

PLAN TO FORCE EMPLOYEE TO RESIGN BACKFIRES

By David N. Michael

Have you ever considered making a problem employee's work life so difficult that he or she just gives up and resigns? In light of a recent ruling by the federal appellate court in Chicago, employers may want to rethink that strategy.

In that case, Sally Naeem filed a lawsuit against McKesson Drug Company alleging a claim for intentional infliction of emotional distress, among others. Ms. Naeem had been working for McKesson since 1978, but her problems began after she was transferred to the distribution center in 1992. Ms. Naeem agreed to assume the role of transportation coordinator in addition to her existing role as computer room supervisor. This essentially gave her the responsibilities of what had previously been two full-time jobs. She received merit-based pay increases in both 1993 and 1994.

In March of 1994, Ms. Naeem's manager made a sexual advance that she rebuffed. Four months later, Ms. Naeem applied for the operations manager position, but did not get it. She then filed a discrimination charge with the EEOC, claiming sex discrimination and retaliation. McKesson defended on the grounds that Ms. Naeem was not meeting performance standards in her current position.

In 1995, Ms. Naeem was experiencing a difficult pregnancy. Following a change of manager, her work load increased dramatically. Particularly, she was asked to set up computers, which involved climbing a metal staircase and crawling under furniture. Ms. Naeem was feeling overwhelmed and concerned about her physical health. She expressed her concerns to her manager and to the human resources department, but did not receive assistance or a reduction in work load. After returning from a short medical leave, Ms. Naeem was disciplined for failure to complete assignments before going on leave. She was placed on a "Performance Improvement Plan" (PIP), which required her to perform extra projects in addition to her normal job duties. At trial, the human resources manager admitted that this was done in order to "send Sally a message."

The court found the management at McKesson continued to send Sally messages. For example, it relocated her office during her absence. In the process of that relocation, files were lost which made it nearly impossible to complete the tasks in the PIP. Her manager also reprimanded and humiliated her at staff meetings. The deadlines given for the tasks under the PIP were so demanding that she was working "around the clock" to attempt to meet them. Her manager even went so far as to tamper with her computer and change her password so that she would be unable to meet these deadlines. On February 2, 1996, McKesson terminated her employment for failing to meet the deadlines in her PIP.

At trial, the jury found for Ms. Naeem. In affirming that verdict, the appellate court reviewed the three elements of a claim for intentional infliction of emotional distress: (1) the defendant's conduct was extreme and outrageous, (2) the defendant intended to inflict severe emotional distress, and (3) the defendant's conduct caused emotional distress. Although courts have been hesitant to find intentional infliction of emotional distress in the workplace, the court held that the conduct by McKesson in this case went "far beyond typical on-the-job disagreements" sufficient to be classified as extreme and outrageous. The court additionally found that the management's aim to "send Sally a message" was sufficient to satisfy the intent element of the claim. Finally, the court found the evidence of Ms. Naeem's emotional distress was overwhelming. She was diagnosed with post-traumatic stress disorder and major depressive disorder, both traced to her experiences at work. She and her husband both testified about her hair loss, uncontrollable crying for hours, and lack of marital relations. As a result, the Seventh Circuit affirmed the jury award of \$240,000 for pain and suffering and \$225,000 for past and future lost earnings.

So what is the lesson for employers? The federal appellate court in Chicago is regularly viewed as an employer-friendly court. Its decision in favor of Ms. Naeem sends a clear message to employers that there are limits to the actions a court will sanction. Over-the-top efforts to force an employee to resign can backfire.

David Michael is a Partner and Chair of Gould & Ratner's Human Resources and Employment Law Group. He may be reached at 312.899.1603 or via email at dmichael@gouldratner.com.

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