

Zero Tolerance for “Zero Tolerance” Policies?

Waldthausen & Associates, Inc. is a Retained Executive Search firm with the focus on recruiting managers that influence a company's result and earnings. The firm focuses on recruiting professional managers for US subsidiaries with parent companies located in central Europe.

“Zero tolerance” policies are popular among employers trying to end unlawful harassment, drug use, violence, and other egregious behavior in their workplaces. Such policies do have the benefit of being black-and-white, easy to apply and non-discriminatory.

But is “zero tolerance” too much of a good thing? It could be – at least, if you really mean it.

Certainly there is nothing wrong with having a policy that certain types of behavior will result in termination – no ifs, ands or buts. For example, no one would lose sleep over an employee who was immediately terminated for threatening to kill a co-worker. Or, would they?

The trouble with “zero tolerance” policies is that even a seemingly clear-cut threat such as this may be anything but. It may help to view “workplace threats” (or harassment, or possibly, even drug use) on a continuum, with “Not Threatening at All” on one end, and “Very Threatening” at the other. At the “Very Threatening” end, there are employees who say they will kill their co-workers and really mean it. Perhaps midway is the “hothead” employee who says such things in anger but in 25 years with the company has never hurt a fly and isn’t taken seriously by anyone who knows him. On the “Not Threatening at All” end is the employee who says in fun, “I’m gonna kill you!” anytime he or she is mildly inconvenienced and may even be smiling or laughing when saying it. Should all three of these cases really be treated alike? They are all “threats,” but they are clearly not “equal.” Fire the first employee? Absolutely. The second” maybe a reprimand or counseling to be careful about his speech, but termination seems excessive. Fire the third? *What, are you kidding?*

Most employers will remember the “Seinfeld case” from the 1990s, in which a male employee discussed the previous night’s episode, involving a character whose name rhymed with a female body part, at the office water

cooler. A female co-worker was offended and reported him, and he was fired. He sued his employer and won a verdict for \$26.6 million. Assuming the female really was offended by the conversation, should this man’s behavior been “dealt with”? Most definitely, but terminating his employment would strike most people as excessive. So, it’s all right to keep those “zero tolerance” policies as long as everyone understands that they don’t mean that anyone who commits a violation, no matter how trivial, will receive the ultimate sanction. A “zero tolerance” policy should never prevent you from exercising your judgment and common sense:

- “Zero tolerance” should never mean that you can’t retain an employee whom you found to be innocent, or against whom there was insufficient evidence of wrongdoing.
- “Zero tolerance” should never prevent you from electing to discipline rather than terminate an employee if the violation was relatively trivial.
- “Zero tolerance” should never prevent you from refraining from discipline at all, where the violation was really trivial, inoffensive, or in jest and understood as such.
- “Zero tolerance” should never prevent you from making an exception where a reasonable accommodation for the employee’s disability or religion is appropriate.

There is an old cliché that one should never say “never” and always avoid saying “always.” But a prudent employer will never apply a “zero tolerance” policy mechanically, and will always exercise sound discretion and judgment based on the circumstances of the case. Zero tolerance for “zero tolerance” policies! (The strict kind, anyway.)

(Reprinted by Permission, John Critchfield, Constangy Brooks & Smith, LLC, www.constangy.com)

PUBLISHED BY:

WALDTHAUSEN & ASSOCIATES, INC., 1910 ABBOTT STREET, SUITE 201, CHARLOTTE, NC 28203, T: 704-372-2172

FIND MORE NEWS ON OUR WEBSITE: www.waldthauseninc.com