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HR In the Moment Scenarios PA Chamber of Business and Industry*

presented by

Jonathan A. Segal, Esquire

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Hypo 1

1. You are sitting in your office
2. An employee asks to meet with you
3. He tells you that 50% of the employees in the plant/office have signed authorization cards
4. He asks to show the cards to you
 - a. Scenario 1: You say “yes” and skim the cards
 - b. Scenario 2: You say “no” so he gets up but leaves copies of the signed cards on your desk

Analysis of Hypo 1

1. 2 ways a union currently can become representative of employees:
 - a. NLRB-supervised election
 - b. Voluntary recognition
2. Don't review signed cards or petition
 - a. Union may argue authority to recognize the union
 - b. Set up for retaliation claim

Analysis of Hypo 1

3. Messaging to supervisors and above:
 - a. No: You could recognize a union if you review cards so don't
 - b. Yes: You don't have authority to recognize a union. Even so, don't...
4. Train supervisors and above what to do
 - a. Asked to review cards
 - b. Cards left for them to review

Analysis of Hypo 1

5. NLRB General Counsel: favors recognition by NLRB by card check
 - a. Not law, yet
 - b. Constitutional and statutory impediments

Hypothetical 2

1. Randall asks to speak with you in confidence; he claims that Mark made a racist remark in his presence; Randall repeats the comment to you
2. You know Mark well and never have heard him saying anything you consider insensitive, let alone racist
3. Your response: “that does not sound like Mark”
4. Randall’s reply: “let’s keep it confidential; do not want an investigation”

Analysis of Hypothetical 2

1. What's wrong with saying "that does not sound like Mark"
 - a. Disbelieving
 - b. No better: "that sounds like Mark"
 - c. Don't evaluate what Mark said
 - d. Focus on process
 - e. Thank Mark for bringing his concerns to you without expressing any judgment on the merits

Analysis of Hypothetical 2

2. Can you keep confidential?
 - a. General rule: “No”
 - b. Need to investigate/look into concerns if actual or constructive knowledge of legal wrong
 - c. Make clear that you will keep Randall’s identity as confidential as possible but cannot promise absolute confidentiality
 - d. State that you will neither engage in nor tolerate retaliatory conduct

Hypothetical 3

1. Ron walks into HR's office; he is wearing women's clothing
2. Ron states that he now goes by Rhonda
3. Rhonda then proceeds to tell HR that her pronouns are she/her/hers

Hypothetical 3

4. Let's unpack problems with each of the following responses by HR:
 - a. I never have met a transgendered person before
 - b. Did you have the sex change?
 - c. Congratulations; that's wonderful

Analysis of Hypothetical 3

1. What issues should you address with Rhonda?
 - a. Do you want us to make changes to your signature block on e-mail, your name and picture on the website, etc.?
 - b. Do you want to discuss how you will address with colleagues and clients?
 - c. How else can I help?
 - d. **Discuss** the bathrooms

Analysis of Hypothetical 3

2. A co-worker, Carol, refuses to use female pronouns when referring to Rhonda on the basis of her (Carol's) religious beliefs
 - a. Are you discriminating against Carol on the basis of her religious beliefs if you make her use female pronouns when referring to Rhonda?
 - b. Are you permitting the harassment of Rhonda if you allow Carol to use male pronouns in reference to her?

Analysis of Hypothetical 3

2. A co-worker, Carol, refuses to use female pronouns on the basis of her religious beliefs
 - c. Is there an accommodation (continued)?
 - i. Use name and avoid pronouns
 - ii. Be careful of context

Hypothetical 4

1. Stefan has withdrawn substantially over the past 3 months
2. You ask him how he is.
3. Stefan says fine but later says: “At times, I am not sure I want to be alive.”

Analysis of Hypothetical 4

1. What's wrong with each of the following responses:
 - a. Have you ever considered suicide?
 - b. Have you ever attempted suicide?
 - c. Are you seeing a professional?

Analysis of Hypothetical 4

2. What could have been said?
 - a. Option 1 in the moment
 - i. Make clear you care
 - ii. Encourage consultation with EAP
 - b. Option 2 after the conversation
 - i. Call EAP or other mental health professional
 - ii. Ask if they recommend fitness for duty based on objective facts you share
 - iii. Then require fitness for duty if and as recommended
 - Risk selection, not risk avoidance

Hypothetical 5

1. An employee tells you that her great aunt just died
2. You respond by saying “my thoughts and prayers are with you.”
3. The employee responds that “she does not need your prayers”
4. You respond: “Sorry; I did not mean to offend you”

Analysis of Hypothetical 5

1. What's wrong with: "Sorry; I did not mean to offend you"
 - a. Shifts focus
 - b. Also, are you really sorry?
2. Thank you for telling me; I won't say it again to you

Analysis of Hypothetical 5

3. Other things not to say:
 - a. I know how you feel; I lost my....
 - b. You are lucky to have had her so long; after all, she was 97
 - c. What did she die of?
 - d. You are doing okay, right?
 - e. She's in a better place

10 Things Not To Say or Do When Terminating An Employee

1. We had no choice but to terminate your employment
2. It had nothing to do with your performance (when it did)
3. You have no one to blame but yourself; you didn't try hard enough

10 Things Not To Say or Do When Terminating An Employee

4. This is harder on me than you
5. I know how you feel
6. Someday you will thank me when you find a job that matches your gifts

10 Things Not To Say or Do When Terminating An Employee

7. You will always be part of our organizational family; you'll even get the Institute newsletter
8. I'm sorry

10 Things Not To Say or Do When Terminating An Employee

9. You send Team Invite re: your termination
10. Pardon the impersonal nature of this e-mail, but you are fired

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Thank You!