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It's All Fun and Games until Someone Loses an Eye: How a New Manager's Office Banter Can Haunt You

By Marcie B. Cornfield, Esq.

We all want to work in a jovial workplace environment, one where we get along with our co-workers and our manager, one where we all enjoy meeting as a team for lunch and the occasional drink. Indeed, we would all agree that such an environment makes for a pleasant workplace and that when morale is good, the workplace functions more smoothly. But what happens when a manager, who enjoys a good amount of camaraderie with co-workers and who is involved in routine jokes and comments, shows up in a Charge of Discrimination? Here's an example:

My manager has created a sexually hostile work environment. He asked me if I had a "hot date" and told me I looked "great" in that skirt. He is always asking me if I want to have a drink with him. I believe I am being discriminated against because of my sex in violation of Title VII.

This is a common scenario. It is one where a new manager has been in a subordinate position, working alongside his co-workers for years. He has engaged in the same jokes, comments and overall horseplay that co-workers tend to engage in, from time to time. Then he gets promoted and does not realize that his actions now bind the company. He wants to remain friends with former colleagues, maybe because he misses the camaraderie, or maybe just because he does not understand his new role. Whatever the reason, upon his promotion, these once "innocuous" comments continue, as the new manager does not realize that the boundaries have changed. Then, the new manager gives a former colleague a poor performance review or a written warning, and the former colleague files a Charge. Now, all of these innocuous comments and friendly invitations have been taken out of context and lumped into one Charge to which the Company must now respond. How could this situation have been avoided?

- **Have an Anti-Harassment Policy in Place and Train Your Workforce:** Provide training to all employees regarding what sorts of comments are inappropriate. While we all want camaraderie, and we cannot prevent co-workers from occasionally teasing one another about having a "hot date," it is best to have a solid harassment policy in place which explicitly prohibits any inappropriate comments and lets employees know they can report such comments if they feel they have been inappropriately targeted. This provides your company with protection when the employee does not utilize the complaint mechanisms outlined in your policy, as it may preserve your affirmative defense.
- **Train Your Managers to Stop Inappropriate Behavior Immediately:** Train your managers on the difference between appropriate and inappropriate workplace banter. Managers must immediately put a stop towards any behavior that they suspect is inappropriate.
- **Train Newly Promoted Managers:** Train your newly promoted managers to accept their new role. Boundary issues must be discussed with new managers before the promotion is effectuated. New managers must be informed that their actions now bind the company and that the same level of office banter is no longer acceptable. Managers must be warned of the consequences if they fail to change their behavior. They must especially be warned of the consequences for engaging in sexual harassment and that what was once acceptable behavior with their female co-workers is now no longer permissible.
- **Have Resources Available for New Managers:** Making the transition from co-worker to manager is a difficult transition for new managers, as they may want to remain part of the group and miss that level of camaraderie. They will also have a difficult time commanding respect while maintaining a good rapport with their subordinates. The new manager will not know how to leverage his or her new role and successfully maneuver between these two worlds. The transition may take quite awhile, and some new managers will struggle. Therefore, the company should provide resources for these new managers so that when

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problems develop they have a resource other than a former co-worker. Such a situation not only lowers morale and creates divisions, but this perceived favoritism may in and of itself lead to a Charge of Discrimination.

- **Train Your Managers to Avoid Office Gossip:** New managers will be privy to confidential information and may be prone to share such information with one of their former co-workers that they still regard as a friend, especially when that manager wants to feel the same level of approval that they once had from their subordinates. Prohibit this! The new manager must be warned of the consequences for sharing confidential information and must be informed of the specific types of information that cannot be shared, including but not limited to confidential information about a former colleague's work performance, medical conditions, or any other personal information.
- **Train Your Managers to Refrain from Bad Mouthing Their Subordinates:** New managers must be reminded that they were promoted because of their level of professionalism and excellent work. Remind them to keep it that way and not insult one co-worker to another.
- **Train Your Managers Not to "Play Favorites":** A new manager is bound to have made closer personal friendships with some former colleagues than with others. It will be only natural for the new manager to favor these friends in terms of assignments because there will be a level of trust that has already been established. Rewarding excellent work is one thing, but there is a danger in playing favorites, especially where "like attracts like." For instance, a male manager might have made close relationships with his male co-workers. If that male manager now starts giving the choice assignments to his male friends on a routine basis, for no other reason than their past friendship, your company could end up with a terms and conditions claim for sex discrimination. Thus, it is important that new managers are trained on fairly evaluating job performance and what factors they should consider when determining work assignments.
- **Remind the New Manager the Importance of Closed Door Conversations:** New managers will need to be reminded that private conversations are just that - private. Poor performance should never be addressed in front of others. If the new manager wants to command respect, then the best way to do that is to train the new manager to respect his subordinates and not embarrass them.

The transition from friend to supervisor can be a difficult one, but with the right training and resources, managers can be set up for success.

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