



**What
would
YOU
DO**



Meet Grace



- 27 years old
- Employed for 2 years
- Does good work with no documented warnings
- Seven months pregnant

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Meet Will

- Grace's manager
- Very reliable and hard working, expects the same of others
- Likes to joke around with everyone...sometimes gets a little carried away

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The E-mail



- Grace comes to your office visibly upset one morning with an e-mail Will sent her the previous night at 8:36 PM
- “Grace, I’m working on the XYZ project, but I cant find the numbers you were supposed to be working on. What is the status? I need this tonight if possible. I know you have babies on the brain right now, but you are not on maternity leave yet! Just kidding. But really, where are the numbers?”



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Offensive Vs. Humor



- Grace claims that Will has been making verbal jokes for months now about her taking maternity leave, but this is the first time he said something in writing
- Coupled with a complaint about her not completing the XYZ project, Grace is worried that Will is going to give her a bad review or even fire her because of her pregnancy
- Grace mentions that her brother-in-law’s roommate is a lawyer and that he thinks she has a case



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What would YOU DO?



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Downplay Grace's Concerns?



- Do not ignore jokes between employees – especially between managers and employees. Document investigations; communications with employees; their responses to communications. Do not overlook email or texts.
- Encourage employees to refrain from and/or to report offensive behavior (report to immediate supervisor or *human resources*).
- Don't belittle a complaint when you receive one, even if you don't think it has merit.



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Take steps reasonably calculated to end improper conduct that it knows or "should know" about



- Monitor and address Will's offensive or "joking" conduct.
- Document the investigation, including disciplinary actions and communications with Grace.
- Clearly document reasons behind any disciplinary action taken or **not** taken.
- Be consistent.
- Do not wait for a formal complaint before acting.



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Is That the Only Problem?




- Wage-Hour Concerns
 - Why is a non-exempt employee being sent work related emails after hours?
- Why is this a Crisis?
 - Could indicate employees working off the clock.

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What would YOU DO


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How Should You Respond?

- Investigate
 - Speak with the Manager
 - How often are such emails sent?
 - Does he/she expect a response before the next work day?
 - Are employees told to report time spent responding?
 - Speak with other Managers
 - Is this an isolated or common practice?

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How Should You Respond?

- Evaluate Risk
 - Employer is obligated to maintain all hours worked
 - This is not limited to work performed on premises
 - Review time keeping practices for other problem areas
 - Remote Access
 - Rest/Meal Breaks
 - Travel Time
 - Training


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How Should You Respond?



- Determine Need for Change in Policy
 - Eliminate remote access for non-exempt employees
 - Instruct managers not to send emails after normal work hours
 - Require employees to report all out of office work
- Train Managers and Employees on Policies

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Final Questions

Presented by:
David Buchsbaum and Lisa McGlynn

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Thank You

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