

## **A Case of Bad Behavior and a Whistleblower Label: How to Handle the Situation**

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*Ethan is a manager in a large health care system involved with the operation and maintenance of the system's electronic health record system. He has a Bachelor of Science degree in health care management and has worked for several health care companies since his graduation. Ethan has been labeled a "whistleblower" within his company because he experienced a discriminatory insult from his supervisor and peers that he reported to Human Resources. As a result, he has been passed over for a number of promotions which he feels is the result of his whistleblower status. What are possible options for Ethan?*

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### **INTRODUCTION**

Ethan has diabetes and as a result has hearing loss requiring the use of hearing aids. While having his hearing aids serviced and adjusted, he was without them for a few days. During this time, he attended a departmental meeting led by his supervisor. He explained to his supervisor and those attending the meeting that he might have to look at them closely to hear what they were saying and that he was not staring or being rude. During the meeting, his supervisor pretending to speak, without making any sounds and Ethan saw that his peers were laughing. When asked why, his supervisor told him he was just making a joke and meant nothing by the act. Ethan found it offensive and did not think it was professional. He decided to report the event to Human Resources for appropriate resolution. The HR representative ultimately shared the information reported with Ethan's supervisor. Ethan felt that he had been let down by the actions of the HR Representative. He learned that he was being referred to, informally, as a "whistleblower" and felt it was being used against him since his interests in promotions were not being successful.

Eventually, Ethan began pursuing jobs with other health care organizations and has a promising opportunity with a nationally recognized university and health care system. He shared the whistleblower

situation with some friends because he felt he had been mistreated and felt that the only recourse he had resulted in him being unfairly labeled and ostracized. He appreciated the next career opportunity which might be his but feels the result is he must move and distance himself from his friends and family. All he had done was recognize his mistreatment and seek resolution from the organization using the appropriate complaint process.

In reviewing these facts, certain considerations rose to the surface. These included Ethan's hearing impairment and the Americans with Disabilities Act of 1990 as amended in 2008 (ADA). Also, the appearance of a hostile work environment which falls under the auspices of the Equal Employment Opportunity Commission (EEOC) of the Federal Department of Labor (DOL). Finally, the employment compliance environment of corporate America has created the existence of a "grievance" procedure that affords companies a first-line-of-defense against complaints of discrimination when employees do not utilize the existing process for addressing such complaints internally before taking them to the EEOC or outside council. Ethan followed his organization's grievance procedure, insofar as he went to Human Resources to report his concern.

## **ALTERNATIVES**

What occurred in this case was unfortunate because an employee became displeased with his supervisor and chose to report his situation to Human Resources. The supervisor was at least disrespectful and damaged the relationships with a member of his team. The HR representative was unprofessional in informing Ethan's supervisor and arming him with information that could be used against Ethan. Finally, a competent employee chose to leave the organization primarily as a direct result of this situation. In health care, employee turnover is a problem that must be addressed for the sake of improvement and not be exacerbated, as was the case here.

Several alternative outcomes could have occurred. Exploring these alternatives provides an opportunity to learn from the mistakes of others. While these are all hypothetical, they could have been the outcome. Each has its own set of costs that are real, however.

One possible outcome could have involved Ethan, the disgruntled employee, pursuing an ADA claim with the EEOC. This would have involved the health care organization receiving a charge letter from the commission. This starts a process of correspondence with the EEOC acknowledging the charge and the commitment to investigate and provide a response to the charge. Then each person named in the charge would have to be interviewed and their statement written and signed. Any additional named individuals would also be interviewed, and statements created. Through the formalization of the investigation, the company would do its best to defend the company and its actions. Finally, a response to the charge would be written and sent to the EEOC. A decision from the EEOC could result in an offer to mediate, the acceptance of the claim by the EEOC to sue on behalf of the employee, or a right-to-sue letter being issued to the employee. All this activity is time consuming and costs the company, regardless of the outcome.

Since the disability implied here is hearing impairment, the responsibility under the ADA rests with the employee to notify the company of the disability. An interactive response from the company is required to determine if an accommodation is warranted. Since this was not done prior to the incident of this case, the ADA probably does not apply.

Another alternative for this case would involve the pursuit of a hostile work environment claim with the EEOC. Again, the process outlined previously would be followed and the same time and expense requirement would be incurred by the company. The same possible outcomes exist, with an offer to mediate a settlement, the EEOC suing on behalf of the employee, or a right-to-sue letter being issued to the employee. In the consideration of a hostile work environment, harm to the employee must be shown. Since promotions were denied, harm would only be supported if the employee was best qualified but not promoted. That is a difficult standard to prove.

It should be noted that the employee's use of the company's internal complaint or grievance procedure removes one defense the company could have used in their response to the EEOC for either of

these alternatives. A standard comment in many responses to the charge letters is that the company provides a means of lodging a complaint and for the wronged employee to seek redress internally and that was not the case. This is seen as a failure of the employee and that the charge is not as serious as the employee has claimed to the EEOC. In this case, Ethan did seek redress when he contacted Human Resources. As such, it weakens the company's response to either charge. Also, if the employee had chosen to involve a personal attorney in either of these alternatives, the time and expense associated for the company would have increased.

A third alternative would have been that the supervisor recognized the impact of his actions at the time that Ethan asked why he did the act. The supervisor could have responded with a sincere apology absent any explanation of real or purported intent. He could have talked with Ethan as soon as the meeting was over to ensure that he resolved Ethan's concerns and taken whatever action required to make appropriate amends. The supervisor could also have discussed the inappropriate nature of his action with each of the other attendees at the meeting one-on-one and to emphasize the mistake he made was not appropriate. Finally, he could have been an active supporter in Ethan's desire for promotion and mentored him as needed for advancement within the company.

## **SOLUTION**

In an ideal setting, the act of Ethan's supervisor would not have happened. Effective training at the supervisor level, as well as an effective program that emphasizes respect and trust in the workplace would have been invaluable. The company could have had an emphasis on employee satisfaction and engagement that would have influenced the conduct of all meetings and the employee development appropriate for everyone in the company.

## **RECOMMENDATION**

A strategic human resource plan should be developed, aligned with the strategic plan of health care organization, to produce the outcome identified in the solution. Preparing the organization for the future is the most efficacious route this company can take. While an employee was lost, the less desirable alternatives did not materialize. Correcting the culture now and for the future will provide not only the best defense against future similar situations but also provide the right human resource culture for this health care organization.

## **REFERENCES**

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