



Legal Landmines Every Manager Needs to Avoid

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John S. Gannon is a Partner, with Skoler, Abbott & Presser, P.C., a law firm that has exclusively represented management and employers in the fields of labor relations and employment law since our founding in 1964. Throughout his career with the firm, John has defended employers against claims of discrimination, retaliation, harassment, and wrongful termination, as well as actions arising under the FMLA and wage and hour law. John also has experience with lawsuits seeking to enforce restrictive covenants and protect trade secrets. John frequently assists employers in litigation avoidance strategies. He regularly counsels employers on compliance with state and federal laws, including the Americans with Disabilities Act, Fair Labor Standards Act, and Occupational Health and Safety Act.

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Today's Agenda

- Preventing Harassment: What Leaders Need to Know
- Preventing Discrimination/Retaliation Lawsuits: What Leaders Need to Know
- Other Landmines for Leaders
 - Wage and Hour Issues
 - Handling Medical Conditions
- Questions

Story of Paul and Didi

- Didi began working for Acme in accounting department
 - Started in 2014
- Hired by Paul and Curt
- Paul head of department, Curt was direct manager
 - Paul and Didi very friendly, often discussing dining interests
 - Didi is a “rock star” first few years
 - They joked that she was Paul’s “favorite”
 - Occasionally had lunch together (alone)
 - Didi even invited Paul to her son’s birthday

Story of Paul and Didi

- Didi often asked Paul to have “one-on-one” meetings
- Paul agreed, even though Didi should have been meeting with Curt
- Two of them were admittedly “flirtatious”
- About 5 or 6 others in the department – what did they think about this?
- Here come the rumors...

Story of Paul and Didi

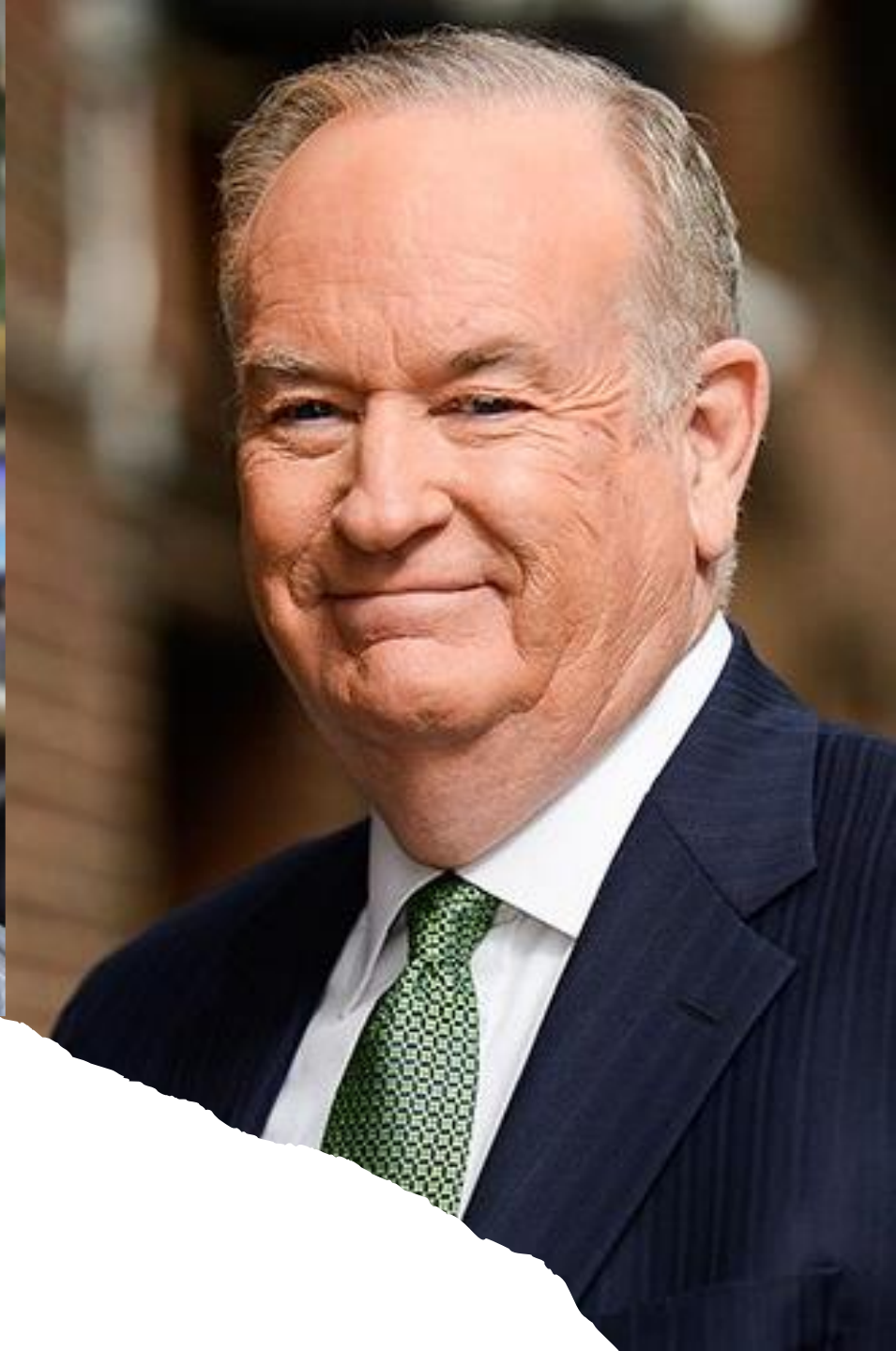
- Text messages! Emails!
 - “Thank you for lunch on Friday and more importantly the talk. I really appreciate the leadership and direction you give me. I feel better going into this week and I am looking forward to a great FY18. I would like to meet again soon. Let me know if you can fit me in maybe bi-weekly.”
 - “Thank you for pizza and ice cream! Also for the talk. It really has me thinking.”
 - (9:34 PM) D: Game of thrones?
 - P: Still working!!!!
 - D: Oh no you missed it?? It was good
 - D: Long day for you! Any flight issues?
 - P: You are funny... getting into my hotel room... beat up day!
 - D: Night
 - P: You are too sweet... I hope you get great sleep!

Story of Paul and Didi

- According to Didi, Paul:
 - Frequently made comments about Didi's appearance
 - Said he liked her hair curly, touched hair on occasion
 - Told her he liked a trench coat on her – “like this on you”
 - Invaded personal space at cubicle
 - Said: “you’re my real favorite” on occasion
 - Texted once about going out for a drink b/c holiday party canceled
 - Texted her: "I've been thinking about you way too much."
 - Told her: "I think your intelligence is sexy."
 - Didi also about the untrue rumors going around

Story of Paul and Didi

- According to Paul:
 - Frequently made comments about *everyone's* appearance
 - Possibly made some of the comments but never called her “sexy”
 - Can't control the rumors
 - Claims she was the one who repeatedly asked to meet with him
 - Why ask for meetings if offended by him?



Which one is Paul?

Story of Paul and Didi

- How did it end?
 - Acme does an investigation
 - Investigator: Paul violated company anti-harassment policy
 - Removed from the department, transferred to mid-west
 - *Was this enough?*
 - Jane, Didi's new boss, is Paul's friend
 - Jane very critical of Didi missing work to care for new child
 - Didi gets a terrible review, then gets a lawyer
 - *What's the problem here?*



Preventing Harassment: What Leaders Need to Know

Why Do Supervisors Need to Be Careful?

- You are a role model!
 - Problematic behavior or comments can create a permissive atmosphere where others feel emboldened
- You could be liable
 - Unwanted and unwelcome behavior or comments can create liability for the company and for the supervisor
- You're responsible for the workplace
 - Disrespect breeds poor morale
 - Valued employees will seek other employment

What You Need to Know

- Know your company policy
- What is a “hostile work environment” anyway?
- What to do if you observe inappropriate behavior or get a complaint
- What happens when a leader is accused of harassment?
What happens if they turn a blind eye?

Hostile Work Environment

1. Employee is a member of a protected class;
2. Employee subjected to unwelcome sexual (or other) harassment;
3. The harassment was based upon sex (or other protected characteristic);
4. The harassment was sufficiently severe or pervasive so as to alter the conditions of plaintiff's employment;
5. The objectionable conduct was both objectively and subjectively offensive, such that (a) a reasonable person would find it hostile or abusive and (b) the target in fact did perceive it to be so; and
6. Some basis for employer liability has been established

Hostile Work Environment

- Not all “harassment” is illegal
- Harassment or discrimination on the basis of membership in a protected classification
- Examples:
 - Age, race, color, national origin, religion
 - Disability, veteran status, military service
 - Sexual orientation, genetic information

O'Horo v. Boston Medical Center (1st Cir. Feb. 21, 2025)

- Employee claimed she was subjected to a hostile work environment, alleged that:
 - Male colleague "mansplain[ed]" and spoke condescendingly to her
 - Male colleague called her a "square peg in a round hole"
 - Male colleagues discussed her "interactive and emotional intelligence issues"
 - During a meeting, male colleague asked whether she would "buy him a six pack" if he solved a problem
 - Male colleague routinely was condescending toward employee in front of other staff

O'Horo v. Boston Medical Center (1st Cir. Feb. 21, 2025)

- Was this behavior severe? Pervasive? Based upon her gender?
 - *“Even if we assume as true Dr. O'Horo's version of the foregoing allegations, when viewed both individually and collectively, they do not amount to the sort of severe and pervasive harassment based on gender necessary to establish a hostile work environment claim”*
 - *The incidents had “no apparent relation to her gender”*
 - *“evidence suggests that Dr. Higgins's interpersonal conflicts were not unique to Dr. O'Horo, specifically, or women, generally; rather, Dr. Higgins treated many of his colleagues, including non-female ones, the same: poorly”*

Hostile Work Environment

- Not all “harassment” is illegal
- Harassment or discrimination on the basis of membership in a protected classification
- Problems with treating everyone poorly?

Affirmative Defense to Non-Supervisor Harassment

- Did the employer exercise reasonable care to prevent and correct?
 - Policy + adequate training
- Take prompt + remedial action
- What happens if supervisor does not report?

If You Receive a Complaint

- Take the issue seriously
- Listen
- Contact appropriate person so investigation can commence
 - Know and follow your company policy
- What if you don't observe it directly?
 - Can you still take action?



Preventing Discrimination/Retaliation Lawsuits:
What Leaders Need to Know

Why Do Lawsuits Get Filed?

- Disgruntled employees
- Poor managing/supervision
- No/little cost to employee, big cost for employers to go all the way to trial (even if successful)
- Fee shifting statutes that allow for individual liability
- Risk of punitive damages
- Administrative agencies and courts/juries in this region lean pro-employee

Why Do Lawsuits Get Filed?

- Employee claims that an “adverse action” is based on:
 - Protected characteristics
 - Examples: Age, race, color, national origin, religion, disability, veteran status, sexual orientation
 - Protected activity
 - Examples: Complaints about discrimination or harassment, complaints about wages, use of FMLA or ADA leave

Organization's Defense

- Legitimate, non-discriminatory reason for taking action:
 - Rules violation or series of rules violations
 - Handbook up-to-date?
 - Misconduct
 - Insubordination
 - Performance issues
- Protection: Proper and thorough documentation

Why Do Cases Go to Trial?

- “Your reason is a smoke screen (pretext) for discrimination”
 - Inaccurate statements in personnel file or administrative filings
 - Rules not consistently applied
 - Comparators treated different
 - Stray remarks
 - Given reason factually false
 - Lack of adequate documentation

Ripoli v. R.I. Department of Human Services, 123 F.4th 565 (1st Cir. 2024) (RIF gone wrong)

- Employee (female/lesbian) terminated from her position as Associate Director of the Rhode Island Office of Veterans Affairs (OVA) as part of reorg
- New Director claimed her position duplicated his role and negatively impacted budget and productivity
- Neither party disputed she performed well
- Her position was the only one eliminated
- She claimed discrimination based on gender and sexual orientation

Ripoli v. R.I. Department of Human Services, 123 F.4th 565 (1st Cir. 2024) (RIF gone wrong)

- Shortly after employee separated (two days), Director created new position: Strategic Planning, Policy, and Communications Administrator (SPPCA), which was given to a heterosexual male employee
- Duties overlapped with the Associate Director role
- Employee was not considered for the SPPCA role
- New SPPCA has no management experience, while plaintiff supervised OVA for four years
- Court reversed lower court granting of summary judgment
 - What this means: Go to trial, or settle

Ripoli v. R.I. Department of Human Services, 123 F.4th 565 (1st Cir. 2024) (RIF gone wrong)

- *“The evidence that [plaintiff's] services were supplanted by services rendered by Jolin, a heterosexual male who was arguably less qualified than her to carry out the duties of this management role, also tends to support an inference of discrimination”*
- *“As to the budgetary justification, State leaders conceded that there were no budgetary imperatives that required eliminating the appellant's position”*
- *“According to its job description, the Associate Director assisted the Director in performing certain duties, but was not independently responsible for performing the same duties. Providing assistance to a superior so that the superior can carry out a duty does not necessarily impose upon the subordinate that same duty.”*
- *“There is evidence of some significant overlap between the Associate Director's role and the SPPCA role.”*

Other Landmines for Leaders

- Wage and Hour Issues
 - State laws are *extremely* pro-employee
 - Risk of class/collective actions
 - Misclassification mistakes
 - Working off-the-clock
 - Meal break mishaps
 - New pay equity and pay transparency laws

Other Landmines for Leaders

- Handling Medical Conditions
 - Dealing with the “Bermuda triangle” of leave laws
 - Which law do we follow?
 - Challenging FMLA/intermittent leave issues
 - Unique problems presented by mental health conditions
 - Employee tells you they are fine
 - Employee claims performance problems are a result of mental health

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