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Employers Work to Limit Abusive Conduct, Bullying by Supervisors

Commentary by Robert Turk

Sixty years ago, employers were stereotyped as uncaring capitalists who treated employees with little dignity or respect. Supervisors were viewed as sexist bullies and feudal lords of the shop floor. Those holding positions of authority understood that harsh actions carried little consequence short of employee unionization. In 1955, very few laws curtailed employer excesses or afforded employees industrial due process. Employees, on the other hand, were viewed as respectful, hard-working folks who needed protection from their uncivil bosses.


Turk

These were just stereotypes, of course. There were many progressive employers and many disrespectful employees. Nevertheless, the reality in the 1950s was that union membership grew to 35 percent of the U.S. workforce because employees felt they needed protection from uncaring employers. By 1964, when Florida's workforce was 14 percent unionized, Granville Alley Jr. (one of Florida's most prominent management labor attorneys at that time) warned employers about the reasons employees joined unions. In a March 1964 article, Alley noted, "In every instance the cause of the unionization problem could be traced back to a failing on the part of top management. … You must develop your company's reputation as a good place to work, where fair and honorable treatment prevails."

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As the decades passed, many laws emerged to protect employees from discrimination based on race, sex, religion, national origin, age, veteran status, disability and pregnancy. The use of polygraphs was greatly curtailed, and laws regulating employee benefits, workforce reductions, and family leave were all addressed by Congress.

Laws preventing harassment (including sexual harassment) and discrimination took hold. Florida protected workplace whistleblowers. Miami-Dade prohibited discrimination based on sexual orientation and gender identity, and prohibited employers from shorting employees on their wages. Many state and local governments recently joined the "Ban the Box" movement, which seeks to curtail or postpone an employer's ability to inquire about a job applicant's criminal record.

Many employers now clearly understand that it makes good business sense to treat employees with respect and civility. Employers hold regular management training sessions emphasizing the importance of treating employees fairly and a zero tolerance for bullying. Consequently, the need for union protection has dropped nationwide. NPR recently reported that less than 6 percent of Florida's public and private sector workforce is unionized.

A number of managers still believe that being rude or demeaning is the appropriate

method to elicit the desired performance. State and federal laws still allow managers to do so in many cases so long as they are "equal opportunity bullies." The Workplace Bullying Institute reported that in a 2014 Zogby poll of 1,000 adults, 7 percent reported currently being bullied and another 20 percent reported being bullied at work sometime in the past.

To address this, state legislators across the county have introduced bills that seek to prohibit workplace bullying. This past year, 26 states and two territories introduced antibullying bills. Florida state representative Daphne Campbell introduced the Safe Work Environment Act in Tallahassee last term. None of these bills have passed.

Employees are now regularly suing their employers based, in part, on alleged bullying by their supervisors. Over the past few months, Employment Law 360 reported on cases in which disgruntled employees have sued employers such as Daimler Trucks of North America, Becket Media, Northup Grumman Systems and a division of Huntington Ingalls Industries, all alleging abusive conduct and bullying tied to discriminatory acts by supervisors.

Perhaps the most publicized case of bullying occurred this past December. Heather Cho, vice president of Korean Airlines, lost her cool, screamed at and publicly humiliated a flight attendant and the chief flight attendant of her flight as it taxied out of John F. Kennedy International Airport. The reason for Ms. Cho's outrage? The attendant served her macadamia nuts in a bag instead of on a plate. Cho berated both employees, required them to get on their knees and beg for her forgiveness, hit the chief attendant with an object, and forced the pilot to turn the plane back to the gate to remove the now terminated chief attendant. Upon returning to Korea, Cho faced a firestorm of criticism for her imperious action, which also resulted in her serving four months in prison.

Courts and government agencies always have made it clear that insubordinate employees who bully their bosses may be fired without recourse. That has recently changed. Over the last few years, the National Labor Relations Board (NLRB) has been aggressively striking down employer work rules meant to maintain workplace order and civility, when it believed those rules could conceivably restrict employees from engaging in protected conduct.

For example, the NLRB has found unlawful the termination of workers who have violated company rules on insubordination and the use of profanity directed at their bosses. Last year, the NLRB ruled that Starbucks violated the law when it terminated an off-duty pro-union employee who entered his own store to protest and then engaged in a heated argument with a customer/off duty assistant manager from another Starbucks store. The employee told the manager, "You can f--- yourself, if you want to f--- me up, go ahead, I'm here."

The NLRB also found unlawful the termination of a car salesman who regularly complained about how he and his co-workers were paid. In a meeting with the dealership owner, the employee yelled that the owner was "a "f---ing crook" and an "a--hole." The employee then told the owner that if he fired the employee the owner "would regret it." The NLRB ruled that the employee was not "menacing, physically aggressive or belligerent" toward his boss.

Unlike the 1950s, employers are now making sustained efforts to prohibit obnoxious and bullying conduct by their supervisors. At the same time, the NLRB has given employees the "green light" to act obnoxiously and profanely in dealing with their supervisors when they seek to engage in what the NLRB believes to be protected workplace conduct. Clearly the workplace of 2015 is no longer the workplace of 1955.

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