

Manager Responsibilities *Treating Employees Consistently*

As managers, every decision we make is scrutinized under, and held accountable to, a variety of federal and state laws. In particular, managers are held accountable to the EEOC and Title VII of the Civil Rights Act. Ensuring that you treat employees consistently, or that you can justify any inconsistent treatment, may help you prevent retaliation, or the appearance of retaliation.

Harassment and Workplace Culture

Your company culture is going to have the largest influence on preventing harassment in the workplace. Even if you have a clear code of conduct that says no harassment is ever tolerated, it won't do much good if managers don't build a culture of respect.

As a manager, it's your responsibility to take all complaints seriously, discipline staff for violating harassment policies, and lead by an example of treating staff respectfully.

Encouraging employees to report any incidents of harassment – or bullying or discrimination – won't do any good if the supervisor or HR brushes off charges. A common problem is showing favoritism based on who's been accused: If it's a top-performing worker, it may be tempting to side against the accuser. This sends a message that star employees can get away with harassment.

Likewise, you need to convey to your staff that playing favorites is not acceptable. Managers need to communicate that they won't stand for inconsistent treatment of employees based on supervisors' personal bias. Make it clear that you mean it and don't ignore policy violations and disrespectful treatment of staff.

Below are some processes and thoughts for handling employment decisions while being aware of legal requirements when retaliation may be a legal risk.

Disciplining or Firing an Employee

Unfortunately, it may be necessary for you to discipline or terminate an employee. There are many reasons why this action may be justified. Even so, it is possible that taking disciplinary action may result in a discrimination charge or complaint.

Ensuring that managers involved in discipline or termination decisions understand their responsibilities may help prevent discrimination.



- ▲ Ensure that disciplinary and termination decisions are not based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, age (40 or older) or genetic information (including family medical history).
- ▲ Ensure that disciplinary and termination decisions are not based on an employee's decision to report discrimination, participate in a discrimination investigation or lawsuit, or oppose discrimination (for example, threatening to file a discrimination complaint).
- ▲ In general, ensure that disciplinary and termination decisions are consistent with your discipline policy.
 - However, in some instances, you may need to deviate from that policy. In those instances, ensure that you can justify treating the employee differently.
 - For example, your discipline policy may state that employees who fail to meet deadlines will receive a warning. You may decide to waive the warning for an employee who was unable to meet a deadline because she did not receive a necessary part from a supplier, despite her repeated and timely requests for the part.
- ▲ Consider documenting the reason(s) for the discipline or termination.
- ▲ This may help you defend your business if a discrimination charge or complaint is filed.
- ▲ To prevent misunderstandings, it may be helpful to explain the reason(s) for the discipline or termination decision to the employee.
- ▲ Respond promptly and effectively to discrimination complaints regarding disciplinary action.

Questions to Ask Yourself if Legal Protections Have Already been Triggered

Before making an employment decision that may negatively affect an employee who reported discrimination, assisted with a discrimination investigation or lawsuit, or opposed discrimination, ask yourself:

- ▲ Am I holding this employee to stricter performance or behavioral standards now than I did before he filed a discrimination complaint, assisted with a discrimination investigation or lawsuit, or opposed discrimination?
- ▲ Am I treating this employee differently than I have treated other employees who have broken similar rules?
- ▲ Am I treating this employee differently than I have treated other employees with similar skills, abilities or accomplishments?

If the answer to any of these questions is “yes,” or if your decision is not consistent with your past behavior or with your employee policies, determine whether you can justify the decision to treat the employee differently.

Example - Justifying Inconsistent Treatment

In general, you treat all of your employees the same way, holding them accountable for their work, rewarding them when appropriate, and imposing disciplinary measures when necessary. You do not base employment decisions on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age (40 or older), disability or genetic information (including family medical history).

In some instances, however, you may need to treat employees differently or deviate from your past behavior or your employee policies.

For example:

- ▲ You may decide to hold an employee to stricter performance or conduct standards than you impose on other employees because the employee has a high profile role that merits the stricter standards.
- ▲ You may suspend one employee for failing to complete an order on time and issue warnings to other employees who failed to complete orders on time because the first employee has repeatedly missed deadlines and the other employees have never missed a deadline before.
- ▲ You may need to postpone a promotion because your business’s current financial situation does not allow you to grant the promotion in the originally anticipated time frame.

In these situations, to prevent misunderstandings, it may be helpful to explain to the employee why you are treating him differently.

If there are no circumstances that justify treating the employee differently, you may want to determine whether it is possible to accomplish your objective(s) in a manner more consistent with your past behavior or your employee policies.

Tips for Preventing Retaliation

Receiving a charge or complaint of discrimination can be frustrating, especially when you are confident that you haven’t done anything wrong. You may want to confront the employee who filed the complaint to demand an explanation, assert your innocence or insist that he withdraw the complaint. You may be inclined to punish the employee for filing the complaint, perhaps by suspending or firing him. **DON’T DO IT!** These actions may be illegal, and they will only exacerbate the situation. So what should you do?

- ▲ Understand your responsibilities. It is illegal for you to retaliate against (punish) applicants, employees or former employees for:
 - filing a complaint of discrimination with your business;
 - filing a charge of discrimination with a federal, state or local agency;
 - participating in a discrimination investigation or lawsuit (for example, serving as a witness); or
 - opposing discrimination (for example, threatening to file a charge or complaint of discrimination).
- ▲ Don’t take out your frustrations about the complaint on the employee. Treat the employee as if he had never reported discrimination, assisted with a discrimination investigation or lawsuit or opposed discrimination.
- ▲ Treat employees consistently. Before making employment decisions that may negatively affect the employee, ensure that you are acting consistently with past practice or that you can justify treating the employee differently.
- ▲ Establish an open door policy. Encourage employees to share any concerns about discrimination with you. Respond promptly and effectively to discrimination questions, concerns and complaints.
- ▲ Hold employees accountable. Ensure that employee policies are followed and enforced consistently. Hold employees accountable for complying with and enforcing discrimination policies.