

## **EMPLOYER SHOULD PUT A STOP TO THE “CANE MUTINY”**

QUESTION: One of our employees, Herman, started using a cane about a year ago. Since then, Herman’s coworkers have been teasing him - good naturedly, of course - about it. I supervise Herman’s team, and I’ve heard one of the employees say things like, “Hey Herman, show us your Charlie Chaplin imitation! Or how about your Yoda?!” Another employee often commandeers Herman’s cane when he’s not looking and hides it somewhere in the office.

We’ve always been a team that gets along well and jokes with each other. Also, Herman is popular among coworkers, and at first he seemed to accept the joking in the harmless spirit in which it was offered.

But lately, I’ve noticed that Herman appears frustrated and doesn’t laugh when others razz him about the cane. In turn, his co-workers seem confused and even irritated by this apparent change of heart. And yesterday, there was a very tense moment: When one of his co-workers said, “Hey Herman, stop feeling sorry for yourself and hobble on over here,” Herman pointed his cane at him and yelled, “Watch it, or this will be applied directly to your head!” Although Herman giggled nervously, his face was red and he was breathing heavily. Everyone else left the room.

Now I’m at a loss. I’ve always let my employees work out their own conflicts, because it seems to build a better sense of team spirit. So on the one hand, I’d like to just wait for a couple of weeks and see if everyone can calm down and work it out among themselves. But on the other, I don’t want a harassment claim from Herman landing on my doorstep. Any suggestions?

ANSWER: Yes. You need to counsel those employees to stop the banter, immediately. Regardless of whether Herman originally enjoyed the joking or was just going along with it to save face, the comments were inappropriate for the workplace. And since this behavior has apparently been repeated over time, it could be evolving into the type of illegal behavior known as “hostile environment” harassment.

Elements of a hostile environment harassment claim include:

- Severe or pervasive conduct (such as jokes, teasing or insults)
- which is unwelcome, and
- which a reasonable person would find offensive, and
- is related to the protected class status of one or more employees.

“Protected class status” includes characteristics such as race, color, national origin, sex, disability, age, religion, marital status, and any other trait that is legally protected from discrimination.

To establish a “hostile environment,” the offensive conduct must generally be severe or pervasive. This means that even those actions that are not particularly harsh or brutal the first

time could create a hostile environment if they are engaged in on a continuous basis. The alleged harasser's intent is immaterial.

Thus, employers and supervisors need to be vigilant about keeping the workplace free from inappropriate comments and actions, especially those related to protected classes. And as indicated by your situation, the supervisor should not be guided by the apparent "consent" of the person who is the object of the comments. The best way to nip harassment in the bud is to intervene immediately to keep it from getting out of control.

This is not to say, however, that Herman should be allowed to brandish his cane at his co-workers. While this situation may not have happened if you had taken action earlier, the reality is that you should also mention to Herman that just as jokes about canes are not funny, neither are jokes about using them for other than their intended purpose.

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