

Human Resources

By Stephanie Ramsey

HR Reality Check:

Yep, the Stories are True!



HR CASE STUDY #5

SCENARIO: Millennial Funeral Services, owned by Mark and Margaret Millennial, is a funeral business in a Midwestern state that recognizes at-will employment. Including the two owners, they have 15 employees. While

neither of Mark and Margaret's children is active in the business, they do have a quality key employee, John James. In fact, they have spoken to John about how the business could potentially transfer to him when Mark and Margaret are ready to retire in about 10 years.

About two years ago, John began dating a woman and they were married within six months. Mark and Margaret were happy for John and still interested in selling him the business. However, last year they hit a snag in their plans.

It started simply with John appearing to be somewhat distracted at work as he took numerous cellphone calls from his wife each day. The situation soon escalated to frequent calls to the funeral home receptionist. During these calls, John's wife was strident and

sometimes used abusive language while demanding the receptionist advise John to take her calls. The problem continued with the wife calling Mark or Margaret personally, when John worked past 5 p.m. or on the weekends. She yelled and screamed that they were horrible employers and that they needed to send John home.

Fed up with the situation, Mark and Margaret met with John one afternoon and proceeded to give him a written warning about his wife disrupting the workplace. Further,

they indicated that if his wife did not stop her actions they would fire him. John was initially embarrassed and apologetic, promising that he would speak to his wife and advise her to stop harassing the business.

However, the next day John approached Mark and Margaret very angry. He accused them of unfairly disciplining him for the actions of his wife, and said he wanted the disciplinary write-up removed from his personnel file and the threat of termination rescinded. Mark and Margaret didn't know how to proceed.

What are the rules? Some might think that Title VII of the Civil Rights Act of 1964 would apply in this situation. Title VII prohibits harassment at a level that creates a work environment that a reasonable person would consider intimidating, hostile or abusive.

However, this section of Title VII is referencing harassment as a form of discrimination against protected classifications such as age, sex, religion, race and color. Thus, it would be difficult to apply Title VII to this specific situation.

However, the Occupational Safety and Health Administration states: "Workers have a right to a safe workplace. The law requires employers to provide their employees with safe and healthful workplaces." Currently OSHA has begun drafting specific standards addressing the prevention of workplace violence in specific industries. Therefore, an employer may be liable if a situation within their business puts employees at risk of violence.

Did the employer make any mistakes? To the employers' credit, they are attempting to protect their

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employees from a verbally abusive individual and a hostile working environment. However, disciplining or terminating their key man for the behavior of another party may lead not only to an unhappy employee but also to a lawsuit. Why? It is difficult to hold an employee responsible for the actions of a third party.

If his wife's behavior causes John's termination and then he sues Millennial Funeral Services, the court may find in his favor. Further, it is unlikely that the firm's actions toward John will discourage his wife from her horrible behavior – she may even be incited to do something dangerous.

Resolution of the issue: After discussion with professional advisers, Mark and Margaret elected to rescind their written disciplinary report as well as the threat of termination, which satisfied John. They did speak with him about the fact that they expected his work performance to remain at an acceptable level. They also reiterated that employment with their business was at-will.

Mark and Margaret then filed a police report for several of the instances when John's wife was verbally abusive to them or other employees. Eventually they requested and were granted a restraining order against John's wife. A year after these events, John is still working for Millennial Funeral Services, and they are very happy with his work performance. His wife has had no contact with the business or their employees since receiving the restraining order. Mark and Margaret have not moved forward with any formal plans to sell the business to John.

Preventive measures: A formal written policy prohibiting workplace violence as well as establishing that the business will not allow verbal abuse of their employees within their employee handbook is a strong foundation for addressing this issue. This policy can also set out the steps that the company will follow in the event such actions occur.

It is also important to stress at-will employment within the funeral home's employee handbook. If Mark and Margaret had disciplined John for his job performance being impacted by the amount of time he was spending on the phone with his wife and filed police reports on his wife's actions as soon as the events occurred, perhaps they would not have found themselves in the pickle of reversing a disciplinary action. •



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