NAME **KEY** Entrepreneurship These are real cases that Human Resource departments have been faced with.

For each case, mark in the My Vote whether you believe the plaintiff or defendant won. In the reasons section put whether the P or D was the employee or the employer. Also in the reasons section, you will write 1 point you discuss in favor of each party. Record the real outcome of the case in the last column, marking (P) or (D) for each. The first case is done for an example.

**Plaintiff-person suing**

**Defendant- person defending against the suit**

|  |  |  |
| --- | --- | --- |
| **CASE** | **OUTCOME** | **Reasons** |
| **1** | D | D -Employer- all of his complaints were investigated by the human resources department. P -Employee- young females were treated better than he. |
| **2** | P | P-Employee- Claims she wasn’t hired because of her age (53 year old) D-employer- Claims the woman wasn’t hired because of the “availability listed on the application” & “disrespectful body language” |
| **3** | D | D-employer- The company rearranged her old job to accommodate her, some of her duties were removed, but her pay was the same P-employee- Claims her company took too long to accommodate her |
| **4** | D | D-employer- “The employee had no right to privacy…Employer-owned desk” P-employee- Claimed company invaded his privacy by searching his desk without permission |
| **5** | P | P-employee- Claims coworkers harassed her because of her race D-employer- Manager: They were voicing legitimate complaints about her communication skills |
| **6** | P | P-employee- Complained of racial slurs in music being played; Nothing happened D-employer- Rap music played loudly |
| **7** | P | P-employee- Fired because of his gender D-employer- Broke a rule + He’s had behavior problems in the past |
| **8** | D | D-employee- Disabling heart attack caused by the stress of hearing she was losing her job P-employer- She wasn’t eligible because the injury didn’t occur as a result of her job duties |
| **9** | D | D-employer- Found inappropriate pictures of police officer posted on myspace P-employee- Iowa police officer, inappropriate pictures posted BEFORE she was hired |
| **10** | D | D-employer- Fired employee after he dozed off on duty P-employee- Was fired because of his disability; sleep apnea |
| **11** | D | D-employer- Emailed employees about consequences of stealing after incident involving firing an employee for stealing P-employee- Sued the company for libel/slander email |
| **12** | D | D- (owners of site); Employee posted confidential information on their website Should have sued the employee instead of the site P-employer- Sues website owners for not taking it down |
| **13** | P | P-employee- Sued company for sex discrimination; was fired for two different reasons & replaced by a man D-employer- Being replaced by a man was a coincidence |
| **14** | P | P-employee- Sues for invasion of privacy after boss opens mail ex-employee’s mail & makes a copy of it D-employer- The letter was sent to the company’s address, so it was company property |
| **15** | P | P-employee- Failing drug test didn’t reach level of gross misconduct D-employer- Employee failing the drug test was “gross misconduct” |
| **16** | D | D-employer- Performance was why the employee was terminated P-employee- Terminated because of a disability; claims he began having problems because of his boss |
| **17** | P | P-employer- Employee sent confrontational emails D-employee- Misuse of caps lock |

**CASE 1**

One of a manager’s hardest tasks: Dealing with a difficult employee who’s constantly making frivolous complaints. What can supervisors do without being accused of retaliation?

A recent court case involved an employee who didn’t get along with his boss or his co-workers. He claimed his supervisor treated him different than younger, female employees.

Throughout his employment, he filed several complaints with management and HR. For example, he alleged:

* his supervisor refused to take his suggestions during staff meetings
* his work was monitored more closely than other workers’, and
* a performance review that labeled him as a difficult employee was the result of age and gender bias.

HR investigated each complaint, but could find no evidence of discrimination. The conclusion: The employee was “sensitive to feedback” and needed to work out his personal conflict with his supervisor. After each investigation, he was told to improve the relationship and “move on.”

Can manager discipline constant complainer?

The company began outsourcing some of its operations and had to shrink the employee’s department. He was one of the employees chosen to be terminated.

He sued, claiming he was treated unfairly because of his gender and fired in retaliation for his complaints.

The company argued that all of the employee’s complaints were handled properly and the company issued  appropriate responses. The constant complaints were disrupting the workplace, so the employee was asked to improve the relationship with his boss.

Who won the case? Answer: the company. The court ruled the complaints and the termination weren’t connected.

The judge took the situation for what it was: The company disciplined — and then chose to get rid of  — a difficult, poor-performing employee.

The lessons for managers dealing with difficult people who complain:

1. Treat all complaints the same. Assuming someone’s claims are frivolous is an easy way to avoid correcting a real problem. That could get the company sued.
2. Educate employees on what constitutes harassment and discrimination. One way to limit frivolous complaints is to educate people on what is and isn’t against the law.
3. Don’t avoid dealing with difficult people. As this case shows, managers can take action when an employee’s constant complaints disrupt the workplace. Just make sure all the problems are documented.

**CASE 2**

Here’s an example of a company that got in big legal trouble after a hiring manager gave an applicant an inconsistent explanation of why she didn’t get the job.

A 53-year-old woman applied for a job at a Starbucks store. During her interview, the hiring manager mentioned a concern with the availability listed on her application. The applicant then explained she would be flexible and could be available more frequently than the hours she listed.

Still, the woman wasn’t hired, because of the availability listed on the application, as well as “disrespectful body language” during the interview and her conduct afterward.

The applicant called the manager and visited the store to ask why she wasn’t hired. Each time, the manager gave the same answer — the availability listed on her application — without mentioning the other factors. She sued, claiming her age was the real reason.

Starbucks tried to get the case thrown out, but the judge wouldn’t buy it. Why not?

The main factor was the inconsistency in the manager’s explanations. She said one thing in court, and another to the applicant — which, according to the woman, shouldn’t have been a valid reason after she explained her flexibility in the interview.

Also, the court examined the store’s recent hiring records. Of the 19 employees hired by the manager, none were older than 30.

That gave the judge enough suspicion to send the case to a jury trial.

**Cite: Boyajian** v. Starbucks

**CASE 3** The Americans with Disabilities Act requires employers to engage in an “interactive process” to find reasonable accommodations for disabled employees. The law’s not specific about how to do so, but missteps can lead to costly lawsuits. Here’s a case where an employee sued because she thought her company took too long to accommodate her — even though she got everything she asked for in the end. The woman was diagnosed with a rare blood disease and could no longer perform all the duties of her job. Specifically, her doctor said she needed to avoid highly stressful activities.

She told her boss what she could and couldn’t do, and the employer temporarily placed her in a different position, keeping her salary the same.

Due to staffing concerns, the transfer couldn’t be permanent, so the company tried to rearrange her old job to accommodate her. As requested, some of her duties were removed, and restrictions were placed on when her shifts could be scheduled.

But she sued the company anyway. Why? She claimed it took the company too long to figure out an accommodation.

The court didn’t buy it. The law gives no time limit for getting through the interactive process, and in the end, the woman got what she wanted. Also, she didn’t lose any money while she was waiting because she was paid her usual salary throughout.

If she had been put in a lower-paying job, she may have been able to argue that the company’s delay was detrimental to her.

**CASE 4** Employers have a duty to keep their workers safe. But how far can they go without infringing on employees’ individual rights?

**The facts:**

An employee’s desk was searched after he submitted a questionable expense report for a company-issued cell phone. Nothing related to the expense report was uncovered, but the manager did find — inside a locked drawer — a pellet gun and ammunition. This violated a company policy against bringing weapons to work, and the man was fired. He sued, claiming the company invaded his privacy by searching his desk without his permission.

**The employer said:**

The employee had no right to privacy when it came to an employer-owned desk. The company didn’t need permission to search its own property.

**Who won the case?**

**Answer:** The employer.

**Why:** The court agreed with the company — the employee had no “reasonable expectation of privacy.” The desk was owned by the company and used for company purposes. Therefore, his boss had every right to search the drawers.

**Cite:** Ratti v. Service Management Systems, Inc.

**CASE 5** In a diverse workplace, you might need to give supervisors some extra sensitivity training to avoid illegal bias.

In one recent court case, an employee complained that she was regularly harassed by co-workers because of her national origin.

She was originally from Mexico and spoke Spanish as her first language. Other employees had problems with her limited English — she claimed they would often respond to her comments by yelling, “What? What?” or “I do not understand you.”

The woman complained to her boss about how she was being treated, but no action was ever taken. The manager’s reaction: They were just voicing legitimate complaints about her communication skills.

But she didn’t see it that way — she sued the company for allowing a hostile work environment.

The court agreed. The employee demonstrated she knew enough English to do her job. Her co-workers clearly weren’t making legitimate complaints, they were taunting and harassing her.

The company failed to have the case thrown out and will now face a costly jury trial.

The lesson for managers: If it looks like employees are giving someone a hard time because of anything related to race, religion, gender or ethnicity, it’s your duty to step in and stop it.

**Cite:** Navarro v. U.S. Tsubaki, Inc.

**CASE 6** A lot of things can lead to lawsuits against employers — like an employee’s taste in music.

In one recent case, an African-American employee sued for racial harassment. The culprit: A rap CD played loudly by a co-worker.

The co-worker would often listen to the music and sing along — including a bevy of racial slurs — within the employee’s earshot. He told his boss and co-worker the language was offense, but the music never stopped.

He took the company to court and won a $168,000 settlement.

**Offensive music at work**

It isn’t always direct confrontation between two employees that can lead to harassment or discrimination suits. Companies have been hit hard over the presence of music, jokes, posters or other media that employees found offensive.

The key for employers: Take action when employees complain. Even if the supervisor doesn’t understand why the employee’s offended, a court might.

**Cite:** EEOC v. Novellus Sys. Inc.

**CASE 7** Two employees are caught breaking the same rule. One has had behavior problems in the past, the other hasn’t. Can their manager legally fire one and not the other?

In many situations, yes, as long as the documentation is in order. But here’s a case where a manager’s flexibility went too far — and got the company in big trouble:

A male bus driver was fired after dropping a student off at an unauthorized stop, in violation of the school district’s policy.

The problem: A few other drivers, all female, had broken the same rule but were never disciplined.

So the male driver sued, claiming he was fired because of his gender.

His manager argued the decision was partially based on the man’s previous performance — during his tenure, he’d been involved in one accident, and the school district had gotten several complaints about him from students’ parents.

His unauthorized stop was just the final straw.

What did the court think?

The judge sided with the employee. He presented a lot of evidence of how frequently the policy was broken. One female driver was caught making unauthorized stops on a regular basis for two years, without any disciplinary action.

The man did have problems in the past, but the school district couldn’t prove the rule had ever been taken seriously by management when female employees were involved.

The lesson for managers: You don’t have to treat every employee exactly the same, even when they violate the same policy. In some cases, such as when there’ve been previous behavior problems, the company might decide to fire an employee while only warning the other.

But firing someone while taking absolutely no action against anyone else is likely to lead to a discrimination lawsuit.

**Cite:** Dinkins v. Suffolk Transportation Services.

**CASE 8** Should employees get workers’ compensation benefits when they develop health problems caused by job-related stress? Yes, according to one court.

Here’s what happened in this recent case:

A 60-year-old employee was told her job was being eliminated after 25 years of working for the employer. She started crying and got permission from her boss to take the rest of the day off.

At home, about an hour after getting the news, the woman suffered a permanently disabling heart attack. Her doctor said she’d been healthy and that the incident was caused by the stress of hearing she was losing her job.

She was awarded accidental disability benefits. The company appealed, arguing she wasn’t eligible because the injury didn’t occur as a result of her job duties.

But the court sided with the employee’s doctor.

It was undisputed that the heart attack was caused by the woman’s conversation with her boss. And since that conversation occurred “during the scope of her employment,” the heart attack was directly related to her job and the woman was eligible for disability benefits.

**Cite:** Retirement Board of Salem v. Contributory Retirement Appeal Board.

**CASE 9**

Apparently, this Iowa police officer had some trouble understanding MySpace’s privacy settings.

A local resident notified the Altoona, IA, police department after he discovered cop Abigail Keller’s MySpace page containing inappropriate photos of her at a bar. In one shot, she was mooning the camera, while in others she performed simulated sex acts, Associated Content [reports](http://www.associatedcontent.com/article/1919350/police_officer_abigail_keller_fired.html?cat=9).

Keller’s response: The pictures were posted a few years ago, *before* she was hired — and she (mistakenly) believed her profile was blocked from public view.

The department fired her. Was that the legal thing to do?

Yes. When Keller took the city to court, a judge ruled the firing was justified, since a police force must maintain a good reputation in the public’s eye.

However, the court did grant Keller unemployment pay, becuase she did not “intentionally disregard” the department’s interests.

**CASE 10** HR often must go to great lengths to accommodate employees with disabilities. But does a company have to go as far as letting someone nap at work?

In one recent case, an employee was fired after dozing off during duty.

His job: flight instructor for Southwest Airlines. Frequently he would fall asleep while giving lectures. The problems continued for about a year and a half before he was terminated.

The employee suffered from sleep apnea — meaning he often couldn’t control when he fell asleep. He told his manager the problems would be limited if his shift was changed — but that would have required other employees working longer, so no change was made.

He also argued that he could work just fine despite his condition. But the company wouldn’t take any chances — after all, his job was to make sure pilots could do their jobs safely. So, without any other options, the company fired him.

He sued, claiming Southwest fired him because of his disability, in violation of the Americans with Disabilities Act (ADA).

**Accommodating sleeping disorders**

Who won the case?

Answer: the company.

The court ruled it would’ve been unreasonable for the company to continue having an employee with a sleep disorder train their pilots on how to stay safe. Since he couldn’t perform the essential functions of his job — and no reasonable accommodation seemed to be available — the company was right in firing him.

Note: ADA suits are always case-specific. A condition that prevents employees from performing one job may not have the same result in others.

In some positions, allowing an employee the chance to take short rest periods may be a reasonable accommodation for a sleeping disorder.

What unusual accommodation requests have you received? Let us know in the comments section below.

**Cite:** Grubb v. Southwest Airlines

**CASE 11** An employee is fired after stealing from the company. To warn employees about the consequences of that behavior, his manager e-mails the rest of the staff explaining the termination. Is the company guilty of libel?

Read the facts of the real-life case and decide: Who won?

The facts:

During an audit of travel expense reports, the company discovered that one employee had requested a total of $1,622 more than he actually spent and pocketed the difference. The employee admitted that he often filled out expense reports before he traveled, estimating how much money he would spend — which was against company policy. He also acknowledged making other “mistakes” that led to him being overpaid. He was fired.

His manager sent an e-mail to the rest of his staff telling them about the termination. The e-mail stated the employee “was not in compliance with our travel and expenses policies,” and reminded employees that “compliance with company policies is not optional.”

After he found out about the e-mail, the employee sued the company for libel.

The employer said:

Everything the manager said in the e-mail was true. There was no intention to defame the employee’s character, just to remind employees that the company takes its policies seriously.

Who won the case?

Answer: The employer.

Why: The judge ruled that the e-mail wasn’t libel. For an act to be considered libel, the statement must:

* be written down
* concern the person bringing the suit
* be defamatory
* be false, and
* cause an economic loss or other adverse consequences.

The e-mail met all the criteria but one: It wasn’t false. The employee was fired for violating the company’s travel and entertainment policy, a fact that was not disputed.

Therefore, while it may have been in poor taste to use the ex-employee as an example, it wasn’t illegal.

Cite:*Noonan v. Staples, Inc.*

**CASE 12** An employee gets fired and, in a fit of anger, runs home and posts confidential corporate info to a public Web site. You can get that taken down and protect your company — can’t you?

Read the facts of this real-life case and decide: Who won?

**The facts:**

A vice president was fired by the bank he was working for. Disgruntled, he uploaded some confidential company documents to a public site designed to leak private government and corporate information, allegedly to expose illegal activity. The company sued the owners of the site to get the documents removed and the site shut down.

**The employer said:**

Leaving the info posted violated the law – the former VP had signed a confidentiality agreement and the documents contained private information about the company and its customers.

**Who won?** The owners of the Web site.

**Why:** Shutting the site down would violate the First Amendment, the judge said. Also, it’d be unlikely to protect the company, since once documents become public they can easily be re-posted to other sites.

The Internet is creating a fierce battleground for employers and employees. Many employers have strict policies to keep employees from talking about the company or their co-workers online. But once someone leaves the company, what can you do? Not much, especially because once something goes public, you can’t stop people from re-posting it.

People have always been able to complain about places they used to work – technology’s just made it a lot easier to find an audience. In the end, its really just another incentive to keep positive employee relations and try to mitigate damage during termination meetings.

Do you have any thoughts on how companies can protect their reputations? Share with us in the comments section.

**Cite:** Bank Julius Baer & Co. Ltd v. Wikileaks

**CASE 13** An employee gets terminated and is given two different reasons for being let go. She sues the company, charging that the mixed signals prove she was let go so that the supervisor could hire a man to replace her. Who won this real-life case?

The scene: Warren Bridges looked at the copies of the e-mails handed to him by HR manager Susanna Diaz. “Yes, I wrote both of those,” he said. “So what?”

Susanna looked over her copies as she replied: “Well, you sent them to Lori a couple of weeks before you fired her. The first one says her performance is a problem ‘and could result in your termination.’ The second one thanks her for her service and says you had to let her go ‘as part of a companywide reduction in force.’”

“Right,” Warren nodded. “I was trying to let Lori down easy and say she got caught in a RIF.”

“Here’s the problem,” Susanna explained. “You replaced her with a man.”“And …” Warren said.

“You gave her conflicting reasons for letting her go — poor performance and a RIF,” she said. “First, we never had a RIF. Second, with all the confusion about the real reason for firing her, you replace her with a man. That looks fishy. Warren sighed. “I still don’t see the big deal.”

But Lori did. She sued the company for sex discrimination, saying there was no clear reason for the firing, and Warren — a man — replaced her with another man. The company said Warren was just trying to go easy on her, and the hiring of a male replacement was a coincidence. Did the company win?

**The judgment**  
No the company lost.

Even though the supervisor had good documentation backing his performance-based reasons for the firing, the judge still ruled in favor of the employee.

The judge’s reason: You can have good documentation, but that doesn’t mean there are grounds for throwing out other evidence that might show mixed reasons or bias.

In this case, the conflicting e-mails and the hiring of a male replacement were enough to overshadow the performance documentation. A lack of consistency in documentation and actions always calls into question the motives of the supervisor and the company, the judge said.

Ruling: Employee wins because of the doubt behind the company’s decision.

When there’s a charge of bias, conflicting information from the supervisor tends to set off alarm bells — and questions — in a judge’s mind:  
• Why would they say one thing and then another?  
• Were they trying to cover up something?

Combine those with the outward appearance of discrimination – a male supervisor replacing a female with a male – and you have the ingredients for a company loss in the courtroom.

[Based on: Parks v. Lebhar-Friedman, Inc.]

**CASE 14** After an employee is let go, his mail keeps coming in, and the boss opens it, believing it’s all business-related. However, some of it is confidential, and the fired employee sues over invasion of privacy. Who won this real-life case?

**The facts:**  
One of the pieces of mail contained a letter — mistakenly addressed — from the employee’s lawyer. The letter contained details of a discrimination suit the employee was planning to file against the employer in connection with the firing.

The supervisor opened the letter, believing it to be standard business correspondence that need to be dealt with because the employer was no longer there. After seeing the contents of the letter, the supervisor made a copy and kept it in a file in case the employee did file the lawsuit.

**The employer said:**  
The letter was sent to the company’s address, and as such was company property. And the supervisor hadn’t opened the letter with the purpose of learning confidential details of a lawsuit, so there was no intent to invade the employee’s privacy.

**Who won the case?**

**Answer:** The employee.

**Why:** A judge ruled that keeping a copy of the lawyer’s letter was an invasion of the employee’s privacy. In handing down the ruling, the judge noted the company indeed had a right to open and examine mail addressed to the ex-employee but delivered to the  
company’s office. Most times, legitimate business needs are served by such action.

But that doesn’t give employers a free hand to keep mail that’s obviously of a personal, confidential nature, especially documents of the type that pass between attorneys and clients. There are distinct differences in types of mail.

**Making careful choices**  
It’s a common situation. An employee leaves, sometimes under less-than-ideal circumstances, but the mail for that employee keeps coming in. What to do?

This case illustrates that managers must make some careful choices. Mail that’s obviously business-related may be opened and used strictly for business purposes. Other types of mail – say, from a lawyer or the IRS – should be returned to the sender or forwarded to the ex-employee (if you have a forwarding address) unopened if possible. To do otherwise leaves the company vulnerable to some serious charges.

Cite: Roth v. Farner-Bocken Co.

safe_image

**CASE 15** Employers who follow their own policies regarding vacation time are usually safe. But here’s a case where a court forced an employer to make the payment to an employee who was fired for conduct — even though the company’s policy said he wasn’t owed anything.

The company’s handbook said that employees fired for “gross misconduct” would not receive pay for earned but unused vacation time. The term “gross misconduct” was not defined.

One employee was fired after he failed a mandatory drug test. He did not receive any vacation pay.

He sued, claiming a failed drug test didn’t reach the level of gross misconduct and demanded a payout for the leave he didn’t use.

The court agreed. Since the company didn’t explain what conduct it was referring to, the judge tipped the scales in the employee’s favor and said “gross misconduct” refers to actions that are “intentional, wanton, willful, deliberate, reckless or in deliberate indifference to an employer’s interest.”

And, according to the court, failing a drug test didn’t make the cut. The employee was awarded his payout.

The lesson: Be careful about using terms that are open to interpretation without clearly defining them. If the handbook had simply said, for example, that employees forfeit their paid leave if they’re fired for breaking company policy, the court battle could likely have been avoided.

**Cite:** Lang v. Quality Mold.

**CASE 16** Employees can claim ADA protection for a variety of physical and mental conditions. But is work-related stress one of them?

In one recent case, an employee was diagnosed with anxiety and depression. He had sleeping problems and needed a short stay in the hospital after a panic attack.

The apparent cause: the employee’s boss. He claimed the problems began after receiving two negative performance reviews and being told he needed to increase his sales.

As his performance problems continued, the last straw came after he broke company policy by misusing his corporate credit card. He was fired.

The employee sued, claiming he was terminated because of a disability.

But the court didn’t buy it — his condition wasn’t serious enough to be a legally protected disability. To meet the standard, the judge said, the condition needs to have permanent or long-term effects.

In this case, the problems were situational — therefore, the depression and anxiety would only last as long as he worked for the same supervisor.

**Cite:** Maslanka v. Johnson & Johnson, Inc.

**CASE 17**  Writing in all caps is one of the most annoying e-mail etiquette breaches. But would one of your managers fire someone for it?

That’s exactly what happened to one woman in New Zealand. Vicki Walker, former controller for a health care company, was fired for sending what her boss called “confrontational” e-mails.

For example: One message advising her staff on how to fill out claim forms contained text in all capitals, as well as some statements in bold and red fonts.

Walker took the company to court for wrongful termination (New Zealand employees can only be fired for cause). The company defended its action by arguing that she caused “disharmony in the workplace.”

But the court didn’t buy it and awarded Walker $17,000. Annoying, yes, but misusing the caps lock key wasn’t a serious enough offense for termination.