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Dealing with Unpleasant Odors in the Workplace

By Julie T. Bittner

Two weeks ago I was at a wedding talking to a close friend of mine from college. She was hired by an internet start-up to manage its accounting department. She caught on quickly, and the owners decided that since she was pretty sharp they would also assign her payroll and other human resources functions. This particular office environment is progressive in that there are no cubicles, simply long, narrow tables that each employee sits at with his or her laptop.

One day an employee approached my friend in her human resources capacity and told her that the person he sat next to at the table smelled terribly of smoke after each break. He then asked my friend what she was going to do about it. With no human resources training to fall back on, my friend simply told her coworker that there was an open seat at the end of the table so he should just move.

Did my friend make the right decision? Is there a more sophisticated way of dealing with someone that smells, or with smells in general, in the workplace?

There are all types of odors that can affect a workplace: body odor caused by poor hygiene or a medical condition; lotions, perfumes, colognes, and aftershaves; candles and air fresheners; smoke; or meal items. Each brings its own set of challenges and potential pitfalls for employers, and while each particular situation should be approached on its own merits, there are some general guidelines employers should keep in mind.

Body Odor

Body odor issues should be dealt with confidentially and sensitivity. Body odor may be caused by myriad issues, including poor hygiene or even a medical condition. If the issue of body odor is not addressed appropriately and if insensitive - and potentially offensive - comments are made by management when handling the issue, employers may face liability under the Americans with Disabilities Act or Title VII of the Civil Rights Act.

The first step to address the problem would be to call a meeting with the employee that emits the odor and bring the matter to the employee's attention. If applicable, the human resources professional can refer the employee to the company's dress and grooming policy and remind the employee of the company's expectations. The human resources professional should be sensitive to the situation and allow the employee to discuss the matter if he or she so chooses. The human resources professional should listen to any suggestions or solutions the employee has to offer.

In the event the employee advises that he or she has a medical condition causing the issue, move forward with the interactive process to determine if a reasonable accommodation exists. Accommodations may include:

- Allowing flexible restroom breaks or a private area to allow the employee to take care of personal hygiene needs at work.
- Providing a private office or workspace with an air purification system.
- Using odor-absorbing products.
- Allowing the employee to work from home.
- If the individual interacts with clients or customers, reassignment to a position that does not involve direct contact may be appropriate.

Scents

I have another friend from college that works in a cubicle environment. For years I have heard her rant about one of her co-worker's complete obliviousness to the fact that her perfume makes my friend sneeze and cough. This particular employee comes to work in the morning with a heavy scent of perfume and then refreshes the scent throughout the day.

In this particular situation, the human resources professional has two employees to be concerned about: 1) my friend and her possible allergy/chemical sensitivity to this scent or medical condition exacerbated by the scent, and 2) the perfumed employee.

Does an employer have a right to tell the perfumed employee not to wear her favorite scent simply because another employee does not like it/is allergic/is sensitive to it?

Unfortunately, the perfumed employee in this situation does not have a right to wear the perfume of her choice. On the other hand, if my friend has a potential medical issue related to the perfume scent, then the employer does have an obligation to go through the interactive process with my friend to determine whether there is a way to accommodate her allergy/chemical sensitivity in the workplace.

For example, in *Buckles v. First Data Resources, Inc.*, 176 F.3d 1098 (8th Cir. 1999), the United States Court of Appeals for the Eighth Circuit found that the employer met its obligations under the ADA to accommodate an employee who suffered from severe sinus attacks triggered by common workplace irritants (perfume, smoke, nail polish, glue, and adhesive) when it prohibited the use of nail polish in the department, created a workstation in an area of the office with better ventilation, and allowed the employee to stop working if he sensed an irritant so that he could wait for the supervisor to remedy the problem. Similarly, in *Kaufmann v. GMAC Mortgage*, 229 F. App'x 164 (3d Cir. 2007), the Third Circuit Court of Appeals held the employer had met its obligation to accommodate when it developed a perfume-free policy and when employees suspected of wearing scented products were reminded by a supervisor of the importance of keeping a perfume-free environment. Furthermore, the employer changed air filters and provided a fan in order to accommodate the employee's allergies to perfume.

To avoid the issue all together employers can adopt a scent-free or fragrance-free policy. This type of policy could be written into the employee handbook dress code policy or it could be written in as a stand alone policy.

In this particular situation, the employer needs to remember to keep my friend's medical condition confidential and not simply run to the perfumed employee to advise them that "Employee X is allergic to your perfume so stop wearing it please."

Smoke

Last summer a situation regarding a woman in St. Louis being fired from her job as a receptionist at a Cancer Center on the grounds that she smelled like smoke at work grabbed national headlines.

Can employees be fired because they smoke cigarettes? Laws vary by state. Some states prohibit discrimination against employees

for the lawful use of products (such as cigarettes) outside the workplace. Other states expressly prohibit employers from making non-smoking a condition of employment. However, in every state, employers are free to ban smoking at work. Employers who choose to have a smoke-free workplace policy can discipline violators of that policy just as they could violators of any other policy. Consistency with enforcement is crucial.

If this is a situation you are facing in your workplace, determine what you would like your workplace policy to be, then consult with your employment attorney to make sure your policy does not violate any state laws.

Regardless of the odors in your workplace, it is essential that you take each employee concern/complaint seriously and work to provide a solution that is agreeable to all parties involved. Remember to keep the ADA/Title VII at the forefront of your mind while you are dealing with these situations.

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