Recent Examples of Getting Sued By Employees

Insights
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Don't give coworkers erotic books.
A recent Law 360 headline described a corporate senior counsel explained providing an erotic book with "playful and provocative" drawings to a fellow manager as an "innocent gift."He had even written an inscription which read, "a taste of Dharma Bum to remind that the Dharma breathes in and out and is nothing special," referring, in part, to the Buddhist philosophy of life and the novel by beat writer Jack Kerouac.There are many other allegations and facts associated with the underlying discrimination claim, and I have no idea as to whether unlawful conduct actually occurred.

This article reminds us that employees, even executives, should keep their personal life out of work and should always act professionally.Can you think of any circumstances in which an alleged victim of sex harassment or discrimination would not be able to raise concerns based upon a peer or supervisor providing them an erotic book containing "playful and provocative" drawings?And keep in mind that the executive was an attorney, and presumably should have been more risk adverse.The moral of this story is that anyone can exercise bad judgment, and often the most powerful and educated individuals may most believe that the rules do not apply to them.

Compelling Religious-like Behavior of Employees May Get One Sued.
Consultants, leadership experts, and thought leaders continually introduce new theories and models for personal and business management.Some of these ideas are quite useful.Other ideas are impractical or even destructive to a business enterprise.

I recently heard of a company where an executive utilized leadership consultants to completely break down executives and supervisors, and once they were an emotional mess, force on them radically new approaches to running the business.Marine Corps drill instructors have long broken down recruits and rebuilt them in the fighting devil dog mold of Marines.However, not all Marine Corp approaches translate well into the business universe, and frankly, in their own way, Marine Corp drill instructors are artists at shaping behavior.Not surprisingly, this employer encountered morale and other problems.I was reminded of the movie, Semi Tough, in which the cocky quarterback, Burt Reynolds, attended self-improvement conferences with Jill Clayburn in an insincere effort to win her affections.The movie has aged well and is still hilarious.One of the self-help conference's approaches was to keep attendees in the same room for hours until they literally urinated in their clothes.Presumably, this would break them down and liberate them.Watch the movie.

So it was with considerable interest that I saw an article about an EEOC press release, set out below, asserting that an employer coerced participation and religious activities and fired employees who opposed them.The EEOC stated as follows:

According to the EEOC's suit, the employer and its parent company, which provide customer service on behalf of various insurance providers, coerced employees to participate in ongoing religious activities since 2007. These activities included group prayers, candle burning, and discussions of spiritual texts. The religious practices are part of a belief system that the defendants' family member created, called "Onionhead." Employees were told wear Onionhead buttons, pull Onionhead cards to place near their work stations and keep only dim lighting in the workplace. None of these practices was work-related. When employees opposed taking part in these religious activities or did not participate fully, they were terminated.

A lively New York Daily News article reported that the defendant employer denied the religious nature of the instruction and claimed that the alleged leader of the "Onion head" practices was an independent consultant to the company.

Who knows how this saga will result itself.However, employers should be careful about imposing religious beliefs on their workers, and should be especially wary about consultant and business models which bear the trappings of a religion or appear manipulative.

The NLRB Continues Its Crusade Against Employer Requirements for Good Behavior.
The NLRB continued its determination to prohibit employers from disciplining employees for any sort of bad behavior by issuing a decision on March 23 that a manufacturer unlawfully threatened to suspend a union steward for providing "cues" to an employee during an investigatory interview about damage to factory machinery.

NLRB Chairman Mark Gaston Pearce and member Kent Hirozawa said that the Steward engaged in protective concerted activity when he displayed a note to remind the employee to assert his defense that he was not trained on the equipment.I tend to agree with dissenting member Phillip A. Miscimarra who wrote that:

The employer was entitled to insist on hearing the employee's answers to its inquiries. The Steward was free to rely on his notebook for other purposes, Miscimarra … but he could not use it to substitute a "script" for the employees own responses.

Please consider the response of the EEOC or an NLRB Investigator if a manager or their counsel engaged in similar conduct to lead a witness during an investigatory interview.

Extortion by Demand Letter.
I read an article entitled *"Extortion by demand letter,"* which criticized the increasingly common practice of plaintiff attorneys using the demand letter process to compel an employer to pay something to resolve otherwise frivolous claims in order to avoid legal expenses and administrative

inconvenience.The article references California's anti SLAPP law which allows a defendant to bring a claim arguing that a demand is frivolous:

Many of you have heard the term "SLAPP," the acronym for "strategic lawsuit against public participation." In California, along with many other states, a SLAPP suit can be brought against a plaintiff whose claim "seeks to chill or punish a party's exercise of constitutional rights to free speech and to petition the government for redress of grievances" The anti-SLAPP statute allows courts to decide SLAPP suits using a special motion to strike — akin to a summary judgment motion. Intended victims of extortion have brought anti-SLAPP suits against plaintiffs, claiming that extortion is not a "protected activity" under SLAPP legislation. Some courts have agreed.

Because of this law, employers often decide not to counter sue a plaintiff, so it is refreshing to see an article endorsing its use against frivolous claims.

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