

HR QUESTION ? of the month



What is the obligation of an employer when personal phones are used to share inappropriate or sexual content in the workplace?

Question: One of our female employees sent a naked photo of herself from her personal cell phone to one of our male employee's personal cell phone. That male employee brought his cell phone to work and showed other employees the picture of the naked female employee. One of the employees who saw the photo informed me, the HR Manager, of the situation. What is the company's obligation with regard to informing the employees involved that we are aware of this activity? Personal cell phones were involved not company supplied phones.

Answer: While the employer typically should not manage employees' off-duty, off-premises and likely lawful conduct, here the conduct has infiltrated the workplace and the employer must investigate and address the issues. The male employee should not have shared this, particularly at work, with his colleagues. This may lead to a sexual harassment complaint by the female colleague, as well as hostile work environment claims by colleagues. We therefore recommend that you meet with the male employee promptly and require that he stop showing the picture at work, and discuss with him that as the female employee may be subject to comments, etc., in the workplace, that he should not share this information outside of work, either. The employer also should meet with the female employee, explain that you have heard about this, that you are not judging the behavior (this should be told to the male as well), and ask her if she has any concerns with respect to the impact on her workplace, so that you can address them. The employer should document the investigation per usual practice. The employer will need to determine whether the male (or female) employee violated any employer policy by showing this picture at work, which is likely – think of it as if he were showing nude pictures generally, of someone who is not a colleague -- and discipline the employee consistently with employer policy and practice.

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