Question No. 1:

Employee was a male county animal services assistant, which means he responded to calls to pick up roadkill and stray animals. After four years of work, he complained that his female supervisor was sexually harassing him. The employer investigated and concluded the supervisor had violated the employer's sexual harassment policy. The supervisor was disciplined and required to retake sexual harassment training.

Although the sexual harassment stopped, the supervisor allegedly told coworkers that the employee was a "liar" and the allegations were not true. Employee complained again and supervisor was again reprimanded and received a short suspension.

Employee then complained that the supervisor began assigning him more calls than other assistants after his sexual harassment complaint, and that she criticized him to co-workers, including calling him lazy and worthless.

Employee sued. Will he be able to pursue his claims?

Answer to Question No. 1:

Yes and no, according to the District Court of Nevada in *Finnegan v. Woshoe County* (2018).

Employee's sexual harassment claims fail because the sexual harassment stopped after employer took prompt remedial action following employee's complaint.

However, employee's retaliation complaint proceeded, because the assignment of additional calls could be considered an adverse employment action resulting from employee's sexual harassment complaints.

Question No. 2:

Employee was hired as a customer service agent by an airline. Upon hiring, employee was required to undergo both classroom and on-the-job training. At the classroom training, which occurred in Dallas, the employee struggled and told the instructors that she had a learning disability. She was allowed to sit in the front of the classroom and talk through test questions and ultimately completed the classroom training.

Employee again struggled when she took her on-the-job training in Denver. She told the instructors that she didn't think she was getting the training she needed and told co-workers that she had a learning disability. She received additional training, including one-on-one instruction, but was ultimately fired. The employer said that while the employee's attitude was excellent, her aptitude was insufficient to remain employed.

Employee sued. Will she prevail?

Answer to Question No. 2:

No, according to the Tenth Circuit Court of Appeals in *Edmonds-Radford v. Southwest Airlines Co.* (9/16/21). The Circuit concluded that the decision-makers did not terminate employee because of her disability because they did not know she had a disability. In addition, the evidence supported the basis for the termination – inability to successfully complete her training. Employee's failure to accommodate claim failed because the employer did not know she was requesting an accommodation due to a disability and because accommodations were provided.

Question No. 3:

Employee was an HR assistant for a medical provider. After the company was acquired by another company, and numerous employees left, the director of the office complained to another HR assistant about understaffing.

In late September, the employee took leave to undergo hand surgery. On October 9, employee was cleared to return to work, but turned in an intermittent leave request to care for her mother, who was suffering from lung cancer. The director again complained about understaffing.

When employee returned to work, she was asked to administer a tuberculosis test to another employee, even though TB tests were not usually administered on the day in question. Employee responded that the request "crazy" and someone else administered the test. The director at the office terminated employee the next day for failure to administer the TB test. Although the director testified that he made the decision to terminate the employee "spontaneously" during the meeting, the HR Manager (employee's immediate supervisor) testified that the director told her before the meeting that he intended to terminate the employee.

Employee sued. Will she be allowed to proceed with her claims?

Answer to Question No. 3:

Yes, according to the federal court for the Eastern District of Pennsylvania in *Speights v. Arsens Home Care* (July, 2020).

The court determined that employer violated the ADA because she was terminated shortly (13 days) after requesting leave for a hand surgery. In addition, the court found that the employer interfered with employee's FMLA rights and retaliated against her for exercising her FMLA rights by terminating her 13 days after she requested leave for herself, and 2 days after she requested leave to care for her mother. The court relied heavily on the director's apparent animosity towards employees missing or leaving work and the inconsistent statements regarding when the decision was made to terminate employee.

Question No. 4:

Employee was hired as a cashier's/sales clerk for a retail store in 1995 and promoted to department head in 2000. She was over 40 years old when she was hired. She reported to the same store manager for years. She was terminated in 2017. She alleged that prior to her termination, her store manager and co-workers made disparaging and age-related comments to her, such as saying a caller to the store wanted to speak to "The Old Lady." A co-worker called her "granny-grump" after hearing employee's husband call her that name and the store manager told her that her "age" was getting to her after she complained of back pain.

Employee was given several write-ups over the last few years of her employment for not following the employer's refund policy and for allegedly being rude to customers.

In October, 2017 a customer reported hearing employee use a racial slur to describe a black customer after the black customer left the store. The customer that made the report was contacted and interviewed and employer believed the report was truthful and in good faith. Employee denied making the slur. Employee's co-workers were interviewed and said that such a racial slur would be out of character for employee. The employer decided to terminate employee. Her position was not filled, but her duties were absorbed by other employees.

Employee sued. Can she proceed with her claims?

Answer to Question No. 4:

No, according to the federal court for the Eastern District of Oklahoma in *Branum v. Orscheln Farm & Home, LLC* (May, 2021).

The court concluded that the comments about employee's age were not direct evidence of age discrimination because they required inferences to conclude they were discriminatory and were subject to different interpretations.

The court further found that the employer's stated reason for termination, the use of a racial slur in front of a customer, was a legitimate non-discriminatory, reason for termination and that the employer had a good faith belief that employee made the slur.

Question No. 5:

Employee worked in a manufacturing plant. Early in his employment, the employee, who is black, was talking about a basketball game with his co-workers and used the "n" word multiple times. A white co-worker overheard the conversation and used a similar word, allegedly attempting to be humorous. Employee became angry and threatened the white co-worker. The white co-worker was suspended for two days and the employee was given a verbal warning for making the threat.

In December 2018, employee accused a co-worker of making a noose out of rope and leaving it near his work station. Employer investigated but could not fully substantiate the complaint because the employee had delayed making the complaint and because the employer did use a "separation string" method in its manufacturing process, which included tying string in a loop.

In late April 2019, employee and several other employees were randomly selected for a drug test. The employee provided two samples but both were rejected because they were outside the acceptable temperature range. Employee was then asked to give another sample, which would be observed. Employee refused and left work.

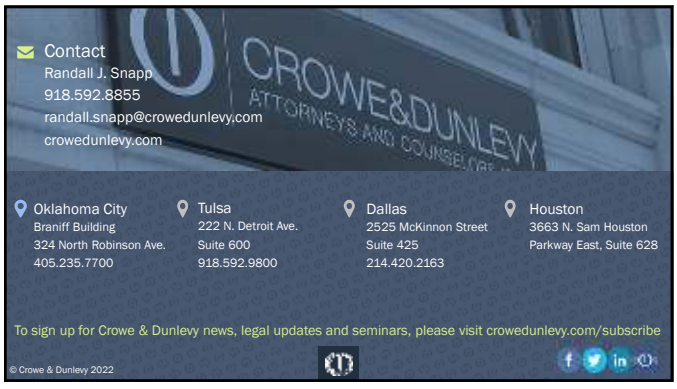
Employee was fired for refusing to comply with drug testing requirements.

Employee sued. Will he be allowed to proceed with his claims?

Answer to Question No. 5:

No, according to the federal court for the Northern District of Oklahoma in *Lockett v. Webco Industries, Inc.* (May, 2021).

The court concluded that the employer had properly responded to the noose incident and the racial slur incident, and noted that the employee did not actually report the racial slur. The court further concluded that the failure to comply with the drug testing requirements was a legitimate, non-discriminatory reason for termination and that there was no temporal proximity between his complaint about the noose and his termination.



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