



Supervisor Slip-Ups That Lead to Lawsuits

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Emmet Ore

Well, hello and welcome, everyone. Thanks for being here. My name is Emmet Ore. I'm the marketing coordinator for Avitus Group, who is a division partner of Vensure, and I'll be our host today. We'll be spending the next hour talking about supervisor slip-ups that can lead to lawsuits. As always, there will be a Q&A session at the end. We're going to do our best to answer all the questions in the time we have, but anything we don't get to will be addressed individually after the session. This webinar is brought to you, as always, by Vensure Employer Services and all of our partners across the U.S.. We have clients in all 50 states who generate most of the questions that we'll be answering today. Today's agenda includes employer liability, the big three supervisor slip-ups, common mistakes, how to train your supervisors, situations in which training is not the answer, and a Q&A session. Our panelist today is Robin Paggi. She is a human resource practitioner who specializes in training on topics such as harassment prevention, team building, and supervisory skills. And with that, I'll hand it over to Robin.

Robin Paggi

Thank you. Alright, with employer liability, according to insurancejournal.com, small- and medium-sized businesses in the U.S. face an almost 12% chance they will be hit with an employment claim. Now, most of our clients are small- and medium-sized businesses, and that's one of the reasons we want to give you this information. Now, the employment claims that businesses usually get hit with are from applicants, employees, and former employees. And sometimes the claims are the result of the acts, the omissions, the misstatements, and the misdeeds of supervisors, and occasionally other employees, and not by the business owners themselves. So, how can the employer get sued for the things employees do? Well, especially supervisors. Employers can end up paying for liability created by their supervisors if those individuals, because of the nature of their duties, are deemed to be authorized to act on behalf of the company. And so, that's one of the things that people need to understand, is that the higher you go up on the food chain, the more you represent the company and the things you do look like it's authorized on behalf of the company. Unfortunately, it's not uncommon for employers to

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be liable for conduct they did not officially endorse or that they were even aware of. Now, before the pandemic, I spent most of my time training supervisors of our clients and I was often surprised, and sometimes even appalled, at who employers had promoted into supervisory positions. I often thought if employers really understood how their supervisors can cause damage and cost them money, they might be more selective of whom they promote into supervisory positions. So, this webinar provides lots of examples of things that supervisors have done that have resulted in their employer being sued. And often, I'll tell you how much the employer ended up paying for the things their supervisors did. So, let's go ahead and move on.

There are big three things that supervisors do that wind up costing their employer lots of money. First of all, harassment. And I've talked a little bit about harassment before, but one of the reasons we talk about it so much is this causes a major amount of lawsuits for employers, especially when their supervisors commit it. Now there are two types of harassment. One is called quid pro quo, which means this or that. And it's when someone in a position of power seeks a sexual favor of someone they supervise, or who is in a subordinate position, and the sexual favor is in return for they get to keep their job, they get a promotion, they get hired in the first place, they get benefits, other types of perks. And also that if the subordinate does not comply with engaging in sexual favors, that something bad will happen to them, such as they will be fired, or demoted, or transferred to a less desirable position or something. So, it's this for that—you give me sexual favors, I give you things, you don't give me sexual favors, I take things away from you. And people might think in 2020, this kind of stuff still happens in the workplace? Unfortunately, it does. Now, there have been many high-profile cases of quid pro quo in the last few years with the whole Me Too movement thing. And people are probably familiar with the incident that happened at Fox News between Gretchen Carlson and Roger Ailes. And Roger Ailes was pretty high up on the food chain. He founded the news network, but he was still a boss. And what allegedly happened, according to Carlson, is that he told her that they had known each other for a long time and they should have started having sex a long time ago. And she said, "Well, I'm not interested," and then he canceled her show. So, you don't give me sexual favors, I take things away from you, such as your show. Well, he denied all wrongdoing, but Fox News ousted him even though he started Fox News, and the company ended up paying \$20 million as a result of that. So, those are some pretty big high-profile cases, but there are lots of cases that don't make national news. So, for example, one happened with a Chrysler automotive worker named Janet Bernie and she filed a lawsuit against the United Auto Workers, accusing the union of, among other things, quid pro quo. Well, how can a union sexually harass an employee? Well, this is what happened. Soon after Bernie began dating a guy named Pat Byers, who was a union official and the son of a union leader, she was given a new position and a significant raise. And Byers had told Bernie that as long as she was with him, her job was secure. But, she broke up with him, and soon after the relationship, she was terminated. So, that's retaliation and quid pro quo. So, court documents state that the order to fire her came from the United Auto Workers headquarters in Detroit. Now, here is something that employers need to know and supervisors need to know, too. An employer is always responsible for harassment by a supervisor that results in a tangible employment action, such as getting fired. So, it doesn't matter if the employer knew about it, doesn't matter if the employer ordered it. If a supervisor winds up firing, demoting, transferring, doing something to hurt the employment of the person who spurned that supervisor, the employer is going to pay for it. Now, the other type of harassment is called hostile work environment, and it can be a form of sexual harassment, but it can also be created by behavior directed at someone or about someone because of being in a protected class, such as race, and that's what happened with a case with Big Lots. The company paid \$400,000 to settle a racial harassment and discrimination lawsuit, in which the Equal Employment Opportunity Commission alleged that the company took no corrective action to stop a supervisor, and coworkers who are all Hispanic, from subjecting a black maintenance mechanic and other black employees to derogatory jokes, comments, slurs, and nicknames, including the N-word and calling them monkey. So, this was a direct supervisor of an employee who was making jokes, comments, slurs, nicknames about the employee, because of his race— he was allowing other coworkers to do it. The employer evidently didn't do anything about it after complaints had been filed, and so the employer pays \$400,000. If harassment did not lead to a tangible employment action, such as being fired, and that's what happened in this case, the employee was not fired, or demoted, or transferred, was subjected to inappropriate behavior. And so, if

harassment happens, when somebody doesn't get fired, the employer is liable unless it proves that it took reasonable care to prevent or correct the harassment, which evidently it did not, or that the employee unreasonably failed to comply, and the employee complaint. So, Big Lots didn't stop the harassment, the company ends up paying for the supervisor's behavior.

Now, one of the things of the Big Three that supervisors do is discrimination and there are two forms of discrimination. One is called disparate treatment, when you treat people differently because of being in a protected class or disparate impact, you don't mean to treat people differently, it just ends up happening because of policies or procedures. Now, a court case that demonstrates this was against New Prime Inc.. And this is one of the biggest trucking companies in our nation. And what happened there is that they had a policy where when they hire a new truck driver, they pair that truck driver with one who has been working there for a while, so that truck driver can train them, which I think is a fabulous idea. You don't want brand new people driving big giant trucks all over the place until they've been properly trained. So, they had this policy and they were trying to hire female truck drivers into their business. They had a situation where a female trainee was paired with a male veteran employee, and he sexually harassed her, and they ended up paying some money for it. So, they created a policy that said, that they would only have same-sex veteran and trainee. And so, they would only pair males up with males and females up with females. They only had a handful of female truck drivers that were already employed there. And so, in order to follow this policy, they ended up hiring all of these males, but hardly any females. Something like 18 months would go by between females being hired. Now, they create this policy in order to protect themselves from future lawsuits, but also to protect the women that they were hiring. Unfortunately for them, they got sued for discrimination. And when they tried to defend themselves by explaining that they were just trying to protect everybody, they were still found guilty of discrimination and ended up paying \$3 million as a result of that. So, disparate impact is when we don't mean to discriminate against people, it just ends up happening. Well, much like harassment, the intent doesn't matter. Hardly anyone intends to harass other people. It's the effect of the behavior that matters. And so, that's why we really need to be careful about our company policies and procedures, to make sure that they don't adversely hurt people because of being in a protected class status, even though that's not the intent. And then the final, final one of the Big Three is retaliation.

Now, retaliation is basically getting back at people for filing a complaint. Employees have the right to file complaints against the company, internally and externally. If they go to a government entity to file a complaint, that is protected. If they complain internally, they don't even have to write something down on a formal complaint. If they just voice their displeasure or discontent about something, that is protected. Meaning that no one, not supervisors, not employers, not coworkers, not third parties, no one can get back at them for filing that complaint. Well, how do people get back at them? Usually, they fire them, they demote them, they transfer them, they give them bad shifts, they do all sorts of things to them. And I'm going to provide you with an example of retaliation that shows how far people will go to get back at people sometimes. So, this case, Cuette Pacific Company and a woman named Lisa Davis worked as a heavy machine operator for this company on a big giant project in California. Project was \$170 million dollars. So, there are lots of employees there that were involved in this project. And the company provided portable toilets, as they are required to do because it's construction and everybody's working outside. However, the toilets were often located miles from the work area and they were often unsanitary, meaning they were not pumped, they were not cleaned. And so, you know what it's like to go into a porta-potty that's like that, it's very unpleasant. So, Lisa Davis complained about the situation that the porta-potties were not being cleaned. She complained to her foreman, to the day shift superintendent, to the night shift superintendent, to the safety officer, and the project manager. And the only response she received was from her foreman, who told her when she had to go to the bathroom to go find a bush. Well, actually, she did receive another response. The next time after her complaints that she entered the women's porta-potty, she found the seat smeared with feces and a pornographic magazine placed on the toilet paper dispenser. That's a form of retaliation, getting back at somebody. So, she suspected that she is being retaliated against for her complaints and said so to her foreman and dayshift superintendent. And then after she complained about retaliation, everyone refused to speak to her, and then about a month later, she was laid off with the rest of the crew. So, if

you have to lay people off after they complain, you can do so for a viable business reason. But a week after the layoffs, the company began to selectively rehire some of the crew. But you guessed it, Davis was not rehired with the rest of the crew. So, this was a sneaky way to get rid of her. So, she sued for discrimination, harassment, retaliation, among other claims, and she was awarded \$270,000 by the jury. And then she went after punitive damages. I don't know if she received anything, but punitive damages can be quite hefty. So, when somebody complains about anything, you've got to make sure that no one gets back at them at any way, in any way, including refusing to talk to them, because that is changing their working condition, which has been seen as a form of retaliation by courts. Alright, so those are the Big Three, but there's lots of other ways that employers end up getting sued, so let's move on.

Some common mistakes that supervisors do. Well, one of the things that happens frequently is that supervisors play favorites, and especially when they are supervising people that they used to be peers with. And so, that's a big problem. And learning how to go from being a peer to a supervisor is one of the things that I work on quite a bit with new supervisors, especially because you've got to make a transition. And it's difficult to not play favorites with people that you like more than other people. Well, in this case that I'm going to tell you about the favoritism with a little bit different than just liking somebody more than somebody else. So, here's what happened. This case happened in California also, and it was Miller versus the Department of Corrections. And so, in this case, what happened was that the prison warden, who was a male, was sexually involved with three female subordinates who worked at the prison. And so, those females allegedly received favorable treatment, including promotions, protection, and other perks. Well, they were fine with the fact that he was dating all three of them because evidently they knew, and they were fine with getting the promotions and the perks and all of those things. Who was not fine with that behavior? It was the other women who work there. They were seeing their promotions, and their perks, and their other things that they wanted going to the women that he was dating. So, they sued. And what happened, the court said that while there was no unwelcome request for sexual favors, learing, or lewd conduct, it was the warden's favoritism toward the three particular women that the plaintiffs claimed created the hostile work environment. And so, you can see how favoritism can turn into a hostile work environment claim. So, the court found in favor with the plaintiffs and they said that there was an EEOC policy that states if favoritism based upon the granting of sexual favors is widespread in a workplace, colleagues who do not welcome this conduct can establish a hostile work environment, regardless of whether any objectionable conduct is directed at them, and regardless of whether those who were granted favorable treatment willingly bestowed the sexual favors. So, the women who were involved in the warden evidently did so willingly. The EEOC said, in these circumstances, a message is implicitly conveyed that the manager's view of women as sexual playthings creates an atmosphere that is demeaning to women, which creates a hostile work environment. So, a different type of favoritism, but you can see how different types of favoritism can lead to a hostile work environment. Failure to document. Alright, so here is my usual plug for previous webinars that we have recorded. A couple of weeks ago, we had a webinar about defendable documentation and talked about the reasons that not having good documentation can get an employer sued. And I gave various examples, and I gave one example that is very similar to the example I'm going to give you. It's not the same court case, but it's a very similar example. In this court case, it was Fulkerson versus Amerititle, Inc. And Fulkerson was terminated shortly after she disclosed that she was pregnant. And her employer argued that it legally terminated her for cause based upon her performance issues. However, the court found that the employer had not documented any performance-related reasons for termination, and allowed her to proceed in her lawsuit. So, I gave an exact version of that, it was just a different woman and a different employer. So you can see how often this might happen. You need to document things because if you get sued for discrimination, which happens frequently when employers fire employees, chances are they will file a discrimination claim. The reason you fired me was because, of this case, pregnancy, or because of my race, or my sex, or my age, or all of those protected classes. And so, people file a discrimination claim saying, "This is why you really fired me." And the employer has to go in self-defens mode, and has to prove, "No, that is not why I fired you, I fired you for cause." And if you do not have the documentation that demonstrates that, then it really doesn't matter whether you fired for cause or not. Lack of documentation leads to lawsuits. And so, that's one of the reasons, it

might be a good idea if you missed that webinar to go back and hear it. Alright, what are some other legal violations? So many legal violations, and that's one of the workshops that I frequently provide to supervisors is the legal aspects of supervision. Supervisors make decisions every day that they don't know have legal consequences to them. And so, for example, one thing that we have in California, I'm not sure about the rest of the country, but here, employers who have 25 or more employees have to allow employees at least eight hours per month, no more than 40 per year, to take time off work unpaid, if it's an hourly employee, but to take time off work, to go to their child's school activities. And so, this is a baseball game, or a graduation, or what have you. So, employers have to allow employees at least eight hours per month, no more than 40 per year. Well, if you have an, a supervisor who has no idea that that law exists, and they have an employee who comes up to them and says, "Oh, hey, I need next Monday off because my kid is graduating from preschool and I need to go watch him." And the supervisor thinks, "That's stupid. First of all, graduating from preschool is stupid. Second of all, asking to take time off work to go watch is stupid." If the employer or the supervisor says, "No, I'm not going to give you that time off," they have just broken the law, and they don't even know it, for the most part. However, lots of employees know what employment laws are because it's all right there on the internet for them to find out. And so, that's one of the reasons it's critical for employers to let supervisors know these are the legal things that you make decisions about, and if nothing else, when somebody asks you a question, send them to HR, so we can direct them correctly. When supervisors are just making it up, or one of the things they have a tendency to do is, "Well, this is what we did at my old job, and so, therefore, that's the law." That's incorrect as well. Alright, so let me tell you about some legal violations. Here we go. Wrongful termination. And so, usually, with at-will employment, it's difficult to file a wrongful termination lawsuit, because at-will says you can fire for any reason, or no reason, as long as it's not an illegal reason. Ah, but, what happened at Akeena Solar, also here in California. And that's one of the things, in California, I don't know why I'm laughing, I shouldn't laugh. But in California, the employers here get sued a lot more because we have more employment laws, for one thing. And so, if you are in California listening to this webinar, then it's critical that, you know what all employment laws we have because we go way beyond what the federal government requires. Alright, so Akeena Solar here in California hired a woman to be a payroll and account technician. So, they hired this woman. Her name is Gladys Tellis and on her first day on the job, she met her new supervisor. And her supervisor discovered that Gladys' left arm was paralyzed. And the supervisor is thinking, how are you going to be a payroll technician, where you're sitting there inputting data all day, how are you going to be a payroll technician with a paralyzed arm? So, this was the supervisor's thinking, and so the supervisor fired her on the spot. And so, maybe the supervisor doesn't know about the Americans with Disabilities Act. So, Tellis, who was the person who was fired, was able to perform her job. I'm sure HR made sure of that before they hired her. So, she was able to perform her job. She was qualified and she could perform the essential functions, and that's all she needed to do. Akeena Solar ended up paying her \$30,000. Remember, she got fired on her first day of work. So, she was given \$30,000 because the supervisor fired her for having a disability. You can't fire people for having a disability. In addition, you can't refuse to hire them for having a disability. You must reasonably accommodate them, if they can perform the essential functions of their job with that reasonable accommodation. And a lot of lawsuits happen as a result of violations of the ADA. Here is another violation that happens frequently. And that is leaves of absence. So, we have federal requirements for leaves of absence, like the FMLA, Family Medical Leave Act. Employers who have 50 or more employees have to allow qualified employees at least 12 weeks off of work, and then they get to come back to their job. So, that's the big thing, is allowing people time off work and then they get to come back to their job. And that's where employers or supervisors do. They don't give people the time off that they are legally allowed to have, and they don't allow people to come back to their job. So, here's a couple of court cases for you, and it's a little bit of a turn. This happened with a Rosebud restaurant. Now, a waitress there, named Christine Buffone, told her supervisor that she was pregnant. So, here's another pregnancy case. Her supervisor allegedly said to her, "No one wants to watch a pregnant woman while they eat dinner. That's disgusting." Now, I'm sure that that supervisor was probably in their 50s, 60s, probably a little older. And the reason I'm making that assumption is because before the Pregnancy Discrimination Act went into play, it was just common that as soon as you start to show your pregnancy, you don't have a job anymore. And so, there was no law that said you can't fire women because they're pregnant, you can't refuse to hire

them because they're pregnant. None of that existed. And so, chances are the supervisor, which is going from that viewpoint. And then also the thing is, is that if you remember maternity wear in the old days, it was big billowing dresses and shirts and everything to hide the fact that a woman was pregnant. That's not the case anymore. But that was back then. And so, the supervisor is saying nobody wants to look at a pregnant lady while they're eating. That's disgusting. Alright. So, after making similar comments, he refused to put Buffoni on the schedule, and then denied her, her right to return to her job after giving birth. And so, as a result of that, the jury awarded her \$380,000. Chances are the supervisor had no idea about the Pregnancy Discrimination Act. The thing is, is that ignorance of the law is no defense and this is what people say quite frequently, "I had no idea this was a law." It doesn't matter whether you knew or not. If you violate the law, you're going to pay for it. Now, that's a woman who was denied her time off work to have her baby and to come back. And another example, a male state trooper in Maryland was told by his supervisor that God made women to have babies when the supervisor denied family medical leave to the state trooper. State trooper wanted to take time off work to care for his wife and his newborn child. And maybe, the supervisor didn't know that people have the right to that time off if they are a qualified employee working for an organization that has to give that time off. Additionally, the trooper claimed the supervisor told him that his wife would have to be dead or in a coma in order for the trooper to qualify for family medical leave. Well, that was incorrect also. So, the trooper was originally awarded \$665,000 in damages. So, we've talked about disabilities a little bit and accommodation. I want to tell you about another lawsuit because the earlier lawsuit was about a woman was fired because of having a disability, and this one, it was a failure to accommodate disabilities. And this happened at AutoZone. And so, they were sued by the Equal Employment Opportunity Commission. And by the way, I want to tell you about that a little bit more right quick. The EEOC is the federal agency that ensures that harassment, discrimination does not happen in the workplace. And when people feel that they have been harassed or discriminated against, they can go to the EEOC and file a claim. That agency then does an investigation and based upon what they find, and how cooperative the employer is, they can sue employers on behalf of the employee. So, employers can get sued from the governmental agencies. They can also get sued by attorneys. So, that's when I'm talking about the EEOC is filing suit, that's what that's all about. Anywho, they sued AutoZone and charged them with requiring a sales manager to perform certain cleaning tasks, including mopping floors, that violated his medical restrictions. The sales manager had a permanent back and neck injury and he was disclaimed, declared disabled by his doctor. And so, when new management came in and they told the sales manager, "You need to mop the floor," he told them, "I can't, I have a medical condition, here's some documentation from my doctor to demonstrate that this is a disability and I need an accommodation." Well, maybe that supervisor didn't understand how to accommodate people with disabilities or anything like that. And so, one of the things that the sales manager said was that, "You know mopping the floor is not an essential duty of my position." And so, that's one of the things, too, people with disabilities have to be able to perform the essential duties of their jobs. But if it's not essential, they don't have to perform it. Somebody else can do it. And so, he explained that as well and, evidently, the supervisor didn't know anything about that. So, he ended up suing and got \$600,000 as a result of that. Now, when we're talking about accommodations, we're not only talking about disabilities, we're talking about religion, as well. And, in December, I'm going to provide a webinar on accommodating religious beliefs and practices and go all into that. And so, I'll just give you a little tease today. Consol Energy Mining Company, and this happened at their West Virginia plant, they had a gentleman who had worked there as a laborer, named Beverly Butcher, and he had worked there for 35 years. And every day when he came into work, he punched in and he punched out, and that's what he did for 35 years. Well, one day he walked in and they had a new time clock, it was a hand scanner. And you might be familiar with the hand scanner that you put your hand in, it takes an imprint, then every day you just put your hand in and it recognizes and let you or clocks you in. So, he went to work one day and they said, "We've got this new hand scanner and we need you to put your hand in so we can make an imprint of it, and then you'll clock in and out every day." And he said, "I cannot do that." And he explained that his preacher had told him that these hand scanners could give you the mark of the beast. Now, if you're not familiar with the mark of the beast, it is from the Book of Revelation and the New Testament of the Bible. And, read it for more information. But very quickly, the mark of the beast is something that you don't want to have at the end of time. Alright, so he explained this to his supervisor. He cannot have the

mark of the beast, he can't do that. And the supervisor allegedly said, "If you do not put your hand in there, we're going to discipline you up, including terminating you." So, evidently, the supervisor didn't agree with the religious belief, didn't know you have to accommodate religious beliefs, not sure what the issue was. But he insisted that Butcher put his hand in that scanner. And so, Butcher retired and he went to the EEOC, who got him half a million dollars. So, hopefully, you'll join us in December when we have that webinar on how to accommodate religious beliefs. Alright, got a couple more legal violations for you and then we'll move on. English-only policies, you can't have them. And, a hospital, just 30 minutes away from me got sued. I told you, lots of California companies get sued. So, what happened at this hospital? Allegedly, they had a lot of Filipino-American hospital workers. And they said that they were the targets of harassing comments, undue scrutiny, disciplinary action, and it all had to do with them speaking Filipino languages, or having an accent. And so, allegedly, and the reason that I keep saying this is because an attorney who represented the hospital was in one of my harassment training or prevention workshops, and he told me, "You know, we ended up paying what we paid simply because it was going to be too expensive. We deny everything." And so, that's what happens sometimes, is that you have these accusations against companies and it's just easier to settle. So, allegedly what happened here is that supervisors, staff, volunteers even were encouraged to act as vigilantes to berate and reprimand the Filipino-American employees when they were speaking their different language, or when they were speaking with an accent, they made fun of them. And one incident, an employee sprayed air freshener on one of the Filipino employee's lunch due to his hatred of Filipino food. So, this went on for about six years, they said. And then finally they had a meeting with the chief executive officer, who said that they were violating their English-only language policy and they need to make sure that they weren't doing it anymore, and they might install security cameras, all sorts of stuff. Okay, well, the biggest problem with the whole thing is that we're not allowed to have English-only policies, and so there's number one. And then the second thing here is that evidently, they were just targeting a specific group of people, based upon their national origin and ancestry, because Spanish-language employees were allowed to speak Spanish there, but the Filipino employees were not allowed to speak their languages there. So, again, the hospital denied any of this happened. They ended up settling for close to a million dollars. And so, that's one of the things that can happen. Now, let me just tell you very quickly about English-only policies. According to the EEOC, employers can require employees to speak English when they are involved in safety-sensitive tasks. And so, you're around heavy equipment or something, everybody's got to speak English if you have at least one English speaker there, so that if somebody yells, "Duck," the English speaker knows to duck. You can require English only in front of customers and clients, and you can require English only when you have got to make sure that information is being passed on correctly, and in a case-by-case basis. Other than that, you cannot say, "You will speak English all the time here," and that is nationwide, not just California. Alright. One more to tell you about, and well, actually, two more, and then we'll do the failure to lead by examples. Alright, real quickly, revealing health information is something that has gotten an employer sued. And so, this happened at an organization. An employee revealed to her supervisor that she had bipolar disorder—she needed time off work to be hospitalized for it. The supervisor, for whatever reason, revealed that information to her coworkers. And when she came back to work, her coworkers ostracized her. They didn't want to have anything to do with her. One of her coworkers asked the supervisor, "Is she likely to go postal on us?" and all of that. So, she was eventually fired because she could not perform her job. So, she did not sue for wrongful termination, she sued for invasion of privacy, saying that the supervisor revealed this information and it hurt her. Now, this court case was very important because when she sued the original court, who heard the case, said, "Oh, well, the supervisor didn't reveal that in writing, and the precedent that has been set is that privacy violations have to be in writing." And so, then she appealed and the appellate court, said, "Well, no, they don't have to be in writing. Why should they have to be in writing? The supervisor revealed her private information to people who did not have a need to know. So, why would it need to be in writing?" And so, they set a new precedent. And so, that's one of the things, the older we get, the more we talk about our health condition, and the stuff that doesn't work anymore, and all of that. It's fine for you to talk about your own health information you cannot talk about the health information of the people you supervise with people who do not have a need to know, that is a violation of their privacy. Alright, now, I want to get this one in before we move on. And this is firing for Facebook postings. And so, that's happening again for those of us who are still

on Facebook. And one of the things that people have said to me is that, well you can't fire people for what they post on Facebook. Well, you can't if what they're posting is complaining about the terms and conditions of their employment. That is protected by the National Labor Relations Act, Section 7, to be exact, is that employees have the right to discuss the terms and conditions of their employment because it might lead to unionizing, and it is protected, whether they are doing it in person or online. So, don't fire people for that, and lots of employers have, and they've had to pay some money or hire people back as a result of doing it incorrectly. However, people can get fired for posting things that pose a conflict of interest for their employer. So, for example, our clients are employers. And if I posted something that said employers are stupid and deserve to get sued, that's not protected. It is a conflict of interest for my employer because it might cost my employer some business. And so, that's when employees can be fired for their Facebook postings. So, before you go firing people for what they're posting on social media, make sure that you're checking, so that you do it correctly and not incorrectly.

Alright, so here we go. Failure to lead by example. This happened at Best Buy. So, what happened here is that Best Buy had a policy that supervisors do not date their subordinates, and that's a great policy to have in place, and it's perfectly legal to have that policy in place. So, the head guy, Brian Dunn, was having a close personal relationship with a female staffer. And his boss, who was the chairman of the board, was told about it. Now, how was the boss told about it? An anonymous note. Who did the anonymous note come from? An employee. And so, lesson number one, out of if you're in a supervisory position and you're doing things that you shouldn't, like not following policy or leading by example, employees are watching you and they're going to tell on you. So, that should help keep you in line, is the fact that somebody might just tell on you. So, that's what happened there is that an employee told the board chairman that the CEO was violating company policy by having an affair with a female subordinate. So, one of the things that ended up happening with all of this is that there was an investigation based upon this complaint, and it was determined because the CEO had lots and lots and lots of text messages to the subordinate. And remember, everything electronic in investigations is, you can just have access to it, people have to hand it over for the most part. And so, they determined that, yes, he was having an inappropriate relationship. And so, not only did he get the boot, but the board chairman also had to resign because he knew about the violation of policy and he stayed silent about it—he did nothing about it. What he was supposed to do is go to the rest of the board. And evidently, he did that because he was friends with the CEO. Alright, so, so many lessons involved in this case. Lesson number one is your employees are watching you and will tell on you. Lesson number two is just because you're at the top of the food chain doesn't mean you get to violate company policies. Number three is technology provides an excellent record of wrongdoing for investigators and attorneys. Lesson number four is that inappropriate relationships can end up costing a lot of money. Alright, now we can move on.

So, train your supervisors. And there are specific things that you can do, and so let's go on to the next slide and I will provide you with the ADDIE technique. So, A-D-D-I-E, the ADDIE technique, it's been around for a while. Those of us who are certified trainers usually follow this technique in designing our training. So, the first thing to do to train your supervisors is analyze the need for training. One of the things that ends up happening sometimes is that people call me up and they say, "Well, we need to train our employees on how to manage stress." Alright. So, I'm assuming that things are really stressful and that's why they need help with that. And then I go into a room full of people and they're wondering why they're being trained on stress, and it turns out that only one person really needed to be trained on how to manage their stress because they had a meltdown at the office. But the employer decided, "Hey, if we're having somebody come in to get trained on stress, let's have everybody." That is so wrong. Please, don't do that. Because when you have people who don't need the training and they're sitting in a workshop for two or three hours, they just become so resentful, and it's a bad training experience for everybody involved. So, analyze who needs to be trained and what do they need to be trained on. So, tools that you can use for that are job descriptions. And so, job descriptions tell you what people need to know. And usually, when you're hiring people, they should be able to perform all of the essential duties on that job description. But, maybe they can't, and you're going to have to train them on how to perform those essential job duties. So, job descriptions. Equipment

used, and people need to know how to use certain equipment. And so, how do we determine who knows how to use that equipment and who doesn't? Grievances, and complaints, and performance evaluations are great tools to use on what do specific individuals need to be trained on, and surveys. And I ended up coaching supervisors from one client because they did an employee survey, "How do you feel about the workplace and your supervisor?", and they found out that employees were really unhappy with their supervisors because they didn't know how to supervise. And so, we started that process. Unfortunately, that's usually what happens. People are promoted into supervisory positions because they do their jobs really well. And employers don't understand that being a good supervisor requires its own skillset. And people are often not trained with that skillset until something happens. And so, that's just a bad way of going about doing it because it can end up costing you a lot of money that way. Alright, so next up, you analyze who needs the training and what training do they need? you design the training. And the design is just basically, what do we want to accomplish? Just a broad idea of what needs to be accomplished. But very important for this, you need to have specific objectives. And so, specific objectives for the training is what I said at the beginning of my workshops is that, "At the end of this workshop, you will be able to..." and I list the variety of things that they should be able to do. So, people know exactly what needs, where we're going, and what they need to be able to do once they walk out the door. And that's another important thing, too, is that they've got to be able to use the skills immediately. If you are training people six months prior to something, they're going to forget it all and it's going to be a waste of time. So, examples of design for those objectives include, at the end of this training, we want an increase of productivity, or we want a decrease in the amount of complaints. So, what I do with coaching and with training is identify the areas needing improvement and the strategies that they will be able to create in order to do whatever they need to do. Alright, so then we develop what the training is. So designing is, this says this is what we want to be able to accomplish, develop is what is the training going to look like, so that they will be able to do what we need them to do. So, this is where we develop the curriculum and I'm not talking to textbook, I'm just talking about handouts, like PowerPoint slides and that type of thing. So, what will those handouts look like? What kind of activities will we have? I like to do role play. A lot of people do not like role play. But the thing is, is that we don't know how to do something until we do it. And so, for example, on difficult conversations. I can tell people I have difficult conversations. I can show them how to do it, but they don't know how to do it until they're role playing with people in the workshop who are giving them feedback and that type of thing. So, what kind of activities are you going to have, and the medium you're going to use. Is it going to be in person, online, self-directed, instructor taught, all of those types of things. So, once you've developed the material and the plan, then you implement it. But, before you implement it, you have the implementation plan. That plan needs to include budget. Who is going to be the trainer? Who exactly is going to be the audience? How are we going to evaluate things? What are the schedules like? What are the venues like? And this is really important because I have gone into situations where people have had me train, and the venue is just not conducive to training. I finally bought my own little speaker and microphone to take with me, after I was put into a couple of situations where I'm in a warehouse training, and there is heavy equipment going on and all of that stuff all around me. And so, of course, people aren't thinking about these things beforehand. They're not the trainer and they're not trying to determine the best environment. But, I would think that they would know that in a warehouse, with people still performing manual labor around them, would not be good. So, because my voice kept giving out, I finally bought myself a microphone and a speaker and I got it ready any time I need it. So, that's good. So, you have the implementation plan looking about how much money and who's going to do it, where, when, all of those types of things. And then you need to determine how we're going to evaluate the training. And so, four different ways of evaluation. First is you just have people fill out a little questionnaire right after the training and that evaluates the reaction to the training. Okay, that's nice, but that doesn't let you know whether people learn something. So then the next thing that you can do is you can evaluate whether they've learned something. And I like to do this with a pre-test and post-test. And so, at least through the post-test, it demonstrates that they did learn something, or they didn't learn something. Then there's behavior. So, when they go back to work, people there can watch them and determine whether the training helped them perform their job. And then finally, there's results. And this is the return on investment. And this is very difficult. One of the reasons that employers don't provide training is because it's expensive. And one of the things they're afraid of is that I'm going to train people and

then they're just going to leave me. So, the return on investment tries to demonstrate the return you get for the investment in training, and it's usually money. Alright. So, if we pay \$2,000 for this training, then how much money are we saving as a result of it? So for example, if you have high turnover, and you decide that maybe the reason we have high turnover is because our interviewing process is not very good, we're hiring the wrong people. So, let's have some training on interviewing. Alright. Well, if your turnover usually cost you \$10,000 a year, and your interviewing costs you \$2,000, but it reduces turnover, then you end up saving a thousand dollars. So, that's the kind of return on investment we're looking for. It's very difficult to determine how training impacted the bottom line, but that's what you try to go for. Alright. So, in a nutshell, that's how to train. Let's move on and see when training is not the answer.

So, one of the things that happens frequently is that people think, alright, well, let's train everybody. Well, sometimes training is not what you need. You need a specific performance improvement plan for an individual, who then goes through individual coaching. And so, performance improvement plans say, this is what you are not doing, this is what we need you to do, this is the timeline we're giving you, and then the individual coaching is the help we're giving you. And so, it's very specific. So, instead of just sitting in a classroom or a training room with other people and hoping the employee gets how it relates to the, to that person, it's individual so that it's very directed at the employee. And then sometimes termination is the answer. Is that you try to help people as much as you possibly can. And you train them, and sometimes you discipline them, and you give them a performance improvement plan. But if they just can't do the job, then termination is the right answer. And it's the right answer for the employee as well, because employees sometimes don't have the guts to terminate their own employment, and they know that they can't do the job well, and they're unhappy. Sometimes termination is the best gift that you can give them. Alright. So, that is all the information I have for you, except I do want to end on this note. Employees tend to sue because they feel like they were treated like garbage, because their manager was allowed to behave badly, when employer greed is out of control, and when rules are not fairly enforced. And so, it's very important to protect the employer from lawsuits. Don't give employees a reason to sue. Alright. Now, I'd like to hear your questions.

Emmet Ore

Alright, thanks, Robin. First question here: is it legal for employers to demote a supervisor and reduce their pay?

Robin Paggi

Yes, and so that has happened with some of my clients is, they promote somebody into a supervisory position, they're just not cut out for the job, we provide them with training, individual coaching, they just can't do it. And so, yes, they can be demoted. And along with the demotion comes a cut in pay. So, by the way, once employers start paying us something, they're not required to continue to pay us unless we're in some kind of employment contract. And so, that's one of the things that sometimes happens is that employers have to reduce people's salaries in order to survive, especially during a pandemic. But, yes, when you get a demotion, you certainly can have a reduction in pay.

Emmet Ore

Great, thank you. Is it legal for employers to fire a supervisor who unknowingly made a mistake when the supervisor never received any training on how to avoid the mistake?

Robin Paggi

Yes, it is legal. It doesn't seem fair. You never provide the supervisor with training, the supervisor makes a mistake, but it happens to be a legal violation. Yes, the employer can fire them for the mistake that they've made. And again, I think that's very unfair. But it is legal.

Emmet Ore

That is all the questions we currently have. Maybe we'll give it another 10, 15 seconds here before we close up.

Robin Paggi

Okay, and while we're waiting to see if we have any other questions, I would just like to remind folks that we have been doing these weekly webinars for a couple of months now. And, if you go to the Vensure website, all of our previous webinars have been recorded and are there. So, if I have talked about some things that you need more information on, such as documentation or conducting investigations, those types of things, they are available to you at any time. So, please take advantage of that.

Emmet Ore

Okay, and if anyone has any questions that they think of later, just reach out to us at webinarhrhelp@vensure.com, and we'll get those answered for you. And thanks for being here, Robin. Thanks, everyone, for being here as well. Oh, it looks like we just got a question. Alright.

Robin Paggi

Okay.

Emmet Ore

Can you fire someone who gets arrested outside of work?

Robin Paggi

Well, after it's been determined that they have done something illegal, and so remember, innocent until proven guilty. And so, just because somebody has been arrested. However, if somebody is out of the job for an extended period of time because of the arrest, then the termination would probably be based upon the fact that they can't perform their job. So, it's not because they've been arrested for something, and not yet convicted, but because the circumstances they can't come to work and perform their job. So, as always the devil is in the details, and so don't go out there and start firing people as a result. Always check-in. If you are a client of ours, check in with us to make sure that we get all of the details to be able to guide you properly. And if you're not a client of ours, that's one of the reasons you want to be one.

Emmet Ore

We do have another question here. Maybe you can decipher it for me. The question is simply, SHRM certification.

Robin Paggi

Oh, I will mail out our email to you the codes for the recertification, probably by the end of the week.

Emmet Ore

Excellent, okay. Looks like we're we're done with questions and we're at the top of the hour. So, thanks again, everyone for being here. And we'll see you next time.