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# THE KRIZNER GROUP

*AN EMPLOYMENT LAW BOUTIQUE*

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**GAME THE SYSTEM & WIN AT PREVENTING  
LAWSUITS**

### **John**

John supervises fifteen people and works fifty to sixty hours a week at his job. As a salaried manager, he takes great pride in the way that he leads his people. Moreover, he is very happy that he recently received a significant pay increase to \$46,000 annually. On January 1<sup>st</sup>, you have some news to share with him...

### **Wanda**

Wanda has openly shared that she is pregnant and will be having an abortion next Friday. Since she only has 1 day of accrued paid leave in her bank, she has asked for a week of unpaid time to recover physically and emotionally after the procedure. Her coworker pulls her aside and shares that she thinks that this is wrong in the eyes of God and begs her to keep the baby. The supervisor believes that an entire week of leave is unnecessary, especially during this busy season, so only grants 2 days of time.

### **Those Darn College Kids**

The weeds are out of control this year and the Organization needs to find some additional help in meeting some of the unexpected maintenance needs. As a result, several college students are hired to weed, cut the grass, clean the parking lots, and other similar tasks. To save the hassles associated with payroll setup, such students are treated as 1099 independent contractors.

## **Never Too Old**

The Organization has lost significant revenue over the past year and therefore needs to enter into a season of reorganization to realign its labor costs with a revised budget. It hopes to impact the fewest number of employees possible and therefore decides to lay off employees earning the most amount of money. Four of the six employees chosen are over the age of 60. Leadership seems unphased about such fact since there is a legitimate rationale to the process.

### **Elijah**

Elijah is a hothead. He has repeatedly demonstrated a lack of patience with others at work and has been verbally warned on several occasions about elevating his voice and impliedly intimidating others to do what he tells them to do. A month ago, Elijah physically shoved a coworker, Ron, which resulted in a physical altercation between the men. The supervisor sat both of them down and “worked things out” without any resulting discipline. Today, Elijah is arrested after engaging in a horrific incident of road rage in which he brutally beat another person, sending such individual to the hospital.

### **Carla**

Carla has a condition known as chronic fatigue syndrome. After exhausting 12 weeks of Family Medical Leave, she requested an additional month of time before returning to work. The supervisor wants it to be denied, and no decision is officially reached. After the month, Carla does return but continues to have episodes that cause her to call out just before her work is to begin. Her absences occur approximately five to six times each month and she is at work approximately 85% of her scheduled time. The supervisor would now like for her to be terminated.

### **Aaliyah**

Aaliyah has been terminated from her job for repeatedly failing to appear for work as scheduled and has now filed for unemployment. In response to her filing, the Organization has responded that she was terminated and therefore is ineligible to receive such benefits. The unemployment folks find in Aaliyah's favor and the Organization is outraged with such a determination. Despite hours of preparation and several appeals, they are unable to overturn the decision.

### **Troy**

Troy has had continuous issues with Beth, his immediate subordinate, but chooses not to bring these issues up with her to avoid unnecessary friction and embarrassment. Eventually, Troy takes Beth to lunch to discuss the issues, and it goes poorly. Troy then abruptly asks Beth to resign, causing her to leave the lunch angry. Troy hopes the message got through and thinks Beth will resign to avoid embarrassment. Instead, Beth files a complaint alleging harassment and improper pay practices against Troy two days later. Troy is so angry he fires Beth as soon as he learns of the complaint.

### **Alex**

During a team meeting, Alex, a senior employee, repeatedly makes inappropriate comments about gender. Alex says things like, "Women are often too emotional to handle high-stress projects and deadlines" but explains that they do have "a better ability to organize and administer projects than men." Alex also frequently uses phrases like debby downer, prima donna, drama queen, and mean girl when referring to different women throughout the Organization.

## **Gabriela**

Gabriela calls to alert you that an investigator from the Department of Labor is asking for you at the front of the office. Your heart immediately stops, as you think of a few of the “exempt” positions at the Organization – that help desk role, the high schooled degree manager who oversees two employees, the coordinator position, and that midlevel accounting person...

## **Sandra**

After months of interviewing, you have found an incredible new employee, Sandra. You verbally extend an offer, and she agrees to start three weeks later. A few days prior to her orientation, you receive an anonymous message indicating that Sandra has some proverbial skeletons in her closet. After checking both social media and the Internet, you learn that she was terminated from both of her last positions because of unprofessional and highly public behavior. When you call her to rescind the offer, she says she will sue you because she sold her house in Montana and has incurred dramatic expense to relocate to Florida.

## **Carl**

Carl has been a poorly performing employee since he began at the Organization four years ago. His supervisor, Angie, has invested heavily in coaching him verbally, in hopes that he can improve. Unfortunately, he continues to make the same mistakes and seems to lack any interest in improving. Angie now seeks your advice on how to best terminate him within the next ninety days. Angie knows that you are going to tell her something about “writeups”, but she is not a big fan of discipline, so she hopes that you have a “better idea.”

## Jan

During an interview, you notice that a candidate, Jan, appears to be pregnant. You remember from your *The Krizner Group* training that you cannot ask. Fortunately, however, Jan tells you how much she enjoys being a mother in response to one of your questions about her greatest passions in life. Moreover, she notices the picture of your child on your desk and asks you what type of childcare you utilize. As a result, you decide that it is acceptable to ask her about her pregnancy and how much time she might need off when the baby is born.

## Mira

Mira, a department head, has had a truly difficult week. After providing two prior corrective actions for failed performance, she had to suspend one of her employees, Adam, to show him that she “means business.” She also had to deal with another situation in which her employee, Betsy, had been suspected of taking money from the petty cash drawer so Mira had to suspend her as well. Finally, she was forced to issue a third suspension against Canita because the employee manual’s progressive discipline policy states that an employee must be sent home for five days after a third infraction for tardiness.

## James

James, a supervisor, does not have much of a “filter” when he is at work. He oversees an exclusively male team and therefore believes that he can share his thoughts openly. He tells his coworkers about an erotic thriller that he watched the night before, describing one of the scenes in detail. He is also known to regularly invade his employees’ workspace by standing too close and putting his arm around employees when he is giving them instruction. James is also deeply involved with fitness and compares the physique of his men and instructs them what they should do to build better muscle mass. One employee causally mentions this to another supervisor, Rob. Rob simply responds, “that’s just James – he is a little odd but odd toward everyone.”

### **Shaggy**

Scott “Shaggy” Rogers applies for a position and openly discloses that he uses medical marijuana. He indicates that he knows that this will not be a problem since the State of Florida now allows such prescriptions. You remember the requirements under the Americans with Disabilities Act to provide reasonable accommodations. As such, despite the workplace safety concerns associated with the opening, you decide that you have no choice but to hire Shaggy.

### **Jerome**

Jerome has a problematic employee, Sam, that he needs to terminate. Unfortunately, however, their department already has three openings that it has not been able to fill over recent months. As a result, Jerome is already working an additional 10 hours a week and is candidly exhausted. Terminating Sam now would only add to his workload, so he delays the announcement. Sam begins complaining about migraine headaches to another manager on the team. A week later, Sam makes a significant mistake and Jerome immediately fires him.

### **Ray**

Roy, a six year frontline employee, was recently promoted to become a supervisor. An argument breaks out within his team and racial slurs are used. His best friend, and now subordinate, Mike helps resolve the disagreement by using the same slur in a humorous way that relieves the tension. Everyone on the team agrees his intervention stops the fight from escalating. Roy does not document or report anything because he thinks "everything is good now."

## **Bob**

Bob's team seems to have a hard time focusing while they are at work. Each of them takes entirely too many breaks throughout the day, often times to smoke or to engage in endless conversations about their social lives. To best remedy such practices, Bob decides to begin making everyone clock out for these regular 10 to 15 minute breaks. While this quickly curbs much of the behavior, some of the employees welcome the opportunity and regularly utilize this newfound benefit.

## **Wallace**

Wallace has used his paid time off benefits to be out of work for three different multiple-week absences related to a health condition that he is managing. After exhausting his paid leave, Wallace has been granted a month of unpaid leave by his manager. This time is not reported to human resources. Two months later, Wallace is absent from work again and his supervisor now demands that he be terminated because such absence is not sustainable.

## **We Don't Need That**

Years ago, your County applied for and received federal funds to repair some of your roads and bridges. Your County continues to receive money for such work each year. You never saw the application, and no one ever asked you about the language regarding Affirmative Action Plans. The County employee completing the application knows your county doesn't discriminate, so when completing the application, he checked "Yes" when asked, "Do you have an Affirmative Action Plan?" Now, the County Administrator has received a certified letter from the Office of Federal Contract Compliance Programs stating that due to the failure to comply with the request for a copy of your Affirmative Action Plan, federal funding will cease immediately. Turns out, several notices and requests were sent to the County earlier, but since no one knew what to do with them, they bounced around or sat on someone's desk without action.



# THE OLE' CHEAT SHEET

(NO NEED TO WRITE IT ON YOUR HAND!!!)

## Name The Law Word Bank

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|---|
| Fair Labor Standards Act                            |
| Family Medical Leave Act                            |
| Internal Revenue Service & Fair Labor Standards Act |
| Fair Labor Standards Act                            |
| Negligent Retention                                 |
| Americans with Disabilities Act                     |
| Title VII   |
| Whistleblower                                       |
| Title VII   |
| Fair Labor Standards Act                            |
| Promissory Estoppel/Reliance                        |
| Discrimination                                      |
| Pregnancy Discrimination Act                        |
| Office of Federal Contract Compliance Programs      |
| Nearly Every Employment Law                         |
| Unemployment  |
| Not An Issue This one is drug free                  |
| Title VII, ADA, Equal Pay Act                       |
| Title VII   |
| Age Discrimination in Employment Act                |
| Pregnant Worker Fairness Act                        |

# THE OLE' CHEAT SHEET

(NO NEED TO WRITE IT ON YOUR HAND!!!)

## Name The Problem Word Bank

|                              |
|------------------------------|
| Retaliation                  |
| Failure To Accommodate       |
| Sexual Harassment            |
| Disparate Impact             |
| Maintaining Unfit Employee   |
| Failure To Accommodate       |
| Inappropriate Interviewing   |
| Affirmative Action Failure   |
| Gender Discrimination        |
| Sloppy Supervision           |
| Insufficient Wording         |
| Inappropriate Exemptions     |
| Poorly Worded Response       |
| Failed Communication         |
| Acting To Penalize Employee  |
| Improper 1099 Classification |
| None Despite Mistaken Belief |
| Overtime Violation           |
| Race Discrimination          |
| Improper Break Deduction     |
| Failure To Certify           |

# THE OLE' CHEAT SHEET

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## Name The Solution Word Bank

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| Terminate employees who pose potential threats to others   |
| Offer reasonable accommodations and consider undue hardship; avoid commentary that could be harassment   |
| Convert to non-exempt salaried or hourly status or modify job functions  |
| Document adverse decisions using advance email; document early with employee signatures included   |
| Increase salary to \$XXXX or convert to non-exempt status  |
| Contemplate unpaid leave as a reasonable accommodation, including intermittent leave   |
| Don't miss same sex sexual harassment; train and investigate   |
| Requiring leadership to always engage with human resources   |
| Train, train, and train more, as well as taking prompt remedial action upon receipt of complaint   |
| Convert such positions to employee status or assume the risk   |
| Incorporate at will language and identify remaining screens to which employment is subject   |
| Create an affirmative action plan annually and comply with the rules   |
| Avoid any questions or responses regarding protected classes during preemployment  |
| Utilize corrective actions earlier in the process with 3-part goals  |
| Avoid the use of such tool except short term delay in termination or suspected illegal behavior  |
| Utilize the word "misconduct" and cite to existing policy or job description wording   |
| Keep pursuing safety at your workplace   |
| Reconsider the layoff strategy by utilizing objective screens applied to entire workforce  |
| Invest in greater leadership training when promoting or hiring employees who lack supervisory experience and formation                                 |
| Ensure that employees are paid for any and all breaks less than 20 minutes and that deductible lunch breaks are a minimum of 30 minutes                |
| Improve supervisory communication to human resources with qualifying events; instilling practice of consistent designation and certification processes |