



DELAWARE

EMPLOYMENT LAW LETTER

Part of your Delaware Employment Law Service

Vol. 22, No. 9
September 2017

HR ISSUES

Dealing with the 'What about me?!' employee

by Lauren E.M. Russell

Managing employees is tough! If it wasn't, no one would need HR professionals and employment attorneys. And one of the most persistent challenges in the field of employment law is employee gossip and the sense of entitlement that can result from it. Here's some practical guidance for dealing with employees who are always asking, "What about me?!"

Wages and waging war

Employee wages are one of the oldest sources of employee conflict. I'm certain that somewhere in a cave in France, there are paintings by early humans depicting a fight over who got "paid" the most following a successful hunting trip. All employers should know that prohibiting employees from discussing wages is unlawful. Discussing wages and benefits is considered "concerted activity" protected by the National Labor Relations Act (NLRA). Company policies that prohibit employees from discussing their compensation should be removed from your handbook immediately.

So what can you do when you cannot have a policy

that prevents your employees from discussing wages? There are several acceptable responses when Sue in shipping comes to HR complaining that Bob in accounting is getting paid more than she is.

First, make clear that your company doesn't discuss the details of one employee's compensation with another employee. Second, if you're willing to revisit an employee's compensation, say so! That doesn't mean you're committing to a raise. However, if Sue feels that her skills are being undervalued, hear her out. Has she obtained any degrees or certifications since her last raise that are relevant to her job? Have other employees with the same job title or similar levels of seniority received raises while Sue didn't? If an employee complains that she's being treated unfairly, it's *always* a good idea to investigate her claim and its merit *before* she becomes fed up and files a charge of discrimination or a lawsuit.

What if you decide not to extend a raise? Be honest, but don't overshare. If the business is strapped for resources, tell the employee that you're not in a position to grant *anyone* a raise at the moment, but you'll revisit her request in six months, a year, or more. And then follow through. If you reviewed the entire shipping department and determined that Sue is being paid fairly in light of the qualifications of her coworkers, tell her that.

Moreover, an employee in accounting and an employee in shipping are probably not good comparators. And remember, you're not going to discuss Bob's compensation anyway. But you can tell Sue that you reviewed her qualifications, seniority, and compensation compared to the others in her department, and she is being compensated fairly. Then end the discussion.

Unreasonable requests for reasonable accommodations

Some employers are concerned about granting reasonable accommodations because other employees will want similar treatment. This usually occurs when an employee is taking intermittent leave under the Family and Medical Leave Act

(FMLA) for something like chronic migraines ("Why does she only have to work four days a week?! I want a reduced schedule, too!") or gets a popular workplace perk as a reasonable accommodation under the Americans with Disabilities Act (ADA) or the Delaware Persons with Disabilities Employment Protection Act (DPDEPA) ("Ooh, dual monitors and a standing desk — that looks great! I want them, too!").

To be clear, intermittent leave and reasonable accommodations are *legal entitlements* under state or federal law — and often under both. You cannot deny an employee leave or a reasonable accommodation because you're concerned that another employee who isn't disabled will want similar treatment. However, that doesn't mean your nondisabled employees will be happy about their circumstances. So what do you do?

First, you *do not* discuss the reasons that Bob in accounting received a standing desk or a reduced work schedule while Sue in shipping didn't. The changes to Bob's terms and conditions of employment are related to personal medical information, and you are legally prohibited from disclosing that information to another employee. But you can open a dialogue with Sue that hints at the conditions for Bob's change in circumstances.

Ask Sue if there is a documented medical reason why she requires a reduced work schedule or a standing desk. If she is a decent person who had a momentary lapse in humanity and became envious of a coworker who is suffering from real misfortune, she will correct course. There's always a slight chance that Sue is a bad egg, but if so, she will still have to go through the steps of documenting her alleged disability or serious medical condition. And if she can do that, she's entitled to an accommodation, even if you find the circumstances troubling.

Settlements

One of the most common issues raised in employment litigation is a fear of settling lawsuits because the payout might inspire frivolous litigation. That may be a rational concern in certain

lines of business. Temporary staffing, for example, has a very high rate of turnover. As a result, a temporary staffing agency may decide that it will fight any lawsuit filed against it to deter similar claims. However, if your business is facing its first employee lawsuit in its 50-year history, then a settlement isn't likely to inspire a long line of copycat suits.

It's true that even under the best agreements, the value of the settlement may leak out. But give careful thought to whether a settlement will actually increase your risk of litigation or whether you're making important business decisions based on another business's experience that's inapplicable to your circumstances.

Bottom line

Employees gossip. It would make all of our lives easier if they didn't, but they do. In most cases, gossip is harmless, but it can give rise to situations that seriously harm productivity and morale. While you cannot stop employees from talking to each other, you can deal with some of the issues that arise in a strategic manner that allows you to document that you've treated all of your employees fairly and you respect their complaints — even if you don't agree with them!

The author can be reached at lrussell@ycst.com.

Copyright 2017 M. Lee Smith Publishers LLC

DELAWARE EMPLOYMENT LAW LETTER does not attempt to offer solutions to individual problems but rather to provide information about current developments in Delaware employment law. Questions about individual problems should be addressed to the employment law attorney of your choice.

[Back to Results](#)

[Back to Search](#)

[Exit Search](#)