

Legal Update Article

Addressing and Preventing Inappropriate ‘Shop Talk’

By James M. Stone

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Meet the Authors



James M. Stone

Principal

(216) 750-4307

James.Stone@jacksonlewis.com

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In a manufacturing environment, employees often work near each other, and the level of noise can cause conversations to go unheard by others not in the immediate vicinity. Like the quintessential example of “locker room talk,” “shop talk” in a manufacturing environment can walk a fine line between employee banter and inappropriate, or, in extreme cases, even illegal, conduct.

Certainly, a factory floor may not observe the same levels of decorum or politeness as, for instance, an office environment. However, at some point, a threshold could be reached which employees might objectively and subjectively find words used in their workplace harassing and offensive.

To address and prevent inappropriate “shop talk” on the plant floor, manufacturers can consider the following:

- *Provide up-to-date policies for reporting any harassing conduct:* Be sure that employees know who they can report any complaints to, the process the company follows for investigating complaints, and that employees who report potentially inappropriate conduct will not be retaliated against for raising concerns.
- *Promptly investigate any complaints of harassment by employees:* Employees may complain of conduct that does not appear to be unlawful. Employers should still investigate these complaints promptly and thoroughly, as conduct may not necessarily have to expressly reference a protected class to rise to the level of illegal conduct and inappropriate conduct in any form can negatively affect the work environment. For these reasons, promptly and thoroughly investigate all complaints of inappropriate conduct in the workplace, even if the conduct does ultimately turn out to be lawful.
- *Investigate overheard inappropriate conduct:* In a manufacturing environment, anyone, even managers, may overhear clearly inappropriate and harassing “shop talk” between employees occurring the workplace. Once an employer has knowledge of unlawful harassment occurring in the workplace, the company has a duty to investigate and remedy unlawful conduct. Be mindful of labor law implications when disciplining employees: Although the National Labor Relations Board recently set a new standard for when an employee loses the protection of the National Labor Relations Act (NLRA) and can be lawfully disciplined or discharged after making abusive or offensive comments in work-related situations, employers should still be mindful of whether the employee’s conduct could be classified as protected concerted activity under the NLRA, as disciplining an employee for protected concerted activity could result in claims.
- *Evaluate individually:* Every situation must be evaluated on its own merits, just as every complaint, charge, or case does. Nevertheless, a company that takes complaints of harassment seriously and investigates and considers any substantial complaints or observations of workplace misconduct can lower the risk of claims.

Please contact a Jackson Lewis attorney with any questions related to harassment policies, training for management and employees, and other preventive practices.

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