

December
19, 2012



Aaron J.
Graf, Esq.

Questions
on this topic?
[CLICK HERE](#)

Don't Be Afraid To Care

By Aaron J. Graf

During a recent conversation with a friend who serves as a supervisor at a local company, she told me she was "afraid to care" when it came to the subordinates she encounters on a daily basis. Especially during this holiday season, it struck me as a sad commentary on what the exponential growth of lawsuits has done to the important interpersonal and professional relationships in the workplace.

She felt that knowing any personal information about her subordinates - whether it be why they weren't feeling well that day, how their ill family member was doing, or what they did the past weekend - would only lead to knowledge that could invite or support a future claim against the company. She was frustrated because she was constantly feeling guilty about not developing interpersonal relationships with these individuals because, outside of the workplace, she is a compassionate, empathetic, and kind individual. For example, she shared that a woman in her workplace recently had become pregnant. While complications in the pregnancy had developed, in the end the employee and the baby were happy and healthy. But instead of being her natural, compassionate self during the time that the complications arose, and instead of sharing her joy with the employee when the baby was born healthy and happy, she constantly found herself using guarded language and tip-toeing around any medical issues.

This struggle between wanting to develop professional interpersonal relationships with subordinates and the fear of providing ammunition for a future discrimination claim is not an uncommon one among supervisors. Certainly, laws should be in place to prevent discrimination based on any number of protectable characteristics. Employment decisions should never be based on gender, color, or disability, but rather should be based on merit alone.

But is this really what we had in mind, making otherwise good, well-meaning people afraid to care about their fellow human beings? Employers and supervisors have become so wary of the possibility of being sued in the future that they are often paralyzed in the present when it comes to developing the important interpersonal relationships that make a workplace thrive, grow, and be productive. I imagine it is a common feeling among supervisors to feel isolated and alone at work, despite being surrounded by people that they would otherwise develop professional relationships with.

All this raises a seemingly basic but yet complicated question: what can a supervisor, or an employer for that matter, do to clear the path for the development of interpersonal relationships in the workplace without exposing themselves to unnecessary and unwanted liability?

As to employers, first and foremost, having good policies, procedures, and reporting mechanisms in place is likely the single best step to avoiding most kinds of liability. However, this means more than just having a lengthy and detailed employee handbook and handing the employee a copy at orientation. Make sure the policies are clear, consistent, and easy to follow. A 150-page employee handbook does little good if it is confusing, contradicts itself, and no employee actually reads it. Make sure the employees not only receive and have constant access to the policies, but also that they understand them. Devoting one hour during orientation to actually go over each policy and procedure can save time and prevent liability in the future. Also, ensure that employees have numerous avenues to report any concerns about discrimination, harassment, or the like to supervisors, human resources, or a 24-hour hotline, and have such information posted in the workplace, not just buried in the handbook.

In addition to training supervisors as to the above policies and procedures, train supervisors to be self-aware of their behavior towards employees. Training supervisors to be self-aware of how they treat each individual employee, and why they treat them in the fashion they do, can empower supervisors to develop those powerful and important interpersonal relationships with all employees without being paralyzed by fear of future litigation.

As to what supervisors can do, first, be aware that knowing information about a subordinate, no matter how sensitive, can never lead to liability in and of itself. It is what is done with the information, and an employer's actions after learning of the information, that leads to liability. This is not to say that a supervisor should seek out sensitive information about a subordinate, but one should also not live in fear of discovering such information during the course of a professional relationship with a subordinate. Ensure that if any such sensitive information is learned that you continue to treat the employee in the same fashion you did previously.

Next, follow the policies and procedures the employer has in place

consistently and treat every employee the same. While there is absolutely nothing wrong with developing interpersonal relationships with subordinates, such relationships should not cloud your judgment in carrying out the policies and procedures consistently. If the company policy is that someone who is more than five minutes late for their shift gets a written warning, then everyone who is more than five minutes late for their shift should get a written warning, no exceptions for friends. In that same vein, document how you treat every employee consistently and the same. The single most important way a supervisor can demonstrate that he or she is not playing favorites is to be able to demonstrate through documentation that every employee was treated in the same fashion.

There is no question that a workplace filled with positive and professional interpersonal relationships will lead to a more productive and satisfied workforce. Striking the balance of fostering those positive and professional relationships with appropriate workplace discourse and avoiding future liability can be a difficult one. However, that does not mean supervisors should be discouraged from developing those relationships or that supervisors should live in fear of them. Rather, employers can empower the supervisors by having appropriate policies in place and training supervisors regarding the same. In addition, supervisors can feel free to develop those relationships so long as they remain self-aware of how they are treating each employee, consistently follow the policies in place, and document the equal and consistent treatment of all employees.

The 60-Second Memo is a publication of Gonzalez Saggio & Harlan LLP and is intended to provide general information regarding legal issues and developments to our clients and other friends. It should not be construed as legal advice or a legal opinion on any specific facts or situations. For further information on your own situation, we encourage you to contact the author of the article or any other member of the firm. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.



Copyright 2012 Gonzalez Saggio & Harlan LLP. All rights reserved.

Arizona | California | Connecticut | Florida | Georgia | Illinois | Indiana | Iowa
Massachusetts | New Jersey | New York | Ohio | Tennessee | Washington, D.C. | Wisconsin

www.gshllp.com