

RISKY WORKPLACES – SITUATIONS THAT SEEM INNOCENT BUT CAUSE TROUBLE

DANGER ZONE	
The Isolated Location	<p>Example</p> <p>Sue, a female lifeguard, works for the City at a beach location remote from the City offices downtown. She is one of very few female guards. Her supervisors are male. Her supervisors sexually harass her verbally and physically. She complains to another supervisor, but no corrective action is taken. Although the City publishes an anti-harassment policy, it fails to distribute the policy to the beach location. Sue quits and sues the City for sexual harassment. She wins.</p> <p>Risks</p> <ul style="list-style-type: none">▪ The location takes on a life and culture of its own.▪ The location functions so independently that the City (the employer) forgets about it.▪ Bad actors have free reign.▪ Victims feel they have no recourse.▪ Managers and supervisors remain the legal "arms and legs" of the employer.▪ The employer is liable for the bad acts of the supervisors and managers.
The Night Shift	<p>Example</p> <p>A Company runs three shifts continuously in its heavy manufacturing plant. Third shift has the smallest number of employees. The Company decides to save money by assigning George, a lead worker, to this shift. He is called the "Shift Supervisor", and is a union member, as are the other employees on the shift. Employees see George as the "go to" person when they have complaints, but he has no hiring and firing authority, and he can't discipline them. He does, however, recommend discipline. Women on the shift are repeatedly teased, insulted and sexually touched by male co-workers. The Company has an anti-harassment policy. The women make complaints to George, but no corrective action is taken. The women quit and sue. They win.</p> <p>Risks</p> <ul style="list-style-type: none">▪ The shift takes on a life and culture of its own.▪ The Company pays little attention to the behavior of third shift employees unless Human Resources gets complaints.▪ The Shift Supervisor is legally a "manager".▪ Bad actors, including the Shift Supervisor, have free reign.

- Victims feel they have no recourse.
- The employer is liable for the bad acts of the Shift Supervisor - his failure to act is the Company's failure.

The Smoking Area

Example

Employees are not permitted to smoke inside the building. Therefore, they congregate on the patio just outside the door. Everyone goes there, from Tony, the Vice President of Sales to the receptionist, Judy. They regularly chat about the Company and personal lives. Eventually Tony tells Judy about his unhappy marriage and impending divorce. He even asks her out for a drink after work so they can talk more. Judy makes an excuse and doesn't go, but Tony asks again. She then complains of harassment to Human Resources, which meets with Tony. Tony says, "I am really offended that she came to you. We are very good friends. She should have come to me."

Risks

- The smoking area takes on a life and culture of its own.
- It is very democratic, and employees there may forget about the Company hierarchy.
- When the Vice President forgets about hierarchy, he forgets about his responsibilities as a manager and makes poor decisions.
- The Vice President forgets that he is always a manager in the eyes of the receptionist and thus responsible to the Company for his actions.
- By taking actions that are viewed as "harassment" by a subordinate, he puts the Company at risk.
- Future decisions adverse to Judy may be seen as retaliation.

The "Untouchable" Manager

Example

The Company is a family owned business. One of the family members, Scott, is the Vice President of Engineering. Scott works unusual hours, takes long lunches, sometimes with subordinates, and makes independent decisions about employee bonuses. When Scott comes around, employees humor him regardless of what he says or does. They know that, should there be a layoff, it will be Scott's decision who goes and who stays. Nobody in the Company questions Scott's activities, least of all Human Resources.

Risks

- The Company is legally responsible for the actions of this manager, no matter what they are.
- Because he is viewed as "hands off" by Human Resources and the other managers, including the President, his inappropriate behavior goes unchecked.
- Because he believes that his authority exceeds the policies and procedures of the Company, he is likely to be unfamiliar with them and unwilling to follow them.
- He is the cause of employee relations problems, including lack of productivity.
- He will likely be the source of legal problems arising from unequal treatment of employees, even including wage and hour issues.

The Promoted Supervisor

Example

Mort supervises a group of credit analysts. For ten years, until about six months ago, he was a credit analyst in the same group himself, but he was promoted. He is delighted to be able to continue to work with the same group and socialize with them as well. Last weekend a member of the group got married, and Mort attended. Everybody had a little too much to drink, so things got rowdy. Mort did some inappropriate touching and made quite a few comments, but thought nothing much of it. After all, these are his friends. Unfortunately, however, Cindy objected and brought her concerns to Human Resources. She claims she can't continue to work with him as his supervisor – how can she look up to him now?

Risks

- The supervisor forgot about hierarchy. In so doing, he forgot about his responsibilities as a manager and made poor decisions.
- The supervisor forgot that he is always a manager in the eyes of his subordinates, no matter how recently they were peers, and he is responsible to the Company for his actions.
- By taking actions that are viewed as "harassment" by a subordinate, he put the Company at risk.
- Even in the absence of claimed "harassment", the supervisor has put his effectiveness at risk.
- Future efforts to manage Cindy may be perceived as retaliation.

WHAT THESE SITUATIONS HAVE IN COMMON

- The Company failed to identify the risks in advance.
- A manager lost perspective and failed to act in the best interest of the Company.
- The Company failed to have systems to monitor the behavior of managers.
- The Company failed to train managers regarding their roles and potential liability arising from 1) inappropriate actions; and 2) failure to act.

ROLE OF THE MANAGER

A Manager

- A manager is a person who has been given the power and authority to affect the terms and conditions of the employment of a subordinate.
- A supervisor is legally the same as a manager – title is not important – function is important.

Role of the Manager

- Is the Company.
- What a manager knows, the employer knows.
- What a manager does, the employer does.
- What a manager fails to do, the employer fails to do.

Manager Action

- Take appropriate action when you know or should know of legal risk.
- What is appropriate action depends on all of the circumstances.
- Remember to create documents at the time of the situation to show your legitimate "Business Purpose".