

## **LAWSUITS CAN BE UGLIER THE SECOND TIME AROUND: AVOID EXPOSURE TO RETALIATION CLAIMS**

**Question:** I own an automotive repair shop, and until last November I had never been sued before.

But this one was a doozy. Sharon, my only female mechanic, had applied for the foreman's position in my shop. This would have been a promotion and would have involved a raise. The other candidate was Jerry, another mechanic who had been with me a little longer. I knew either one of them would do a great job, but I chose Jerry because I had known him longer and generally felt more comfortable around him.

When I announced my decision, Sharon didn't say a word. But about a month later, I got a notice that she was suing me for sex discrimination.

Needless to say, I was shocked and angry. I don't mind saying that I was also scared, because I've heard about these huge jury awards in discrimination cases. But most of all, I just couldn't figure out why she would do something like that to me, and I knew I could never trust her again.

The lawsuit didn't go very far; her lawyer had apparently figured out that she didn't have much of a case and urged her to settle. I was relieved but I was still out several thousand dollars for the settlement money and attorneys' fees.

Now, a few months later, I'm feeling very nervous around Sharon. I'm afraid of doing or saying something that might get her angry, because the last thing I need is another lawsuit. For that reason, I avoid her as much as possible. I no longer invite her out to lunch with me and the other employees. And when anyone starts to talk about her, I quickly change the subject or just leave the room. I know the tension between us is obvious to everyone and I wish she would just quit, because I know better than to fire her. Any suggestions?

**Answer:** While it's understandable that the last thing you want is another lawsuit, you may in fact be encouraging one.

You are obviously very familiar with the state and federal laws that prohibit discrimination based upon race, color, religion, etc. These

laws also provide an avenue for employees or applicants to file a lawsuit or an administrative claim if they feel that they have been discriminated against.

And hand in hand with that right to file a claim is the right to not be retaliated against for doing so.

For example, if you were to fire this employee, give her more difficult work, or exclude her from employment opportunities because she filed the discrimination claim, that could be illegal retaliation. And no matter how weak her original claim may have been, she may well win this second case if she can prove that your actions were motivated by her original lawsuit.

In fact, in April of this year the Supreme Court heard a case from a female forklift driver who had filed harassment and discrimination claims against her employer. She further alleged that after doing so, she was illegally retaliated against by being given more difficult duties and even being suspended without pay for a time. This case will be interesting to follow, not just to see what happens to this employee but also to see if the Court offers more legal guidance about how such retaliation cases can be proven.

There are also cases that suggest giving an employee the “cold shoulder” for filing a lawsuit is a form of retaliation that may give rise to a claim—anything, in fact, that might make an employee reluctant to file a claim in the future.

So what’s the best way to protect your company in this situation? Remember that even though you disagreed with her allegations, she had a right to do what she did and thus has a right to be treated with the same dignity and respect with which you treat all employees.

That means not only must you treat her in a nondiscriminatory manner, you must be sure that her coworkers do, as well. Even seemingly small things, like not inviting her to lunch with the others, can end up becoming crucial issues. This is particularly true if these are “power lunches” where contacts are made and business is conducted.

And if you avoid interacting with her, you can end up ostracizing her and inadvertently encouraging others to do so as well. This

would only make the retaliation claim stronger and your workplace unhealthier.

**For more information on this and other important issues affecting Oregon employers, including seminars conducted by Boil's Technical Assistance Unit, visit our website at [www.oregon.gov/boli/ta](http://www.oregon.gov/boli/ta). You can also call us at 971-673-0824.**