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Employment Alert

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TOLERATE ANGER AT YOUR OWN RISK

Maureen Minehan

You have an employee with a hair-trigger temper. He shouts at his staff and recently stormed out of a meeting when a coworker questioned one of his ideas. However, when he's not yelling, he's a key contributor--a fact that has led your organization to ignore his outbursts. While you're not anxious to confront him, you worry your organization is at risk if it doesn't address this behavior. Should you be concerned?

Most employment experts will tell you yes. From liability for workplace violence to lost productivity and low morale, ignoring angry employees can bring significant harm.

From anger to violence

Take the case of workplace violence. If an employee's anger escalates into physical aggression, employees affected by the violence could file suit alleging the employer knew about the potential for violence and should have done more to prevent it. If the employer can't show it took concrete steps to address the problem, they could be held liable.

"Employers have an obligation to provide a safe workplace. If violence occurs, most of the time employers will be given the benefit of the doubt if they can show they took steps to address an employee's anger problem," Mark Terman, a partner at Drinker Biddle in Los Angeles, says.

"Because employers may be liable for negligent hiring/retention or respondent superior liability if anger results in harm to other employees, customers, or third parties, employers should take any outbursts in the workplace seriously and respond promptly to any threats," Anne-Marie Shipe, a partner at Bovis, Kyle & Burch in Atlanta, advises.

Morale is another important consequence when anger goes unchecked. "Employees with chronic temper issues have a negative impact on employee morale and overall business operations. Bad behavior should not be ignored even if the employee's work performance is otherwise good," Shipe says.

David Gevertz, a partner at Baker Donelson in Atlanta, says action is especially critical when the angry employee is a member of the management team. "Supervisors with such problems are more likely to harm morale, drive off underlings, and draw harassment/discrimination complaints than subordinates. They are also more likely to set the standard for what is considered acceptable behavior than subordinates. For those reasons, employers are well advised to aggressively address supervisory bad behavior."

Steps to take

Steps employers should consider taking to manage an angry employee include:

Tell the employee the behavior is unacceptable. "While there are several options for addressing anger management challenges in an otherwise valued employee, the best ones are conveyed in person and in writing, and leave no doubt that continued misbehavior will not be tolerated," Gevertz says.

Gevertz says employers have a range of disciplinary actions they can take-- public apologies, suspensions, decreased performance bonuses, delayed promotional opportunities and termination, to name a few, but the actions will only have an impact if the employee believes the employer will follow through. "Poor results tend to occur when these messages are delivered by human resource personnel alone or are undermined by higher-level management that looks only at unrelated results or is too squeamish to confront the problem."

Focus on the behavior, not the cause. Because angry outbursts can be symptoms of some mental or physical conditions, employers should focus on the objectionable behaviors, not their roots, when discussing the problem with employees. Veer too far into the origins and they risk triggering the "regarded as" clause of the Americans With Disabilities Act (ADA). "Employers should not ask whether a mental or physical condition is driving the behavior. It's up to the employee to raise it as an issue," Terman says.

"Employers shouldn't play armchair psychologist and don't need to, as the inquiry is 'what do we need to do to stop this behavior,' not 'why is this misbehavior occurring,'" Gevertz says.

Consider anger management counseling. While a recent ruling by the U.S. Court of Appeals for the Sixth Circuit that mandatory anger management counseling could be considered a medical exam for the purposes of the ADA may scare some employers away from such referrals, Wendy Lane, a partner at Greenberg Glusker in Los Angeles, downplays the threat. [*Kroll v. White Lake Ambulance Auth.*, No. 10-2348 (6th Cir. Aug. 22, 2012)] "In order for the ADA/ADAAA to apply, the employee must have more than a hostile or unpleasant personality. The anger must be caused by or be symptomatic of a disability which is covered under the ADA, such as major chronic depression or post-traumatic stress disorder."

"Even if a referral to anger management counseling causes an employee to receive a diagnosis and make a claim that his or her anger is caused by a covered disability, this may assist the employer in one of two ways. First, the diagnosis hopefully will lead to treatment that the employee might not otherwise have received and help resolve the problem. Second, if the employee refuses to use a mitigating measure such as therapy and/or medication to control the anger, the refusal may provide the employer with defenses that the individual is not qualified for a particular job or poses a direct threat," Lane says.

A documented referral also shows that the employer did take steps to remedy the problem, which could be helpful if the employee's actions spark a lawsuit. "While every case is different, if the angry employee becomes violent or engages in harassing or discriminatory conduct, an employer could likely face a greater risk from failing to refer the employee to anger management than from causing protections under the ADA to be invoked," Lane says.

Examine your culture. Finally, Shipe recommends employers look at their cultures to ensure they encourage and support respectful behavior. "Anger management issues may be caused by stress related to personal, family, health, or financial issues, over which an employer has no control. However, anger management issues also may arise from a work-related fears conflicts, or perceptions, such as perceptions that certain employees are receiving preferential treatment; micromanagerial environments; absentee leadership; absence of meaningful feedback; unreasonably high expectations, inadequate training, poor communication and so on." While none of these things excuse angry behavior, addressing them could reduce the likelihood or intensity of employees' anger.

The bottom line

Tolerating anger in the workplace is a risky proposition for employers. By addressing angry behavior when it happens, employers can minimize the potential for harm or legal liability.

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