

Subject: Capstone JKT, Task 1:

A constructive discharge occurs when an employee is legally justified in claiming that he was compelled to resign because the employer has made working conditions intolerable (By Gerard E. Dempsey and Janet N. Petsche August 1, 2006). In this situation, an employee resigns because the employer was unresponsive to a harassment complaint. Complaint is about policy requires employees to work on a religious holy day. In this scenario Discrimination is harassment on the basis of religion. Employees with written contracts of employment have been more successful in proving constructive discharge when their employers unilaterally change the nature of their jobs (By Gerard E. Dempsey and Janet N. Petsche August 1, 2006). If the employee has job agreement and description and that description includes work time then employer changed this work time and employee quit his job because of this reason that can cause employee sue the company. In order to prevent this kind of situation, employer should talk with employee about changing time shift or give permission to him during religious holyday. When employer hire their employee, he should come with agreement and job description otherwise this will cause problem every time. Human resource must make strong decision about their rules.

May be source of problem is something else but employee approach the situation with

discrimination. One of the possible thing is employee has part time job during weekend and because of this reason he can not continue his part time job and also maybe he spend his time with family during weekend since he had off days Saturdays and Sundays. This is common issue nowadays for divorced people because one of the part just can see their child/children during weekends. These two situation can be one of the source of the problem.

Also, being responsive on time could solve the problem. May be employee requested about time shift and probably he did not get satisfied respond then he filed a case against the company. Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin (U.S. Equal Employment Opportunity Commission). Law requires religious accommodation such as: An employer is required to reasonably accommodate the religious belief of an employee, unless doing so would impose an undue hardship (U.S. Equal Employment Opportunity Commission).

In this scenario discrimination is related to religion. Employer should be understandable about employees' religious days. I think there are just several religious days but employer should be aware of the rules that law requires. Other thing maybe relevant with this case is changing job agreement. Once employer done agreement with employee, he/she should not change it. It can cause this kind of problems. Employer should give and make long term decision for company and hire employees according to given decision.

There are courses of action employer can take to address constructive discharge issues and avoid costly claims. Although it may not be possible to prevent employees from suing, there are steps company can take to reduce the incidence of against a constructive discharge claim. Establish a formal grievance process and communicate it. This gives employees a channel for airing complaints. In addition, failure to take advantage of grievance procedures will count against an employee. Deal with Employee fairly and honestly. Do not attempt to encourage a problem employee to leave by making his life miserable. It could backfire and make your life miserable.

There are several actions also need to be taken:

Conduct mediation and Conciliation technique. Constructive Discharge Mediation involves trained mediator who conducts a neutral meeting with parties. Mediator uses persuasion and people skills to facilitate dialogue, and utilizes their experience and expertise to suggest possible settlement outcomes. This intervention technique is named Conciliation. Both Constructive Discharge Mediation and Constructive Discharge Conciliation allow party to maintain civil relationships and offers greatest opportunity for creative problem solving

Other recommendation is fight the claim. Immediately begin the investigation by getting details from the employee who complained. Explain what will happen next and urge him to report any further problems right away. Speak in private with any potential witnesses as soon as possible.

Make a determination as soon as practical and communicate that decision to the employee.

Also, Clear and Continuous Communication. Honest, clear communication is a must Employees are normally willing to accept change when they understand why it is necessary.

Employer should approach the situation in positive way in term of increasing salary, tolerating religious days, changing his position or if company has other branch, transferring him to other branch that may make the employee happy and may be he can revoke his case against the company.

Checking and making sure that employee asked question about his religious days. Since it is profit organization, employer should make a schedule according to company's profit. If agreement is over, I think employer has right not giving permission and hiring employees according to a new schedule .Another recommendation is Investigation. Maybe employee irritating or taking advantages of religious days because all religions have different holy day and some of them are very important. For example, for Jewish people every Saturday is holy day and for Muslim people every Friday is holy day however employer can not give permission each time for those people since it is profit based company because every hour is money for the company.

Employer should give permission for religious days then employee can make up absence days. He may work on one of the his off days. This is grievance process and dialogue/Communication with employee as I mentioned above. Compromise or settlement between employee and

employer.(U.S. Equal Employment Opportunity Commission).This Legal references supporting my recommendation:(*The employer may require the employee to make up the absence at a mutually convenient time* (U.S. Equal Employment Opportunity Commission),(Gerard E. Dempsey and Janet N. Petsche August1,2006) or company prepare his off days according to his religious days when they done job agreement. *Reasonable Accommodation to the Religious Needs of Employees or Prospective Employees:* (By Gerard E. Dempsey and Janet N. Petsche August1,2006). Another this is:

Was the situation brought to the employer's attention? Did employee give enough time to employer (company) to think about this situation. This is also formal grievance and communication process mentioned above.Employee needs to follow existed process and procedures. This legal reference support my recommendation. Employees will be required to give their employers a 15-day written notice of the problem, and the employer will have another 15 days to take appropriate action(*Arizona recently passed a law making it unnecessary for employees to quit their jobs in order to get an intolerable situation corrected* )

Since USA is very diversity country, employers should be aware of special holy days of employees. Employer should be aware of yearly plan of company and at the same time candidate's special days such as religious days when he signed job agreement with employee.

In order to avoid legal issues around Title VII of the Civil Rights Act of 1964, human resource

department or employer should join training about discrimination. Employer/Decision maker should do brain storm with other administrators before giving critic decisions. Third step is should be responsive on time to employees` questions.

#### References:

(1)(Business Management Daily, *Constructive Discharge*, 2010. Retrieved

from: <http://www.businessmanagementdaily.com/glossary/constructive+discharge.html>

(2) (Gerard E. Dempsey and Janet N. Petsche August 1, 2006) Retrieved

from: <http://www.nsls.info/articles/detail.aspx?articleID=80>

(3) ( *Equal Employment Opportunity Commission Publications Distribution Center*).Retrieved

from: <http://www.eeoc.gov/facts/qanda.html>

(4) *Managing Diversity " chapter three and four" (Understanding Equal Opportunity and the Legal Environment)*

(5) *Title VII of the Civil Rights Act of 1964*. Retrieved from:

<http://www.lexisone.com/caselaw/freecaselaw>