

SWIMMING NAKED WITH THE  
SHARKS

14 BITES FOR YOU TO CONSIDER  
Fact Patterns

# A Tale of Three Troubles

## Fact Pattern A

Mark is a homosexual male. He is occasionally made fun of by other male employees, and in particular is told he needs to act like a real man, including being told not to wear certain clothing, that he spends too much time on his appearance, and that he wears the wrong kind of aftershave. When Mark tells the other employees to cut it out, he is told to take the jokes like a real man. Mark becomes fed up with the joking and goes to HR. The HR director tells Mark that the “guys” are just being honest about how they feel and that Mark, being the minority, should understand that he is likely to experience some jokes occasionally and that there is no law against it.

# A Tale of Three Troubles

## Fact Pattern B

Bob, a ten year employee of the County, has decided he wants to become Betty (or the opposite – Betty decides she wants to become Bob). When the modifications become public, co-workers begin to complain, in particular about having to share facilities with a person who is or was of the opposite sex. Bob (or Betty) complains to HR that she is entitled to facilities of his or her own.

# A Tale of Three Troubles

## Fact Pattern C

James, a new applicant, completes the application for the County and identifies himself as a male employee. He applies for a position that is typically filled by male employees and appears capable of performing the requirements of the position. After his interview, James is recommended for the position. However, when James provides a copy of his drivers' license, it identifies him as a female. James explains that he is biologically a female, but is beginning the process of the necessary medical procedures to change his sex to a male. In appearance, dress, and otherwise, James appears male. The supervisor hiring James tells James he will only proceed with the hiring if James changes his appearance to match the gender stated on the drivers' license.

# Moving Target

Michael is a currently exempt employee at the top of the managerial food chain for his department. He makes \$750/week. All employees below Michael report their time to him and he is responsible for ensuring the time is kept accurately. When it comes to Michael himself, only Michael is responsible for reporting his time and he does not have to keep a record until after 12/1/16/. Michael is told on 11/30/16 that he is to only work 40 hours per week, unless overtime is approved in advance. Michael signs a document agreeing to those conditions. Fast forward to January 2018. Michael goes to HR and reports that he has been working 60-70 hours per week, but never specifically told anyone he was working that much. He did tell his supervisors that he was not able to finish his work in 40 hours, but they just told him overtime was not permitted and to do his best. Therefore, Michael simply did the work and did not report it. After some M & Ms, Michael has changed his mind.

# Last Call

Robert works in customer service department of the public works department. He is injured in a car accident and has to be out of work due to his injuries. Attendance is a mandatory part of the position, but Robert is covered by FMLA. He takes his 12 weeks of FMLA, but calls HR on the next to last day of the 12 weeks to report that he cannot yet return to work. He has an appointment in 15 days, but is doubtful the doctor will allow him to return to work at that time. He thinks he may need to be out for another 60-90 days. Robert is one of only two customer service call-takers. During his absence, other employees have had to fill in on a rotating basis and there is some indication that work is not getting done. The manager of public works wants Robert gone so he can get a new person in the position who will appear for work.

# Million Dollar Scents

Janet works in close proximity to Chad, who started working at the County a few weeks ago. Janet suffers from allergies and asthma on a regular basis. Chad suffers from, seemingly, the opposite, because he fails to appreciate how powerful his “scent” is. Janet complains and the supervisor speaks to him, diplomatically, about the issue. Chad, while embarrassed, takes action to clean up his act. However, he goes overboard and the new scent, while different, is causing more issues with Janet. Janet claims the scent is so powerful, it is affecting her voice and she cannot sing in the church choir anymore. When Janet complains again, her supervisor tells her she cannot have it both ways, but does speak to Chad. Chad, again embarrassed, is less receptive this time. He begins to tease Janet about never being happy, attributing that to her gender. Janet complains she cannot work in the office anymore and quits.

# Why Me?

Billy (AA) and Shelley (C) work as a data entry consultants for a department of the County, inputting a data for County residents for County services and ensuring the information and requests are compliant with the rules. Billy works on the majority of the services and data entry and Shelley works on a select couple of projects that are partially federally funded, with stricter rules. Unfortunately, there are consistent issues with Billy's entries. Billy claims the mistakes are not his fault. The County implements an additional data entry point to track the information Billy inputs to make sure that Billy is doing everything he should, when he should. Shelley is not required to use the additional data entry based on the limited amount of projects she had and few or no errors attributed to her. Due to the limited IT knowledge of Billy's supervisor, there are continued errors, but no discipline. When a new, more IT savvy supervisor comes in, she observes the errors are Billy's and terminates him after two verbal warnings.



# The New Person

County Engineer Ernie has been employed with the County for 23 years since graduating from school and decides to retire.

Applicant Cheryl seeks the position and has the same degree, and 18 years experience working at a private engineering firm. While working at the private engineering firm, she has worked with Ernie on some projects and Ernie tells her about the position before he retires. He also tells her his salary. County makes an offer to hire Cheryl at \$15,000.00 less than Ernie, claiming the desire to cut costs and based on her “lesser experience.”

# Medical Misconduct?

Ramona is injured in a car accident. She is out of work for about a month and then presents a note to return to work, but that has significant limitations. There is a policy requiring Ramona to be able to return to work without limitations. Ramona was made aware of the policy when she was hired and is reminded of the policy when she brings in her note with restrictions. The supervisor instructs Ramona to return with a note that has no restrictions and she can return to work. Ramona's restrictions eventually are lifted, but she does not return with a note or otherwise return to work.

# Bully by Default

Ronald has been employed with the Supervisor of Elections for 26 years. Everyone is waiting for Ronald to retire, but in the interim, Ronald has outlasted about 10-12 people who have come and gone. Although his position is not supervisory, Ronald has come to view himself as king of the mountain. Because he has outlasted other supervisors, new supervisors coming in end up worried about what Ronald can do, so Ronald is not disciplined. Ronald likes to use what he feels are funny names for people like “sport,” “kid,” “honey,” “son,” and “gal.” He is friends with a couple Commissioners and brags about it, describing himself as unfireable. He goes so far as to say he is too old and fat to worry about discipline and runs several good candidates off. Eventually, after a series of protected classes are run off, a suit is filed alleging a hostile work environment.

# Love and War

Frank and Sherry work in the same department. They are both unmarried and strike up a friendship. After a few months and a few dates, Frank and Sherry are an item, but do what they can to hide it from the supervisors. Things work well until Sherry receives a promotion. Frank's work starts to slide, but he relies on Sherry to help him out. Sherry gets in trouble for not disciplining Frank. Discord ensues. Sherry eventually decides Frank is not the gem she thought he was before, but Frank won't let it go and spends a lot of time trying to win Sherry back to no avail. Sherry tells her supervisor what is going on to try to avoid having to deal with Frank's poor performance, but asks her supervisor not to tell anyone else.

# Retaliation Regret

Michael is hired when the need is great and does a good job for the first few weeks. However, Michael's performance begins to slide and he receives a verbal warning and is told his probation is extended for 60 days. The notes related to the verbal warning are put in the file, but Michael is not asked to sign them. Within the 60 days, Michael does not improve, but receives nothing more than occasional verbal warnings. When performing a task improperly, Michael is injured. The supervisor learns of the accident and the improper action at the same time and tries to counsel Michael about the improper action that caused the accident. Michael continues to deflect blame and the supervisor gets frustrated and terminates Michael for insubordination and the improper action that led to the accident and lost money. Michael claims he was trying to ask for medical care.

# Don't You Want Qualified People

Rebecca is a 63 year old teacher applying for work. She has a B.S., a Masters, and is working on her doctorate degree in early childhood education. She also has a director certificate for childhood education programs from the Florida DCF. There is an opening in a day care that includes some educational instruction to the children. However, there are physical requirements related to the position and the person hiring feels that, at 63, Rebecca may not be able to perform the job duties. To attempt to avoid the issue, she claims that Rebecca is “overqualified” for the position.

# Betty's Blues

Betty works in the public works department and started four weeks ago. She learns she is pregnant and tells her supervisor. Three weeks later, Betty reports she has high blood pressure and cannot work outside as is sometimes required by her position. The supervisor provides inside work to Betty, but only allows her 10 hours a week, because he may need to save some of that work for people who are injured on the job. Betty asks for more hours because there are no other light duty employees at the time, but the supervisor tells her he will not exceed his maximum of ten hours for pregnant employees and that he must protect his longer term, male employees.

# Wage Argument Woes

Michael is a currently exempt employee at the top of the managerial food chain for his department. He makes \$750/week. As the 12/1/16 deadline approaches, Michael urges his supervisor to increase his wage to the minimum of \$913. Michael's problem is that he has been so focused on a legally mandated raise, he forgot to perform adequately to receive it. His supervisor tells Michael that if he gets his act together, maybe a raise could be in his future, but does not specifically address any performance issues. Michael claims the reason he did not get the raise is because he was exercising his right to discuss the FLSA changes and no raise is the same as retaliation.



# Trickle Down Bullying

Sam has worked for the Parks and Recreation department for 8 years, but got into a disagreement with Tammi, his supervisor, about the best way to use excess budgeted funds. Sam goes over Tammi's head to the Commissioners when his initial ideas are shut down. Tammi begins harassing Sam for his actions and begins to recruit others in the department, including four other female employees. In addition to pranks, poor communication, and poor performance evaluations, a couple gender-based remarks are thrown in and Sam's co-worker, Cindy, is promoted over him, in spite of his greater length of service and equal overall education and experience. When Sam complains, a cursory investigation is done, but based on the seemingly overwhelming opposition to Sam, the County takes no further action. The harassment continues and Sam goes foru[M] shopping.

Questions??