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DISGRUNTLED EMPLOYEE RETALIATION: DOES THE EMPLOYER HAVE RESPONSIBILITY?

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CASE DESCRIPTION

This short case focuses on harassment and intimidation problems faced by a manager and his family shortly after an employee has been terminated. Whether the departed employee is the intimidator, whether the employer is obligated to investigate and get involved in the matter, and which options or possible actions the manager and his family can take are the key issues in the case.

The case has a difficulty level of four, and is best-suited for use in junior or senior undergraduate-level courses in human resource management or employment law. This case can be presented and discussed in about one and a half hours, and is expected to require about two hours of outside preparation by each student.

CASE SYNOPSIS

This is a case about a disgruntled employee at a software development company that was being downsized. The employee became upset when he was terminated, claimed he was fired because of his Iranian background, and had to be escorted from the premises by a security guard. A few weeks later, his former manager started receiving bills for hundreds of dollars of purchases that neither he nor his wife had ordered, such as magazine subscriptions, life insurance policies, and gifts. The manager thought the terminated employee was probably doing this, but he only had a few forged signatures on some order cards as evidence. The company HR Director was informed about these harassment incidents and shown the signature cards, but didn't offer to get involved to resolve the situation. As more magazines, pornographic pictures, suggestive notes, and even a note with a veiled threat to the wife and baby arrived in the daily mail, the manager realized that his family was being intimidated and threatened in a criminal way. This was no longer just a prank. The police were called and an investigation was begun, but there still seemed to be little support from the company and the HR Director.

Does the employer have a responsibility to protect its managers and their families from work-related harassment? What should the manager do now? Should the family move to a safer place? Should they wait for the police to do something? Should the manager leave his job at the company? Should they retain a lawyer and sue the company?

INSTRUCTORS' NOTES

This short case focuses on harassment and intimidation problems faced by a manager and his family shortly after an employee has been terminated. Whether the departed employee is the intimidator, whether the employer is obligated to investigate and get involved in the matter, and which options or possible actions the manager and his family can take are the key issues in the case. Ask your students to read the case carefully and prepare answers to the discussion questions, or assign them to small groups and ask each group to report their recommendations to the class. As you discuss the case, try to keep the class focused on both the legal and ethical issues that arise. Expect lively class debates and differences of opinion.

DISCUSSION QUESTIONS

- 1. Does McAlister Systems have an obligation to protect its employees and their families from harassment, particularly if it stems from a work-related incident?**

Normally, employees expect the company to provide a safe, “harassment-free” workplace. However the Sargent’s intimidation did not occur on company premises and was focused mostly on the family rather than the manager. Furthermore, the alleged harasser is not an employee and it is not at all clear whether Mr. Aziz is the perpetrator. Has the company ever obtained any information that implies that Mohamed has engaged in intimidating or harassing activities like those described by Mark Sargent? If so, then the company would seem to be liable (the negligent hiring or negligent retention argument), and should take some responsibility for resolving the issue. If there is no previous or current evidence of unacceptable behavior, the company is probably not legally obligated to get involved, since Mr. Aziz is no longer an employee. However, most would say that ethically, it would be good if McAlister Systems did all it could to alleviate the stressful situation the Sargents are currently facing.

- 2. Is there any proof that Mohamed Aziz is the perpetrator of this harassment?**

Just because Mark thinks Mohamed is retaliating against his wife Lisa doesn’t mean it is true. The only evidence has been the flowery handwriting on a couple of order cards, which Mark thinks bears some resemblance to Mohamed’s signature. Esther Coles didn’t appear to be convinced that the cards were signed by Mr. Aziz, and without expert corroboration, there really is no proof. However, Mark is very suspicious, given the explosive departure of Mohamed from the company, and the “gifts” sent to two mid-level managers at the company. It seems that further investigation is necessary to find better evidence before accusing Mohamed of anything.

3. What actions can Mark and Lisa take to stop this intimidation? What are their options?

Here is a partial listing of possible options for Mark and Lisa. Obviously, the strengths and weaknesses of each of these options can be explored by the class.

- Hire a security company to protect Lisa at home.
- Hire an independent investigator to watch Mr. Aziz.
- Get a handwriting expert to evaluate the cards and notes received... is it Mohamed's signature?
- Relocate Lisa and the baby to a different location (move the family).
- Leave McAlister Systems and seek work elsewhere (quit to escape the harassment).
- Call the police again and ask for advice on what to do.
- Ask the police to question and monitor Mohamed Aziz.
- Contact the postal authorities and report the forged subscriptions.
- Ask Esther Coles to help the police immediately with this investigation.
- File a grievance at the company against Esther Coles.
- Hire a lawyer and sue the company for constructive discharge or failure to protect.

4. Given your responses above, what would you recommend that Mark and Lisa do? Justify your recommendation.

Many suggestions are plausible. The most obvious ones are to call the police again and ask for advice on what to do now. Also ask Esther Coles to cooperate immediately with the police investigation (see Exhibit 3). Hopefully, the police will have a handwriting expert look at the notes and cards and determine whether Mohamed is really the culprit in this case. If the investigation is still going to take some time, perhaps Lisa and the baby should leave town temporarily, and go visit relatives to get away from the stress and fear that comes with each day's mail. Once the police have concluded their investigation, they can deal with Mr. Aziz if indeed he is the perpetrator of these incidents.

5. What do you think the company could have done or should have done to protect Mark and Lisa Sargent from these harassing incidents? Are these legal or ethical responsibilities?

Even though the company may not feel that there is a legal obligation to get involved, they are somewhat responsible because they failed to train and advise their

manager in how to handle Mohamed's termination properly. Mark was ordered to terminate Mohamed, a task for which he was unprepared. He was very nervous and probably didn't know which procedures to follow, or how to use tact and a sympathetic approach. The result was that Mohamed clearly took offense, made some threats, and now Mark suspects that the intimidation and harassment are payback. In retrospect, managers like Mark should have received training in how to properly discipline and terminate employees. The Human Resources Director should also have been more involved by providing coaching and advice to Mark, as well as making sure that proper procedures were followed and appropriate notices were given. If these things had been done, Mark would have felt more confident, and perhaps Mr. Aziz would not have become so upset.

Why has McAlister Systems been so slow in responding to the request for information from the police? Is the company afraid that Mr. Aziz will target them if they cooperate with the police, or is Esther Coles preoccupied with other company matters? Perhaps she is always very slow to respond to information requests. All the police need is background and support information about Mohamed, so why the delay? Is the information not available? Has the company "lost" the documents supporting Mr. Aziz's termination? At the very least Esther Coles should contact Officer Park immediately and provide whatever information she can. This is a possible criminal investigation, so the lack of company cooperation is unacceptable.

Finally, the company needs to be very supportive of Mark. Mark is a valuable employee, he did what was asked of him, and now he's suffering the consequences of following those orders and firing Mohamed Aziz. Even if Mohamed is not involved, the harassment and intimidation that Mark and Lisa have experienced is very disruptive. They are feeling abandoned because of the apparent indifference of the company to their situation. Mark's loyalty and commitment to the company will be damaged if this feeling isn't rectified soon. If Esther Coles had been more supportive and promptly asked how she could be helpful in assisting Mark and Lisa with this problem, I suspect Mark's morale would be much higher than it is right now. It always makes good sense to show concern and support for a highly-valued employee. Esther Coles (or someone else at the company) needs to reassure Mark and Lisa that the company is behind them, and will do all that they can to end the harassment and restore a sense of well-being in their lives. To ignore their plight and act as though this is a private matter of no concern to the company seems callous and unethical.

POSTSCRIPT

Two days later on May 12, Ms. Coles did respond to Lisa's request and provided Officer Park with the information that he had requested.

On the following day, Officer Park contacted Mohamed Aziz and told him that the police were investigating a serious fraud and harassment complaint filed by the Sargent family. The fraudulently ordered items were reviewed, as well as the photos and threatening notes that had been sent. The handwriting and e-mail addresses involved in these incidents were currently being analyzed. Officer Park warned that if these harassing incidents did not stop immediately, he (Mohamed) would be arrested and charged with several violations. After several minutes of denying repeatedly that he had done anything wrong, Mohamed assured Officer Park that if these incidents continued, he would certainly not be involved in any way, and that he had no intention to harass the Sargents or anyone else at McAlister Systems.

Fortunately, this warning seemed to be enough. Lisa and Mark stopped receiving unordered subscriptions, gifts, and threatening letters. From Lisa's perspective, the crisis was over and she was satisfied with the outcome. However, Lisa and Mark have always felt that McAlister Systems should have done more to protect them and to assist in resolving their situation.