



**LESSONS LEARNED –  
SUCSESSES, FAILURES AND MOVING FORWARD**

PRESENTED BY:

---

**THE KRIZNER GROUP**

*— AN EMPLOYMENT LAW BOUTIQUE —*



JCT  
(Bowtie)

RTIC DRINKWARE LLC  
20702 Hempstead Road, Suite 110  
Houston Texas 77065  
Copyright © 2015 RTIC Drinkware LLC



# The CDC Outside of Atlanta

- Communication
- Documentation
- Consistency

# Opportunity for Reset/Correction

- New Sheriff Doctrine
- Always the Right Time to Do it Right
  - *Allow for publication/dissemination of new policy practice*
  - *Allow for reasonable time period for significant change (60 days)*
- Check for Changes in Job Descriptions
- Check for Changes in Exemption Status
- Internal Promotion Process
- Review for the Little Things (Job Advertisements, Job Offer Letters, etc.)

# Changes to Standard

- Supervisors/Managers are the first line of protection and need
  - *Education*
    - Training or materials on key areas of employment relationship AND who we can call for help
  - *Perspective*
    - Understand why it can happen to them/us
  - *Accountability*
    - Being a supervisor means part of our evaluation is supervisory skills, not just general position

# After the Fact . . .

- Poor understanding of our role leads to poor actions
- Can be based on
  - *Not knowing what questions to ask*
  - *Not knowing how actions affect others*
  - *Not knowing general legal standard*

# Diverse Views

A supervisor reports to you that he sent home Beauregard for reacting poorly to Betty's opinion about masks and vaccines. The supervisor describes that all he knows is that he came into the room and Beauregard was screaming at Betty, stating that Betty's failure to recognize risk was going to kill them all. When you ask the supervisor how the situation escalated so quickly, you learn that Beauregard has been wearing a mask when at work, but has been ridiculed by other employees, including Betty. Beauregard has even written the supervisor a letter to complain about the issues and copied the school's inspector general, but the supervisor told Beauregard to get over it.



# Retaliation Concerns

- Makes up more than half of all Charges received by the EEOC
- Florida has Public Whistleblower protection (112.3187 et seq.)
  - *Courts have routinely emphasized broad application*
  - *Legal violation is NOT required – misfeasance, malfeasance, and gross neglect of duties are options*
  - *Protected individuals are those who*
    - Complete written and signed complaint
    - Participate in hearing or investigation
    - Refuse to participate in action prohibited by this section
    - Use complaint hotline
    - Advance written complaint to supervisor, Chief Inspector General (Governor's Office), agency IG, or FCHR

# Retaliation Concerns

- Good faith, not absolute accuracy, is all that is required
- Reactions can cost us
- Juries can find retaliation without finding discrimination
- Findings of retaliation frequently produce higher verdicts, based on assumed intent
- While not always legally viable, prior complaints frequently make problem employees feel invincible

# It Is Happening to You

Joe, a married man with two daughters, is more effeminate than the rest of the men on his work team, who frequently go to lunch together and often spend Saturdays hunting at the same camp with one another. Joe becomes emotional one day talking about a particular issue and his supervisor tells him to “toughen up.” His coworkers then begin referring to him as “Josephine” and ask him when he is going to start wearing a dress. What is the issue here and what must be done?

# We Are Having A Baby!

The new Pregnant Workers Fairness Act:

- a. Guarantees an employee's right to receive reasonable accommodations for pregnancy, childbirth, or related medical conditions
- b. Denies the employer the ability to claim an undue hardship for pregnancy related needs
- c. Requires that the pregnancy or post-pregnancy condition to be associated with a disability to enjoy the new protections
- d. Requires an employee to take leave when pregnant or facing a pregnancy-related condition that the employer believes is impacting her work
- e. Both a. and d. are correct

# Pop Quiz

Which of the following supervisory created documents offer both personal and organizational protection from liability?

- A. Interview Assessment
- B. Leadership Log
- C. Corrective Action
- D. Annual Evaluation
- E. Involuntary Separation Memorandum
- F. All Of The Above

# Times Up!

A last chance agreement is:

- a. A great tool that should be used carefully
- b. A document in which the supervisor captures historic verbal performance interventions that have taken place
- c. A makeup tool that should be utilized when a leader has failed to properly document performance failings throughout an employee's tenure
- d. b. and c. are both correct
- e. a., b., and c. are all correct

# Religious Discrimination Update

- Claims Filed with the EEOC in FY 2022 – 13,814 (up from 2111 in FY 2021)
- Benefits/Damages Recovered by EEOC - \$12.8 million
- Percentage of Employees Who Feel Discriminated Against – 25-35%
- Percentage of Employees Who Feel They Must Alter Behavior – 20%

# Religious Accommodation Considerations

- Education of supervisors to get HR involved – a supervisor’s belief alone about a claimed religious practice may create exposure
- Religious belief is more than formal or traditional religion – it includes
  - *theistic beliefs as well as non-theistic “moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.*
  - *“ultimate ideas” about “life, purpose, and death”*
- Following recent US Supreme Court decision (Groff) accommodation is undue hardship standard, but greater burden is on employee to accept reasonable option by employer.



# Religious Discrimination Examples

Morgan asks for time off on October 31 to attend the “Samhain Sabbat,” the New Year observance of Wicca, her religion. Her supervisor refuses, saying that Wicca is not a “real” religion but an “illogical conglomeration” of “various aspects of the occult, such as faith healing, self-hypnosis, tarot card reading, and spell casting, which are not religious practices.”

# Religious Discrimination Examples

Edward practices the Kemetic religion, based on ancient Egyptian faith, and affiliates himself with a tribe numbering fewer than ten members. During a religious ceremony he received small tattoos encircling his wrist, written in the Coptic language, which express his servitude to Ra, the Egyptian god of the sun. When his employer asks him to cover the tattoos, he explains that it is a sin to cover them intentionally because doing so would signify a rejection of Ra.

# Religious Discrimination Examples

Sylvia's job has instituted a policy that employees cannot have visible tattoos while working. Sylvia refuses to cover a tattoo on her arm that is the logo of her favorite band. When her manager asks her to cover the tattoo, she states that she likes the band so much that it is essentially her religion. However, when pressed to provide more detail, Sylvia just really likes the music.

# FMLA Considerations

- You make the call – not the employee
- You can, but are not required, to seek medical certification to start FMLA
- Concurrent use of paid leave required (except workers' compensation)
- Communication about
  - *Continuation of Benefits*
  - *Secondary Employment*
  - *Cooperation*
- No automatic “12 weeks and you're out” rule

# Disability Discrimination Update

- Claims Filed with the EEOC in FY 2022 – 25,004
- Benefits/Damages Recovered by EEOC - \$139 million
- Percentage of Employees Who Have and Report a Disability  
– 18-22%
- Nearly 50% also are 65 or older

# Disability Accommodation Considerations

- Supervisor education is key – HR must be involved in almost all medical (including psychological) issues
- Weigh ADA exposure against harm to others – objective basis for harm usually trumps perceived disability claim
- Remember FMLA (and leave and benefit considerations)
- May (often does) coincide with workers' compensation claims
- Essential functions do not legally require permanent accommodation
- Consideration of remote work is forever changed

# Disability Discrimination Examples

Nila suffers from migraine headaches and sleep related issues. She has ongoing appointments with three different doctors to manage such conditions. Nila has been provided with more than 5 weeks of unpaid leave intermittently over the past several months. She is also chronically late for work and fails to alert Janice, her supervisor, prior to her scheduled time. Janice now wants to terminate her. Is this advisable?

# Disability Discrimination Examples

Rodney works as a professional/hands-on skill instructor and injures himself in class. This is Rodney's fifth injury this month, but his first lost time injury. The previous injuries occurred because Rodney failed to use the appropriate safety equipment. Rodney's supervisor makes sure Rodney gets medical attention and Rodney keeps the supervisor posted as to his progress and potential return. At week ten of the FMLA, Rodney advises he will need an additional four weeks of leave. The supervisor responds that because Rodney probably was not using the proper safety equipment and has cost the school additional money due to his injuries, he will be separated.



# Odds and Ends

- DOL salary threshold increase - \$35,568 to \$55,068
- Seamless communication – Handbook, job descriptions, individual performance documents

# Reminders

- CDC
- The way we did it before is not a valid reason by itself.
- Education

# Need More?

**THE KRIZNER GROUP**

850-386-3747

Jason Taylor

[jtaylor@thekriznergroupp.com](mailto:jtaylor@thekriznergroupp.com)