

## Everyone Hide: It's the Fun Police



**Nicholas Williams, Director of Operations**  
Absolute Caulking & Waterproofing, Inc.

**Pamela Davis, Manager Human Resources**  
Absolute Caulking & Waterproofing, Inc.

Picture this: your favorite Superintendent walks into the office for an afternoon meeting about job progress. He says, affectionately, “Hey loser, how’s it going?” Your response is in kind and you say, affectionately, “It was a great day until you walked in.” And everyone has a good laugh and the meeting goes well and the weekend comes and goes. And nobody ever thinks of that ever again.

Now imagine that the exchange occurred via text message or email correspondence. It’s two months later and that favorite superintendent was just terminated for testing positive for cocaine on a random, unannounced drug test per your company’s published policy. The next day, that favorite superintendent sees one of those terribly manipulative Sawaya ads while snorting lines off of his living room table at 7:30 a.m. because he is no longer employed and has nothing better to do. He calls that attorney and says he feels like he was treated unfairly. His attorney finds out about the joking that went on and wisely subpoenas for all of your correspondence.

A letter drops onto your desk that you weren’t ready for. You reach out to your HR director and ask that they send in all of the requested documents. Because, hey, you are a good employer. What could they have on you? You have nothing to hide. You distributed pay fairly, coached your employees on a regular basis, and held annual reviews that laid out clear expectations for growth, supplied extensive benefits, and were generally just an all-around swell chap to be around.

Then your HR director informs you that the coaching sheets and the reviews that were completed by your favorite employee’s superiors were less than perfect.

Your heart stops for a moment and you ask the question, “What do you mean?” Well, the reviews have low scores with no comments to support the reasoning, which seems to be a little too subjective of a rating system.

“Ok. That isn’t that bad. I’m sure that’s the worst of it.” Well, the reviews also have comments that say your employee was a lot more fun to be around when he had a girlfriend. Hmmm....the implications of that comment could be considered harassment.

“That’s not the worst of it, is it?” Well, there is an email from the supervisor calling your favorite employee a lazy bum and asking him when the f\*\*\* he is going to get his s\*\*\* together. Ooooooh man...where’s the Pepto? This just turned into a pretty clearcut case of employee 1, you 0.

Attorneys can gain access to all printed documentation pertaining to any employee that is part of their personnel file. Reviews, coaching, write ups etc. Attorneys can gain access to any correspondence sent from company property including phones, computers and tablets. That means emails, text messages, voicemails etc.

And they will. They will look and look until they find something. “They fired me because they were discriminating against me” is like catnip for the litigator. So they pull all the documents. For some reason a harmless email catches the attorney’s eye and although nothing about it shows discrimination, the time of the email from the employee to their supervisor suggests they were having work related conversations off work hours.

Then your payroll reports are subpoenaed for the employee for that time and the attorney sees that they weren’t paid for these work emails. “Not only were you discriminated against, but they under paid you and you are now entitled to back pay.” Now if you didn’t pay one employee who was “working off the clock” there’s probably a pretty good chance other employees weren’t paid too, right? So the lawyer says, “give me the phone numbers to some of your coworkers” He makes some phone calls and says “Hey, does your company pay you for emails when you’re off the clock?”

The rabbit hole gets deeper and deeper.

The department of labor is going to hear about it and audit you for 5 years. The EEOC is going to hear about it, and all your employees are going to hear about it. And what did you do to deserve potentially having to close your doors because of all the money this is costing you? You fired a coke addict who was endangering the lives of all the other people you are responsible for.

Isn’t it fun to own a business? (While we’re at it, I think you deserve the extra incentive of paying increasingly higher taxes for all of your success. After all, someone has to help support that innocent chap you fired.)

Word to the wise: You are set up to lose. The game is rigged against you. Your favorite employee that works for his favorite boss at his favorite job can become that next claim at any moment once the relationship is severed for any reason, warranted or not.

So, keep that in mind when you are reviewing the documents that slide across your desk. Hold your supervisors accountable for their cheeky little comments. Make sure you are paying your employees for company business off hours. Discipline those that will not fall in line with your standard of professionalism and reporting. You have a business to run with employees to take care of and mouths to feed at home. Leave the comedy to the professionals.

We can have fun at work, we can even laugh at work, but we should never document unprofessional opinions or jokes. The risk is too high and the snicker just isn’t worth it. None of us are as funny as we think we are. Just ask my wife.

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