

1A: "AT-WILL" EMPLOYMENT LAW GAMESHOW



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**You will receive
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Slido Instructions



Option 1:

Scan the QR code to launch Slido.
Choose the room "1A "At-Will"
Employment Gameshow



Option 2:

Go to the event app or conference
webpage.
Go to the agenda tab and click on
the 1A "At-Will" Employment
Gameshow, and click on the "Slido
Poll" link to launch the poll



CMCP 2023

ANNUAL BUSINESS CONFERENCE

SEPTEMBER 20-22, 2023 — SAN FRANCISCO



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ACCOMMODATION



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An employee, an e-discovery manager, is in a performance improvement plan based on their challenges in interacting with other employees (uncommunicative, resistant to feedback, argumentative). The employee's behaviors have not changed and the manager wishes to terminate them, however the employee produces a letter from their doctor that the employee suffers from a neurological condition which is impacting their behavior at work. According to the employee, this means their work team must be trained on how to work with them.

Based on the employee's request, can the employee be reasonably accommodated?

Should the employer move forward with the termination and disregard the doctor's note?



SLIDO POLL Q
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ACCOMMODATION

An employee is not coming into the office per the mandate the employer instituted 6 months ago and now has begun enforcing. According to the employee, they have become very emotionally attached to the pet they adopted during the pandemic and can't concentrate without its presence: the offices have a no pets policy.

- 1) Can the employer enforce the in person office mandate?*
- 2) Is the employer obligated to accommodate the employee?*

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UNIONIZATION & WORKERS' RIGHTS



UNIONIZATION & WORKERS RIGHTS

Employees at Buckstar Arabica Store No. 7 have voted to unionize. After the Company contests the outcome of the election, the NLRB subpoenas a barista from the location to testify; Manager A threatens to discipline the barista if they attend the hearing without finding coverage for their shift. Manager B tells the same barista not to hand out union pins to customers and co-workers while on duty. A month after the unionized employees reach a contract with the Company, the Company decides to close the location due to safety concerns; the Company decides to keep open another location Store No. 10 (located two blocks away) that did not vote to unionize.

- 1) Should Manager A have threatened the barista with a write-up for not finding coverage for their shift?*
- 2) Should Manager B have told the barista not to hand out the union pins?*
- 3) Was the decision to close Store No. 7 legal?*

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UNIONIZATION & WORKERS RIGHTS

The New Stericycle Standard:

AI Tech Go Software's Employee Handbook contains a policy restricting employees' use of social media to make negative comments regarding their work experience and/or disparage the company's products or services. After work, a manager came across a social media post of one of his subordinates criticizing the company's handling of a recent sexual harassment investigation. Additionally, the post criticized the company's quality of the software and programming provided to consumers. In addition, the employee had previously posted pictures of himself while at work in his work cubicle.

The next day the manager confronts the employee regarding the social media posts and asks the employee to remove them. The employee is refusing to take down the posts.

1) Can the employer prohibit this employee from posting disparaging comments via social media?

2) Does the company's policy violate the National Labor Relations Act?



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DE&I CONSIDERATIONS FOR EMPLOYERS



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Company X is going through a tough stretch financially and also cutting back some of the resources it provided for DEI earlier. The Company is contemplating eliminating the Chief Diversity Officer position and two FTE positions dedicated to DEI programming and activities ("the DEI team")--all are at-will, non-exempt positions. The Company also wishes to put the employee resource groups in charge of DEI initiatives, with some support from HR and limited budgets. There is immediate negative reaction from some employees who learn of this proposal, saying that they are being asked to take on more work without pay, and that some ERGS are receiving more support than others.

How should the Company proceed?

- a) *The Company should proceed to eliminate the DEI team.*
- b) *The Company should proceed to put ERGs in charge of DEI efforts instead of having dedicated positions and headcount to lead DEI work.*
- c) *The Company does not need to provide additional pay to ERG members who take on DEI work.*

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DE&I CONSIDERATIONS FOR EMPLOYERS

The former Chief Diversity Officer (who has taken on a new chief of staff) hosted a virtual Town Hall to discuss concerns from white male employees about feeling excluded and not receiving preferential treatment like women and underrepresented groups. During the Zoom meeting, a few outspoken employees who identify as Black, Indigenous and People of Color (“BIPOC”) as well as other historically marginalized communities were muted or removed from the meeting because “they were disruptive and disrespectful.” After the town hall, the Company’s internal Slack channels were lit up with complaints from BIPOC identifying employees, women and LGBTQ+ ERG members and arguments from white male identifying employees that they should be allowed to form their own ERG exclusively for white men. A few days after the town hall, the Chief Human Resources Officer stops by your office to confirm their view that the white men should be allowed to form their own ERG.

How should the Company proceed?

- A. *Issue an internal statement about the virtual town hall*
- B. *Assess the risk of legal liability due to the muting and removal of BIPOC identifying employees from the Town Hall.*
- C. *Support the Chief Human Resources Officer and white male identifying employees and allow the latter to form an ERG.*

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The background is an abstract composition of numerous overlapping triangles. The top half of the image is dominated by shades of blue, ranging from a deep navy to a light, airy sky blue. The bottom half transitions into warm orange and yellow tones, with some triangles appearing as bright highlights. The overall effect is a dynamic, low-poly aesthetic.

THANK YOU



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Golden Gate C2)**

**Emerging Leaders
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**(4th Floor –
Pacific I)**

**Legal Department
Diversity Summit**

**(B2 Level –
Golden Gate C1)**