

The Meaning and Essence of Anger Management

By Dr. Michael Levittan

Anger management is one of the “hot” phrases of the 21st century. It is a concept that is often used, often suggested, but little understood. A good working definition of anger management is: “The insertion of rational thought into a mind that is consumed with anger.” The universally difficult task is to achieve that rationality.

The costs of unmanaged anger are enormous. People who cannot control their angry feelings cause hurt, insult, abandonment, abuse, violence, and death. The consequences of unchecked aggression occur worldwide and manifest in all contexts: homes, schools, workplaces, restaurants, cafes, streets, stores, buses, trains, airplanes and freeways. It would seem to be imperative that both adults and children learn anger management skills and tools as soon as possible. It is axiomatic that if you don’t control anger, then it will control you.

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What Can Employers Do to Protect Employees From Workplace Violence?

By Michael D. Nosler

We have all read the news accounts about some disgruntled employee showing up at the workplace and firing on his fellow employees and innocent bystanders. We’ve even coined a colloquial term for this terrible phenomenon: “going postal.”

Today in Colorado and many western states, our gun laws permit citizens to carry concealed weapons. It is not unusual for citizens in the West to have guns in their vehicles. This ready access to weapons makes any casual threat from someone that “I’m going to kill you” or “I will blow you away” a deadly reality and concern for all employers.

It is important to remember that state and federal constitutional rights allowing citizens to bear arms do not trump a private employer’s right to control activities on their premises. In the face of a no-weapons policy, employees do not have a right to bear arms on your private property, even if they have a lawful concealed weapons permit.

How To Protect Employees

So what can employers do to begin to protect their employees from violence in their midst? The first step is to implement and train employees on a violence prevention or disaster preparedness plan. Much like a sexual-harassment-prevention policy, a violence-in-the-workplace policy should contain the following general provisions:

- A statement of zero tolerance against violence and/or threatening behavior in the workplace.
- Measures to screen and limit access to your premises to persons with a legitimate business interest.

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When Stress Arises, Ask Yourself: “Am I measuring the right things?”

By Janice Calnan

Leaders often contribute to the very problems they want to avoid. As technology changes so must a leader’s beliefs. Otherwise profit dwindles. Measure, measure, measure! If it can’t be measured then it doesn’t count. Numbers tell everything. Or do they?

For 20 years engineers have told me that measurement is everything; it’s crucial to them. Given the speed at which organizations operate today, the belief and practice of measuring everything keeps company leaders from seeing what’s really important and limits their ability to make good decisions. Quantitative measurements are simply not enough.

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STRESS, from cover

When working with executives and other leaders, I regularly interact with human resource specialists whom I believe take the pulse of their organizations. My work with leaders leaves me wondering whether fear, and perhaps violence, lurk beneath the surface. So I ask, "What's happening in the workplace that suggests leaders need to change their style?" A typical response is that employees are leaving their jobs because they are discouraged with their leaders. Employees get discouraged with leaders who:

- say the right things yet neither stand by their word nor follow through with actions;
- fail to ask questions of understanding such as "How does this happen?"
- are blind to how they themselves contribute to situations;
- don't listen and then make decisions without consulting directly with those who do the work;
- communicate despite gaps in information, assume they know what's happening and make decisions based on partial information;
- become bullies and intimidate when they hear something they prefer not to hear; or
- know very little about how they are seen by staff and appear not to care.

There is a general discontent among employees that's characterized by:

- a significant increase in discouragement, stress and depression;
- work/life balance that's wildly out of kilter;
- team spirit that's spiraling down;
- uncertainty of direction and difficulty coping with continuous change;
- a sense of not being appreciated by their leaders;
- an increase in anxiety about expectations and meeting deadlines as delivery times get shorter;
- creating quick fixes (redo, redesign, redevelop) with minimal time to do things right; values are really off;
- having to manage the results of executives' uninformed decisions; and
- feeling unheard, unvalued, stuck and having to do the same things over and over.

All of these contribute to higher levels of stress, which contributes to violence in the workplace.

In the second half of his career, Total Quality pioneer W. Edwards Deming discussed measurement as one of four components of successful quality improvements. He told North American managers that to implement quality improvements they must:

- understand how people think and ask employees about what they know;
- understand how people learn and ask employees about how they learn best;
- understand the system in which they work and ask employees how their leaders and the workplace supports them (or does not) in getting work done; and
- measure output (with "output," meaning people's energy and enthusiasm, which is a major company resource).

Organizations tend to focus on things and ignore people. By focusing on people's stories about their perception of the truth, Deming discovered that he was able to bring about purposeful, high-quality improvements in organizations. Stated simply, it's your people that make your company thrive. When you don't care for your people, they don't care for you. If you are in a leadership role it's your job to turn the environment around. Here are some ideas.

Knowing What to Measure

You don't have to measure everything. Measurement requires calibration—how can you calibrate what goes on inside a person's mind? Great leaders trust their intuition, feelings and life experiences, all of which help them make great decisions. The belief that 'if something can't be measured it doesn't count' is risky. It devalues input from managers and employees and runs the risk of 'no commitment' to whatever plan is at hand. It's impossible to run a company without commitment.

Measurement requires that something be counted and valued. It's a common practice for organizations to reward the top 5% of executives with bonuses. Their teams however may not be rewarded. The company runs the risk of creating an environment where 95% of employees feel discouraged, restless and devalued. Loyalty, creativity and

innovation disappear as people update their resumes and look elsewhere for job opportunities. Leadership practices contribute heavily to this. When employees focus outside their company, profit is impacted negatively. Who is responsible? You know the answer.

Start Asking Questions

Be still and listen to responses. Understand that serving employees is equivalent to increasing profit and securing your future. I am not talking about unions. Find out what employees want. How? Just ask! "What's your perception about [specific event]?" "What gives you confidence in your senior team?" "What do you need from your boss in order to succeed?" When measurement becomes more important than people, interest in work and commitment to the company dwindles. If you're a manager, VP or senior executive, pay attention to how your people think. Learn how they learn. Do they perceive the workplace as working for or against them as they conduct their daily work? This information is critical to know.

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PROVISIONS, from cover

- The barring of all weapons on company premises, including those in private vehicles when on company property.
- Establishment of a policy to permit inspection of work areas, including lockers, desks, and any other property on company premises.
- Establishment of a policy permitting the monitoring of telephone conversations, e-mails, and other means of communications in the workplace.
- An immediate reporting scheme for any threats of violence.
- Training for employees on what to do in case of a threat of violence.
- Coordination with the company's employee assistance program provider to encourage early intervention and counseling on potential domestic or workplace violence issues.
- How to immediately contact the local authorities and first responders.
- Establishment of a disaster preparedness and evacuation program to facilitate a quick reaction to any violent act or disaster that takes place in the workplace.

In Colorado, there is an additional step that employers can take to prevent workplace violence. Several years ago, the Colorado legislature established a comprehensive scheme for courts to issue "civil protection orders" (C.R.S. § 13-14-102). The legislative declaration states, "the general assembly hereby finds that the issuance and enforcement of protection orders are of paramount importance in the State of Colorado because protection orders promote safety, reduce violence, and prevent serious harm and death."

Specifically relevant to employers is Section 13-14-102(4)(b), which provides that "if the judge or magistrate finds that an imminent danger exists to the employees of a business entity, he or she may issue a civil-protection order in the name of the business for the protection of the employees. An employer shall not be liable for failing to obtain a civil-protection order in the name of the business for the protection of the employees and patrons."

The above passage means that you don't have to wait for the individual employee to seek a protective order. You, as the employer, faced with a threat

of violence to your workers or patrons, should have your attorneys at the ready to file a temporary restraining order against the person making the threat. Although a piece of paper does not stop a bullet, experience has also taught that when someone is served with court restraining order papers—by a uniformed and armed sheriff's deputy—it lets them know that they are being watched and that there are serious consequences attached to their threatening conduct.

Finally, employees in Colorado can take Domestic Violence Leave to seek protection against threatened domestic violence. C.R.S. § 24-34-402.7 requires that employers with 50 or more employees allow an employee up to three working days' leave in any 12-month period, with or without pay, if the employee is the victim of domestic abuse, stalking, sexual assault or a crime that includes an act of domestic violence. The reasons for leave can include seeking a restraining order, obtaining medical or mental health counseling for oneself or one's children, making the home secure and seeking legal assistance. Requests for leave require advance notice unless there is an imminent danger to the employee. This leave also requires employees to first exhaust vacation, personal or sick leave. It requires employers to keep the information regarding the leave confidential, and it is unlawful for any employer to interfere with, restrain, deny or discriminate against an employee who attempts to exercise his or her rights under this statute.

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News Briefs

New Trends in Workplace Violence

A survey by Risk Control Strategies reveals that over the last several years younger people, and women in particular, are emerging as workplace violence offenders. The behavioral characteristics of an individual who typically commits an act of violence remain the same. The survey suggests that the most significant difference employers should be aware of is the manner in which they resolve conflict. Electronic assault/death threats have been received by 24% of senior managers; 17% of companies say employees have intentionally and maliciously downloaded viruses and 10% of companies have fallen victim to product tampering. The survey of 602 senior executives reveal increased outsourcing, downsizing, wage garnishments/salary reductions, perceived insufficient raises/bonuses and overall softening of the economy as contributing factors to the rise in workplace violence. Additional information on the survey is available at www.riskcontrolstrategies.com.

Workplace Violence Focus of New Spanish Law

The Spanish government enacted Organic Law on "integrated protection against gender-based violence" (Ley Orgánica de Protección integral contra la Violencia de Género) in December 2004. The law establishes new measures for the "protection, prevention, support and recuperation of the victims of gender-based violence." The new law addresses education, social issues, care and assistance for victims and children, civil regulations concerning the family and cohabitation, and enforcement. The law also establishes regulations relating to workplace violence. In addition, a Public Prosecutor on Violence against Women (Fiscal contra la Violencia sobre la Mujer) will be appointed within the Ministry of Public Prosecution (Ministerio Fiscal).

EEOC Confronts Workplace Violence

The federal Equal Employment Opportunity Commission (EEOC) obtained a successful verdict in a California federal district court on behalf of farmworker Olivia Tamayo. After hearing evidence of rape, sexual harassment and intimidation suffered by Tamayo at Harris Farms, one of the largest agribusinesses in the San Joaquin Valley, a jury awarded \$53,000 in back pay, \$91,000 for front pay (future earnings if she was able to keep working at Harris Farms), \$350,000 in compensatory damages for emotional pain and distress, and \$500,000 in punitive damages. Upon hearing the verdict, Tamayo, married and the mother of five children, told how her supervisor and the general workplace environment at Harris Farms made her fear for her family and personal safety - "For a long time, I remained silent about what my supervisor did and said to me. He carried a gun and a knife, and bragged that he had fought another woman's husband before and gotten away with it. Only later, after he attacked me out of jealousy for speaking with another male supervisor, I decided I had to speak out."

College Takes Action to Prevent Workplace Violence

California Polytechnic State University (Cal Poly) has released a new video aimed at preventing workplace violence on campus. "Introduction to Cal Poly's Workplace Violence Prevention Program" informs the campus community on what workplace violence is and what should be done about it. The video highlights the university's definition of workplace violence as including "intimidation, threat of violence and/or act of violence." For more information on Cal Poly's program, see www.afd.calpoly.edu/afd/violence/violenceguidelines.pdf.

Marketplace

By Keith L'Esperance, SPHR

Books

Outrageous Conduct: Bizarre Behavior at Work by N. Elizabeth Fried, Ph.D., CCP and published by Intermediaries Press (paperback, 200 pages; SHRM Store; www.shrmstore.shrm.org; 1999; \$19.95 members/\$21.95 non-members) From time to time it's interesting to lighten up and look at the more humorous side of the workplace. This funny book is a kaleidoscope of bizarre behaviors that are legendary and entertaining but, at the same time, educational and revealing. The author examines the human comedy of the workplace and its unexpected legal impact. Sometimes what happens is so stupid and outlandish, like incidents of sexual harassment, you may wonder how some folks actually make it through the workday.

Manager's Guide to Preventing a Hostile Work Environment: How to Avoid Legal Threats by Protecting Your Workplace from Harassment Based on Sex, Race, Age . . . by Steven Dranoff, Jr., Wanda Dobrich, Gerald L. Maatman and Gerald L. Maatman, Jr., and published by McGraw-Hill (soft cover, 173 pages; Amazon; www.amazon.com; 2002; \$21.95) In the business environment, the group that plays the most crucial role in harassment prevention is management. Too often, these gatekeepers are poorly trained, left to flounder and ultimately take the blame when things go terribly haywire. In this book, the authors show managers and supervisors ways to recognize and address behavioral problems before they escalate into the lawsuits and PR problems. Topics include spotting employees who may unknowingly create a hostile environment, intervening while a problem is still manageable and presenting a seven-step process to resolve issues based on protected classes.

Managing to Avoid Sexual Harassment Liability by the California Chamber of Commerce and published by California Chamber of Commerce (paperback with CD, 89 pages; SHRM Store; www.shrmstore.shrm.org; 2004; \$74.95 member/\$79.95 non-member) This recently published book/CD provides step-by-step instructions to conduct legally defensible and compliant investigations. The guide includes recent court decisions, important new laws, training employees on harassment prevention and easy-to-use forms.

Personal Safety

Pepper Shot Key Chain Sprayer (OneStopConnection, Inc., a web-based online multiple products company/distributor since 1998; **1-866-677-9393**; www.onestopconnection.com; \$9.95) In today's world, it seems we are always feeling we have to look over the shoulder and be ever more aware of surroundings. In fact, news of violence dominates the airwaves. If you are concerned about your personal protection the Pepper Shot Key Chain Sprayer holds a ½ ounce pepper shot in a leatherette holster, locking actuator and quick release key chain. The spray unit contains 5 one-second bursts and is effective up to 8 feet. If you need to use it, make sure you're up wind.

Videos

Dealing with Conflict (produced by and distributed by Trainer's Spectrum; 2004; 20 minutes; www.tspectrum.com; **1-877-549-5200**; \$595.00) Conflict is difficult to manage. Left unchecked or mismanaged, it can become volatile or worse. Based on the workshop by the same name, this video offers an examination of skill sets based on the five styles of conflict resolution: accommodation, avoidance, compromise, competition and collaboration. Viewers can get a good idea of their own preferred style of conflict resolution and can select the best resolution technique for a given situation.

The publications and products in this column are not evaluated by the Workplace Violence Prevention Reporter, and their mention here is not intended as an endorsement. It is intended to alert readers to new and/or notable products that promote safety and security in the workplace.

FEELINGS, from page 2

If employees don't like the way you lead they won't support your goals or your direction. Can you afford to have this happen? Reduce the focus on measuring *things* and pay more attention to your *people*. Listening to what's 'really' being said! Each time you hear yourself say, "But, I did that because..." employees hear you defending yourself. Stop talking. Ask your people, "What about my decisions make problems for you? I need to know so I can work with you to correct it."

Measuring Feelings

Managers, team leaders and executives don't always know what to measure—so they measure things. Dr. Deming spoke of what "can't be measured," referring to perceptions, thoughts and feelings. Consider the situation with Brian, an engineer and senior manager in a high-tech firm faced with impending layoffs. For days he thinks about how to let people go without causing pain for anyone, himself included. "How will the employees respond?" he wonders. How to deliver bad news is a concern that many managers share.

In Brian's situation, his team could see his distress simply by looking at him. He smiled less; his voice was strained, his responses curt—not at all his usual friendly self. All these behaviors can be measured. And although measurement is important, Brian's boss had better discover what's on Brian's mind. Knowing what an employee is thinking gives clues about how to relieve concerns so that work can continue to get accomplished.

Quality not Quantity

Qualitative approaches allow you to ask for help. This is a good thing. When distressed, overworked, upset or worried, a person's ability to work efficiently is impaired. Brian's boss guessed that Brian was stressed about conducting exit interviews. He really couldn't read Brian's mind and didn't understand Brian's behavior until they talked.

I work with engineers and other decision makers, many of whom think linearly. As we begin our work together they want to measure most things. They consider "feelings" and other human traits to be unimportant. So I ask, "When you are worried about your wife's illness, stressed with your son's poor marks or discouraged with career opportunities, should your feelings be ignored?" We talk about perception and how concerns impact what a person says and does in a leadership role. They learn that worry can't be measured by another person but actions can. The notion that "feelings don't matter" is dangerous. Feelings such as rage, irritation, joy, passion and sadness, to name a few, are real and are linked to behavior. A red angry face, pounding fists and screaming voice are good indicators of feelings. Seeing this behavior leaves good reason to suspect something is wrong. Feelings are at the root of every decision. Comfort, excitement, confidence, fear and trust guide business discussions and technical purchases. Statistics simply support these decisions.

It's About the People

Measuring things keeps people from experiencing feelings. Measurement is about people, how they think, how they feel and how they perceive the system in which they work. Told not to express angry feelings, people hold them inside. Anger then goes underground and pops up elsewhere as violence. Monitor this closely. If you're the leader ask yourself:

- What am I really measuring at work? Is it things or is it people?
- How do I deal with employees' feelings and the real quality issues at work?
- How can I learn more about work tasks and personal concerns that impact performance?

These questions address feelings and people. They also impact profit. Ignored, feelings escalate and violence can erupt. Failing to address your employee's concerns about work and life contributes to greater problems. If you're the leader you're also the key. Notice what's happening inside you. Feel stressed? Pay attention. When you're upset your people are upset. Call for support. Employees depend on you. The future of your organization is at stake.

Janice Calnan, M.Ed., NCC of the Calnan Group teaches professionals and entrepreneurs in engineering, hi-tech and manufacturing industries the leadership skills not taught in MBA schools. Calnan can be reached at (866) 870-5900, or www.janicecalnan.com. Text revised from Chapter 1 in SHIFT: Secrets of positive change for organizations and their leaders, published by Creative Bound Inc.

Controlling Your Temper As the Temperature Rises

Crime rates increase in the summer months, domestic abuse increases in frequency, threats of workplace violence increase too. When we are uncomfortably hot we tend to lose our tempers more easily. Sometimes a "cooling off period" means just that: go cool off, get into an air conditioned space, drink some ice water or run cool water over your wrists. This article suggests a number of ways to manage anger when we are agitated by the heat or just simply angry over a situation in our lives.

Anger is a completely normal, usually healthy, human emotion. But when it gets out of control and turns destructive, it can lead to problems—problems at work, in your personal relationships and in the overall quality of your life.

Anger is an "emotional state that varies in intensity from mild irritation to intense fury and rage," according to Charles Spielberger, Ph.D., a psychologist who specializes in the study of anger. Like other emotions, it is accompanied by physiological and

biological changes: when you get angry, your heart rate and blood pressure go up, as does the level of energy hormones, adrenaline and noradrenalin.

The goal of anger management is to reduce both your emotional feelings and the physiological arousal that anger causes. You can't get rid of, or avoid, the things or the people that enrage you, nor can you change them, but you can learn to control your reactions.

See [TEMPER](#), page 7

Who Are You Calling Angry?

There are crucial misconceptions regarding the emotion of anger. To begin with, anger is a universal feeling. Everyone experiences anger. In fact, everyone experiences anger every single day. To both comprehend the concept and master the practice of anger management, we must increase our awareness of each of the small or large annoying, frustrating, irritating, disappointing, and confusing moments that we endure on a daily basis. Each of these challenging moments is representative of emotions that are actually subcategories of anger.

A second salient concept regarding anger is that people usually fail to recognize their anger until it has reached an overwhelming stage. When we are yelling, cursing, clenching our teeth, pounding our fist, slamming a door, or hitting something or someone, then we know that we are angry. Anger can be such a frightening, shame-filled emotion that people are often reluctant to acknowledge it in themselves. It is convenient to point at others as being angry and out-of-control, but not ourselves. In treatment, I often hear clients say: “I felt so annoyed.” “I was really frustrated.” “I was freaking-out!” Then, the client adds: “But, I wasn’t angry.”

The truth is that most of us not only have difficulty acknowledging anger, but struggle with managing this volatile and consuming emotion. Often there exists a lifelong fear of dealing with angry feelings. If parents abandoned their children or intimidated them with anger, then children grow up afraid to be involved in confrontations and cautious about being assertive. If parents lacked the ability to manage anger in their interactions with each other, then children fail to acquire the tools or the tolerance to express anger in appropriate ways. Instead, children internalize the “fight-or-flight” response of their elders and re-enact that response in subsequent relationships.

Anger’s Key Players

To truly understand anger, a little physiology is in order. The more primitive part of the human brain—the

ANGER MANAGEMENT

TIPS FOR THE HEAT-OF-THE-MOMENT

1) Be aware of yourself

- What am I feeling?
- What sensations am I experiencing in my body?

2) Recognize your anger

- Am I angry?

3) Evaluate your anger

- How angry am I?

4) Control your anger

- How should I handle my anger?

5) Make a decision

- Should I take a time-out, or can I continue with the discussion?

“hindbrain”—has much in common with our animal ancestors. Fear and threat messages received in the limbic system, particularly the amygdale, are then relayed to the adrenal glands. Once adrenalin is secreted, the fight-or-flight response is activated and the animal or the human is immediately reduced to two options: either run away or go off on someone.

Referring back to our definition of anger management, the key to modifying the fight-or-flight response is to engage the pre-frontal cortex, the thinking part of the brain. This feature of advanced intelligence is our great advantage over the animal kingdom. Engaging our thought processes actually involves a counter-instinctive response. When threats emerge, both humans and animals focus on that threat in preparation for either running or fighting. The external danger must be reduced. However, the very root of anger management begins with an introspective process.

Don’t Get Angry: Get Cognitive!

The most efficient method of engaging our thinking brain is to focus on ourselves. Managing anger is so universally difficult to achieve because of this counter-intuitive action. In the midst of the threat involving hurt, insult, disrespect, disappointment, neglect we must think about our own thoughts, feelings, sensations and behaviors. Obviously, this is no easy task, but requires knowledge, commitment, dedication and concentration. We improve with practice.

The introspective process of anger management starts with asking questions about ourselves: “Am I angry?”; “How angry am I?”; “What is ‘triggering’ my anger?”; “What other feelings do I have?”; “Is there another way to view this interaction?”; “What is the other person—my temporary adversary—going through?” and, ultimately, “What is the best way to deal with this situation?”

Once we just try to answer these self-directed questions, then we are thinking and engaging our pre-frontal cortex. The anger does not go away, but rational thought is now being inserted into the flood of anger that is occupying

our psyches. In a sense, the anger is diluted by the introduction of cognition and its intensity is reduced. Human beings are quite capable of modifying the fight-or-flight response and thus, capable of managing anger.

Self-awareness is the first step to anger management. In the heat of the moment, it is imperative to be as immediate and specific as possible with the knowledge of our angry feelings. The primary tool may be termed: "Recognizing the Signs of Anger." We must learn about our anger on intimately, personal levels: 1) Behavioral – "What actions do I typically take when I am angry?"; 2) Physiological – "What do I experience in my body when I am angry?"; 3) Emotional – "What feelings usually go along with my anger?" When we gain awareness of our typical reactions to anger, then we become more familiar with ourselves, and we begin to develop actual signposts in our minds that represent these signs of anger.

Once we begin to recognize angry feelings, then we need to gain control over them. This can be achieved by engaging the thought process to quantify the intensity of our angry feelings. The appropriate tool is called: "Levels of Anger." It can become increasingly facile to designate a number to our anger – with "1" being the lowest and "10" being the highest. An efficient

method of breaking down anger is to assign a number to specific angry feelings, e.g., "annoyance" = 1; "irritation" = 3; "upset" = 5; "frustration" = 6; "agitation" = 7; "furious" = 10. When using this anger management tool, it is important to personalize the feeling, as various emotions affect people in different ways. For some, "disgust" = 3, while for others, "disgust" = 8.

When we gain awareness of anger and specify its intensity, then we are well on the road to anger management. In order to make use of the tools, "Recognizing the Signs of Anger" and

Most of us struggle with managing this volatile emotion.

"Levels of Anger," we need to achieve a mental state akin to the "Sounds of Silence." We need to use our minds to create the necessary space to think about ourselves and not the external source of stimulation, or more pointedly, aggravation. With the creation of mental space, we can then hear, see, smell, taste, touch, and sense anger before its sudden arrival. It is analogous to the hasty, yet diligent preparations that one undertakes as the hurricane is approaching. We must be quick, expedient, and concentrated in our efforts to gain control of the coming

storm of emotionality. There is no time to lose.

When anger is managed, then we gain mastery over its expression. Our minds begin to create options for releasing angry feelings. We can assert ourselves, think about the situation some more or revisit it later. Significantly, we begin to achieve equanimity in our minds and help to create peace in our environments.

Dr. Michael Levittan is a licensed psychotherapist in private practice and the director of the certified state-wide program, T.E.A.M., for treatment of Domestic Violence and Anger Management. He has done trainings on spousal abuse and anger management for L.A. Superior Court, the U.S. Marines, local chapters of the California Association of Marriage and Family Therapists, and various counseling centers and women's shelters. Dr. Levittan teaches seminars and courses for UCLA Extension, Loyola Marymount, and California Graduate Institute, consults for the L.A. Times, Golf Magazine, Riverside Press, In-Touch Magazine, and has presented papers on "Batterers' Treatment" and Child Abuse at the International Conference on Family Violence.

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What Strategies Can You Use to Keep Anger at Bay?

Relaxation

Simple relaxation tools such as deep breathing and relaxing imagery can help calm down angry feelings. There are books and courses that can teach you relaxation techniques and meditation. Once you learn them you can call upon them in any situation. If you are involved in a relationship where both partners are hot-tempered, it might be a good idea for both of you to learn these techniques.

Sand Creek counselors can also help you to learn these techniques. We have a guide that can be mailed or e-mailed to you. Just contact us at info@sandcreekeap.com or the phone number below and we will send you this brief instruction guide to relaxation.

Change the Way you Think

Angry people tend to curse, swear or speak in highly colorful terms that reflect inner thoughts. When you are angry, your thinking can get very exaggerated and over dramatic. Try to replace these thoughts with more rational ones. Take your mind off what you fear will happen and think instead on what is more likely to happen or better yet, what is the best that could happen.

Better Communication

Angry people tend to jump to—and act on—conclusions, and some of those conclusions can be pretty wild. The first thing to do, if you are in a heated discussion is to slow down and think through your responses. Don't say the first thing that comes to your mind, but slow down and think carefully to say

what you want to say from the highest person you can be. Equally important, listen carefully to what the other person is saying.

Do you need counseling?

If you feel your anger is really out of control, if it is having an impact on your relationships and on important parts of your life, consider calling your employee assistance counselor to learn how to handle anger better. Help is just a phone call away.

The Sand Creek Group's Employee Assistance Program is a women-owned small business specializing in providing full range employee assistance programs. For more information see www.sandcreekeap.com or call (651) 430-3383 or 1-800-632-7643.

Closed Door Meeting To Terminate Employee For Accessing Confidential Information Is Not Actionable

Cheri Albury is an African-American who was born in Brooklyn, New York in June 1952. Her educational background includes a high school general equivalency diploma, certificates from the American Institute of Banking and an Accredited Professional certificate from the National Automated Clearinghouse Association. Albury began working for J.P. Morgan Chase in November 1969. Chase maintained a written “Code of Conduct” that served as a guide to ethical conduct for all of its employees. Although Albury denies ever reading the code, she concedes that it was available to her. According to the code, accessing confidential employee information for non-work related purposes or failing to cooperate fully with internal investigations constitute violations that may result in “immediate” termination. Chase also had a policy that called for immediate dismissal for breach of trust [and] dishonesty ...”

Beginning in February 1987, Albury worked in the defendant’s automated clearinghouse operations (ACH) department as the proofing control manager and later as an operations manager. Her duties in the ACH department included accessing employee bank accounts and profile information including employee names, addresses and account numbers. At the time of her termination in 2000, Albury acted as a customer service officer for New York City and the United Nations. Albury’s direct supervisor was Barry Kelly, an African-American. Kelly reported to Ellen Honeywell, an African-American, who in turn reported to Teresa

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Cahill, race undisclosed, then a vice president with Global Custody Services. Albury’s responsibilities as a customer service officer required her to view employee and non-employee account information; some of the data, however, was blocked from her by Chase’s security systems.

In early 2000, one of Albury’s coworkers complained to the human resources department that she was accessing and disseminating employee salary and other confidential information for purposes unrelated to work. An employee in the human resources department contacted Jack Huebsch, an employee relations manager, about the complaint in order to start an internal investigation, and Albury’s managers placed her on paid administrative leave during that investigation. Huebsch conducted an investigation during which he interviewed Albury and several of her coworkers who confirmed that she had been improperly accessing confidential employee information. Albury herself admitted that she accessed account information of three coworkers for non-business related purposes, but maintained that she never disseminated any of this confidential information to coworkers. At the conclusion of the investigation, Huebsch wrote a “Report of Findings” for Albury’s employee relations file. In his report, Huebsch stated that Albury admitted to him that she accessed the salary information of Carlos Petit, an employee working with her, but that she denied having disseminated that information. Huebsch also noted that several of Albury’s coworkers reported that she had disseminated confidential information and, on that basis, Huebsch appeared to determine that Albury had not been truthful during the investigation. Huebsch concluded his report by recommending that Albury be dismissed due to her repeated violations of Chase policy against the unauthorized accessing of confidential account information and her failure to give Huebsch honest answers during the investigation.

Jack Cascio, a vice president in the auditing division of Fraud Prevention and Investigations, was also involved

in the investigation. He met with Albury in February 2000. During the meeting, Albury was asked to sign a document to agree to fully cooperate and to warrant that any false statement would be grounds for termination. She was then asked to write out her statement concerning the allegations. Albury wrote that she accessed confidential information to satisfy her curiosity, that she did not disclose the confidential information and that her access should be terminated to prevent future violations. Cascio’s “Final Report of Investigation” noted the conflict between plaintiff’s statement that she did not disseminate confidential employee account information to others and the contradictory statements of her coworkers

On March 14, 2000, Albury was called to a meeting and terminated. Albury testified that after she asked Huebsch why she was being terminated, Huebsch answered, “You’re a liar, liar, liar” and “started screaming at the top of his throat” After the Equal Employment Opportunity Commission (EEOC) dismissed her charges of discrimination, she filed suit on March 21, 2003 in federal district court. Albury alleged discrimination on the basis of her race, color, national origin, gender and age and asserted a claim for false imprisonment. Chase moved for dismissal and the District Court dismissed the case.

According to the District Court, Albury did not come forward with any evidence showing that she was terminated under circumstances that give rise to an inference of discrimination. The court rejected Albury’s argument that Chase deviated from its internal policies because breach of trust and dishonesty were listed as dischargeable offenses and these were the precise explanations Chase gave for her dismissal. The court also rejected Albury’s claim that she was treated more harshly than similarly situated employees because the circumstances of the other worker to whom Albury compared herself involved facts and circumstances that were not even remotely comparable to those involving her termination. Similarly, the court

rejected Albury's contention that employees who allegedly asked her to access their confidential information were similarly situated. Making the request and actually accessing the confidential information are two entirely different things, noted the court. Finally, Albury's false imprisonment claim was rejected because she could not show that Huebsch intended to detain her in his office. In this regard, Albury admitted that she did not see Huebsch lock the office door nor did Huebsch verbally or physically communicate an intent to restrain her from leaving his office

Albury v. J.P. Morgan Chase, 2005 WL 746440 (S.D.N.Y. 2005).

Analysis

"False imprisonment is an unlawful detention contrary to the will of the person detained, accomplished with or without process of law. The elements of a false imprisonment claim are: 1) the defendant intended to confine the plaintiff; 2) the plaintiff did not consent to the confinement; 3) the plaintiff was aware that [s]he was confined and 4) the confinement was not otherwise privileged, such as confinement pursuant to a warrant or with probable cause or immunity protection. In addition, [a] false imprisonment claim requires a *prima facie* showing of actual confinement or threatening conduct." A lengthy interview of an employee by an employer, without more, does not support a claim for false imprisonment. As stated by one federal District Court Judge, "Summoning an employee into an interview in familiar surroundings in the employer's office does not indicate an intent to confine." The plaintiff's reliance on the fact that Huebsch yelled at her and called her a liar, while certainly not pleasant, does not rise to the level of false imprisonment.

Lessons For Corporate Executives

There are two valuable lessons learned from this case. First, when disciplining an employee, an employer should never do so in a meeting under circumstances where the employee is confined and

reasonably believes he or she is not free to leave. For example, in such a meeting where the employee gets up to leave, an employer should not instruct the employee to sit back down because "I'm not done with you." Certainly, such comments cannot be made in a threatening manner. The second lesson learned from this case has to do with access to private information. In an era of corporate espionage, maintaining confidentiality in company information has become a major source of concern for many employers. Access codes and other security measures should be utilized to protect the information. Where an employee with access to private information, accesses the information out of "curiosity," discipline and/or restricting further access is imperative.

Lessons For Corporate Counsel

Although false imprisonment claims are not commonplace, many employers probably do not understand that such a claim can be made in an employment setting. Techniques for avoiding such claims should be part of any discipline and discharge training that you conduct.

"Taliban" Comments Do Not Establish Harassment Where Employee Only Complained to Harassing Supervisor

Plaintiff-Appellant Amin Hussain is a Pakistani who practices the Shia Imama Ismaili sect of Islam. On April 22, 2002, Defendant-Appellee Highgate Hotels, Inc. fired Hussain from his controller position at the Hotel Pontchartrain in Detroit, Michigan, which is owned by Defendant-Appellee Pontch Limited Partnership, when he failed to complete his performance

improvement plan (PIP). Hussain also had served simultaneously as the controller for the Detroit Best Western, which was also owned by Pontch. Pontch is owned by Jaffer Khimji, Mahmood Khimji, and Mehdi Khimji, East Africans who, like Hussain, practice the Shia Imama Ismaili sect of Islam. As the controller of the Pontchartrain Hotel and Best Western, one of Hussain's primary responsibilities was performing bank reconciliations, which is similar to balancing a checkbook. However, throughout his employment, Hussain had problems relating to the accuracy and timeliness of his bank reconciliation.

In 2001, Teri Marshalek, Highgate's Corporate Controller, decided that all Highgate Hotels would begin using a new software package called Dynamics in November of 2001 to complete their bank reconciliation. The transition was necessary because Highgate's software vendor had informed Marshalek that it would no longer support the software Highgate was then using. In addition, Marshalek concluded that having all hotels on one system would allow for increased efficiency. In August of 2001, Highgate informed its controllers that it would conduct a seminar in Dallas, Texas from September 25-27, 2001 to provide training on the Dynamics software. In the wake of the September 11, 2001 terrorist attacks, Hussain asked Paul Wegert, General Manager of the Hotel Pontchartrain, to be excused from attending the Dallas seminar due to his concerns for his safety and that of his family. Wegert later told Hussain that he called Tony DiRico, President of Highgate Hotels, who called Marshalek, who said that there would be no excuses from the meeting. Marshalek, however, did excuse Shranjit Sikka, an Asian Indian Sikh and controller of a Highgate hotel in Lexington, New York. Sikka personally asked Marshalek to be excused from the meeting due to his similar fears, and Hussain admits that he never directly asked Marshalek to be excused. As his request to be excused was denied, Hussain attended the seminar.

At a dinner held in conjunction with the seminar, Marshalek stated that "she

had been given ‘only a slap on the wrist’ at a former job when she expressed her views about ‘How there are too many immigrants in the country, too many brown people.’” She went on to explain that she was referring to Mexicans. Later, while Hussain and others were watching coverage of the September 11th attacks, Highgate’s Regional Controller Roger Patrick said that he “didn’t understand why the U.S. Government just doesn’t drop an A-bomb [on Afghanistan].” After returning to Detroit, the catering manager Kevin G. told Hussain that he should come to work on Halloween dressed as Osama bin Laden. Additionally, Wegert and other staff repeatedly referred to Hussain as “Taliban.” Hussain complained to Wegert about this conduct, but to no one else. Diane Tunstall, the human resources director at the Hotel Pontchartrain, heard Wegert call Hussain “Taliban.” However, she never heard Hussain complain about it. Indeed, Tunstall testified that she, Wegert and Hussain were friends and considered it “a joking kind of thing.” She stated that they “were always joking and laughing and goofing around and [she] certainly had no reason to think that [Hussain] was offended by it.”

In December of 2001, Zaher Juma and Patrick visited the Best Western and Hotel Pontchartrain in Detroit. According to Marshalek, the purpose of this trip was to train and assist Hussain in several areas dealing with the Best Western, but would include some work at the Pontchartrain. Hussain, however, contends that the purpose of this visit was to audit him. As a result of this visit, Patrick prepared a report which stated that the Pontchartrain needs to reconcile bank accounts as soon as possible and complete bank reconciliation. Hussain received a 2% performance increase in salary and a \$5,000 bonus based on “discretionary factors such as timeless [sic] of reports, receivables, control compliance, and other factors” in January of 2002. That same month, he learned from a member of his staff that his position had been listed as vacant on a job seekers’ website. Barick posted the position on the website because Hussain had indicated to him that he was

considering resigning his position and because he was aware of Hussain’s performance problems. Marshalek, however, informed individuals interviewing for the position that it was not vacant, but may become vacant in the future. Despite Hussain’s protests, the position was not removed.

In February of 2002, Barick offered Hussain the general manager position at the Detroit Best Western, Barick claims he made this offer because of Hussain’s problems at the Hotel Pontchartrain. Although the position would have been a promotion for Hussain, he declined the offer because of the impending sale of the Best Western. On February 25, 2002, Hussain stated that he was ready to start the November bank reconciliation in Dynamics, although his system had “gone live” with Dynamics on November 23, 2001. Around March 1, 2002, Marshalek relieved Hussain of his controller duties at the Best Western so that he could focus on the Hotel Pontchartrain. Marshalek also placed Hussain on a PIP on March 7, 2002. She contends that under the PIP bank reconciliations were to be completed by March 31, 2002. Hussain contends that Marshalek had given him until April 30, 2002 to complete the bank reconciliation in Dynamics. Hussain did not complete all of the bank reconciliation in Dynamics by March 31, 2002, nor did he have them completed when he was terminated on April 22, 2002.

In April 2002, Marshalek recommended to Barick that Hussain be discharged purportedly because of his performance problems and failure to complete the PIP tasks in a timely manner. Barick had already stated on March 27, 2002 in an e-mail responding to Marshalek’s complaints regarding Hussain’s handling of travel agent commissions that Hussain “has to go.” After notifying the Khimjis of Marshalek’s recommendation and consulting with them, Barick approved the decision to discharge Hussain. On April 22, 2002, Marshalek informed Hussain that he was terminated. Marshalek then hired Joan Yezebeck, who is Lebanese, to replace Hussain.

On August 14, 2002, Hussain

initiated the instant action by filing a complaint in Michigan state court alleging national origin and/or religious discrimination and the creation of a hostile work environment in violation of Michigan’s Elliot-Larsen Civil Rights Act. Defendants removed this action to the United States District Court for the Eastern District of Michigan. The District Court subsequently dismissed the action. The District Court rejected the notion that Hussain had come forward with evidence of discriminatory comments (*e.g.*, direct evidence of discrimination) because only the “brown people” comment by Marshalek constituted a comment by a decision-maker, since she recommended discharge, and that comment was made seven months prior to the discharge decision. Consequently, the causal nexus between the comment and discharge decision had been broken by the passage of time. The court also rejected Hussain’s argument that he was treated less favorably than similarly situated employees because he failed to establish that other employees, who arguably were treated better, had experienced such problems with their own bank reconciliation. Hussain was also unable to demonstrate that the basis of the decision was a pretext for discrimination.

As to Hussain’s hostile work environment claim, the court first indicated that Hussain had at least created a factual issue as to whether a reasonable person would conclude that the repeated “Taliban” comments were intended to or did create a hostile work environment. However, the court rejected Hussain’s claim that defendants were liable because he could not show that the employer was on notice of a problem and failed to take prompt and adequate remedial action upon notice of the creation of a hostile work environment. Hussain did not provide evidence that he complained to anyone other than Wegert regarding Wegert’s conduct, which was insufficient under Michigan law. The court disagreed that notice could be established by the fact that another member of management heard one such

comment because Hussain presented no evidence that this other management employee was aware that he was offended by the comment.

Hussain v. Highgate Hotels, Inc., 126 Fed.App. 256, 2005 WL 627964 (6th Cir. 2005).

Analysis

This case provides a good example of the difference in the proofs in discrimination and harassment cases. Indeed, the plaintiff relied on the same evidence (e.g., anti-Muslim comments) to establish each type of claim. As to the discrimination claim, the comments were used to show that a termination decision was discriminatory. In this respect, the plaintiff attempted to show that the decision was made by one with a predisposition to discriminate. The claim failed because only one of the anti-Muslim comments was attributable to a supervisor involved in the decision-making process and it occurred many months prior to the decision. The same comments were used in the harassment claim to show that there was a hostile work environment. In this respect, the plaintiff argued that the steady use of such offensive comments poisoned the work environment for a Muslim. This claim failed as well, not because the comments were not sufficient to poison the workplace but because the plaintiff failed to complain to someone other than the supervisor who had engaged in the conduct.

Lessons For Corporate Executives

It is important to publish a comprehensive harassment policy, which provides the identities of particular individuals to whom complaints should be made. Moreover, it is critical that you provide employees with more than one option and that the complaint procedure is easy to follow and one that actually encourages employees to make complaints. The complaint procedure is defective if it only allows for a complaint to be made to an employee's immediate supervisor, as the immediate supervisor is often the one who has harassed.

Lessons For Corporate Counsel

It is critical when defending claims under a state anti-discrimination law to determine right away what the differences are between the state law and the federal law, with which so many corporate attorneys are most familiar. This case was decided under Michigan law, which differs from the federal law in the sense that an employer is not strictly vicariously liable under Michigan law merely because a supervisor created the hostile environment. Michigan courts require knowledge of the wrongful harassment by higher management first and then a failure to act. Here, Hussain complained to the supervisor who engaged in the harassment and who did not occupy a position of higher management. Consequently, Hussain's complaints did not constitute notice of the harassment. In fact, the court noted that complaining only to the person who was involved in the harassment assured that higher management would not find out about the harassment.

Request That All Employees Take Lie Detector Test Violates Polygraph Protection Act

Under a contract with the Department of Defense (DOD), Transtecs Corp. performed mailroom services at the Pensacola Naval Air Station (NAS). Polkey worked in the NAS mailroom for Transtecs' contractual predecessor since 1998, and served as mailroom supervisor for Transtecs since October 1, 2000. Aside from Polkey, Transtecs employed five clerks at the NAS mailroom.

On Friday, January 11, 2002, after the mailroom had closed for the day, Polkey returned to the mailroom to retrieve an item she had forgotten in the refrigerator. She then discovered that the front desk computer had been left on.

When she turned it off, she discovered fourteen opened and undelivered Christmas cards in the wastebasket near the front computer. Polkey immediately contacted her supervisor, Carl Kirtley, and requested that he come to the mailroom. Polkey told Kirtley that mailroom employee Ronnie Cole had been primarily assigned to the front desk that day. In the wastebasket, Kirtley found Cole's pay stub along with the undelivered mail.

After discussing the matter with DOD personnel and Transtecs' management, both Kirtley and a civilian investigator questioned the six mailroom employees, each of whom denied opening the mail. Nonetheless, Kirtley suspected that Cole was responsible, though he hadn't eliminated the other employees.

After consulting with Transtecs' management, Kirtley arranged for polygraph testing of all the mailroom employees at Transtecs' expense. Transtecs contends that it had already determined that all the mailroom employees would be fired unless one admitted to the wrongdoing, but arranged for polygraph exams to absolve the company of any wrongdoing in the event the DOD pursued charges against the perpetrator.

Kirtley held a meeting with the mailroom employees, during which he requested that each of them submit to a polygraph exam. He explained that the examination was voluntary, and asked each to sign a general release form. The form did not contain information about the mail tampering incident, did not state the basis for testing each employee, and was not signed by any Transtecs official. Each employee signed the form. Kirtley scheduled Cole for a polygraph test that same afternoon.

The following day, Kirtley received an oral report of the polygraph exam results that indicated deception when Cole denied opening the mail. According to Kirtley, he conveyed this information to Godwin Opara, Transtecs' president. Opara denies this, claiming that Kirtley told him the test results were inconclusive. Although Kirtley claims he could not rule out any employee positively, he concedes that after

learning of Cole's test results, he had no reason to suspect that Polkey was involved in any way with the opening of the mail. Kirtley then scheduled another meeting with the mailroom employees and encouraged each of them to take the optional polygraph exam to clear their name. Polkey and other employees expressed concern over the reliability of polygraph exams, fearing that the exam might inaccurately implicate them. All the employees ultimately refused to submit to the exam. Kirtley informed Opara of this decision.

Less than one week later, Polkey was fired, ostensibly for permitting package deliveries through the mailroom's back door, in contravention of NAS security procedures. Polkey brought suit alleging two separate violations of the Polygraph Protection Act: 1) an unlawful polygraph exam request; and 2) a discharge based on her refusal to submit to a polygraph exam. Following the district court's grant of summary judgment to Polkey on her "request" claim, the parties settled the remaining counts, and stipulated to nominal damages on Polkey's "request" claim. The Eleventh Circuit Court of Appeals affirmed because the Polygraph Protection Act is plain and unambiguous and clearly prohibits a covered employer's request or suggestion that an employee submit to a lie detector exam. The court rejected Transtecs' argument that it was within the national defense exemption. According to the court, the national defense exemption applies, by its own terms, only to the federal government.

Next, the court rejected Transtecs' argument that it was within the exemption for ongoing investigations. Although it was undisputed that the polygraph request satisfied the first two elements of the exemption, as Transtecs was conducting an ongoing investigation into the Christmas card tampering incident, and Polkey did have access to those cards and the receptacle in which they were discovered, the availability of the exemption failed because of the reasonable suspicion requirement. Significantly, Transtecs

could not establish that it had "an observable, articulable basis in fact which indicated that Polkey was involved in, or responsible for, an economic loss. Access to the property and potential opportunity, standing alone, cannot constitute reasonable suspicion. By the time Transtecs made its second polygraph request of Polkey, her supervisor conceded that he had no reason to suspect that Polkey was involved in the mail-opening incident. Instead, at the time of Transtecs' second request, the company aimed to test all of its employees only in order to absolve the company of any responsibility for the theft.

Polkey v. Transtecs Corp., 404 F.3d 1264, 22 IER Cases 1058 (11th Cir. 2005).

In the wastebasket, Kirtley found Cole's pay stub along with the undelivered mail.

Analysis

Under the Employee Polygraph Protection Act, it is unlawful for a covered employer to "directly or indirectly, require, request, suggest, or cause any employee ... to take or submit to any lie detector test" (29 U.S.C. § 2002(1)) (emphasis added). Because the statute is phrased in the alternative, its plain language prohibits an employer from requesting or suggesting that an employee submit to a polygraph exam, even where the test is ultimately not administered and no adverse employment action is taken as a consequence.

The EPPA's prohibitions do not prohibit a covered employer from requesting a polygraph exam, where the employer demonstrates that: 1) the test is administered in connection with an ongoing investigation involving economic loss or injury to the employer's business; 2) the employee had access to the subject of the investigation; 3) the employer has a reasonable suspicion as to the

employee's involvement in the loss; and 4) the employer provides the employee with a signed written notice that specifically identifies the economic loss at issue, indicates that the employee had access to the property being investigated, and describes the basis for the employer's reasonable suspicion (29 U.S.C. § 2006(d)(1-4)).

Lessons For Corporate Executives

The use of polygraph examinations as a management tool in the workplace should not be considered without the assistance of your labor counsel. And, use of such a device should be the exception and not the rule. There are many pitfalls in using such devices. For example, the fact that reasonable suspicion is required to take advantage of the limited exception for on-going investigations, likely means that whether you had reasonable suspicion or not is most likely for the fact finder (*i.e.*, the jury).

Lessons For Corporate Counsel

Your corporate clients have to be very careful when it comes to considering the use of a polygraph examination even where it is contemplated in connection with an on-going investigation of economic loss. A variety of state specific polygraph protection laws must also be evaluated in the process. In fact, where your corporate clients conduct business in multiple states, it would be useful for you to provide them with summaries of the various state laws.

Pilchak, Cohen & Tice provides representation in employment law throughout Michigan and many other states. For more information, visit www.mi-employmentlaw.com/firm.htm or call (248) 626-7300.