

The Loud Legal Issues Hiding Behind “Quietly Quitting” Employees

Quiet quitting has become a buzzword to describe employees who perform the bare minimum required by their job, yet still work enough to avoid a termination for job abandonment. Quiet quitting does not occur in a vacuum. When complaints indicating a quiet quitting scenario surface, you must determine whether the employee’s behavior creates any legal issues.

The following are a few of the potential liabilities when evidence of a possible quiet quitting situation arises.

Pay-related compliance issues

Underperformance may arise when an employee feels they are overworked and underpaid. As you know, employee classification under the Fair Labor Standards Act (FLSA) can be tricky. Generally, to be considered exempt from overtime pay, employees must earn at least the minimum salary threshold set by the FLSA and any applicable state law. The salary test is the easy part of the analysis. To be classified as exempt,



employees must also satisfy a duties test. The lines between exempt and non-exempt duties can be grey. If the employee may be improperly classified, your corrective action may prompt the employee to seek legal counsel or file a claim with the government.

Misclassification claims are expensive to defend against and can result in costly judgments or settlements. Before taking corrective action against a quiet quitting employee, first ensure the employee is properly classified.

Another pay-related issue is that in many areas, covered employers will soon need to include the minimum and maximum annual salary or hourly wage in all advertisements for all covered job, promotion or transfer opportunities. Some jurisdictions, including California, require the disclosure of compensation upon employee request.

Confronting a quietly quitting employee about underperformance may prompt the employee to demand to know how he/she is compensated

compared with others in similar roles. In certain states, a request for pay range information is a protected activity that insulates an existing employee from termination for making such a request. This raises the possibility that an employee may allege that a termination for underperformance was merely a pretext for termination based on the employee’s request to see the pay range for his/her position.

Juggling other employment during business hours

For many employers, remote work has increased employee productivity and agility. However, it is not without its downside. Increasingly, employers are being forced to confront scenarios where employees are performing duties for multiple employers during the same business hours. In extreme circumstances, there have even been instances of an employee obtaining employment but then farming his or her

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BUSINESS MANAGEMENT

STATE HAPPENINGS BY RJ

Are Prospects Afraid to Buy from You?

In creating your marketing materials, an important thing to keep in mind is that people might be afraid to buy from you. They’re afraid that your product might be shoddy, your service might be lousy, your solution won’t actually solve their problem (or won’t solve it as easily as some other option would), there’s a better deal to be had elsewhere, etc.

In other words, they’re afraid that if they buy whatever it is that you’re selling, they will later come to regret that decision.

To overcome this, you need to convince them that their fears are unfounded. You must help them see that your product or service will work well, hold up over time and so forth. It will indeed solve their problems, meet their needs and improve their lives.

How can you convince prospects to set aside their fears and buy from you?

Here are some tried-and-true tactics:

- **Offer a solid money-back guarantee** – This is one of the best ways to eliminate perceived risk and make it “safe” for people to consider buying from you. If they’re not completely happy, no problem. You’ll cheerfully refund their purchase price.
- **Provide accurate descriptions** – Be honest in the way you represent your products’ features and benefits. Always avoid saying anything that sounds like hype. And if you’re

selling physical products, include photos showing it from every angle.

- **Use testimonials** – As Yelp, Amazon and many others have proven, people put a lot of faith in the opinions of strangers. Give customers an opportunity to post reviews, and don’t delete the disappointing ones.
- **Create positive expectations** – A person who expects to have a positive experience will be looking for validation of that expectation.
- **Make an emotional connection** – People buy from companies that they know, like and trust. Prospects will feel better about your business if your marketing efforts connect with them on an emotional level. Use words and images to paint a picture of how wonderful it will be to buy from you.
- **Educate prospects** – Sometimes prospects are afraid that their own ignorance will cause them to make a bad decision. Content marketing, such as providing educational articles about your offerings, can help overcome this. If there are decisions to be made, help them understand how to make the best choice for their specific needs.

People who are afraid often won’t make a purchase at all. To increase your sales, you need to anticipate and overcome your prospects’ fears.

Source: Linda Coss, Plumtree Marketing, Inc., www.PlumtreeMarketingInc.com

A New Legislative Session Has Begun

Exciting news: On December 5, the 2023-2024 legislative session officially started. As PIASC’s lobbyists we are already hard at work on your behalf!

Our policy priorities

In 2023 and 2024 the printing industry will be pursuing a focus on workforce development and retention, while seeking to protect our industry from onerous environmental and labor regulations.

In addition, we anticipate that the 2023-2024 legislative session will see an in-depth conversation about reforming the Private Attorney General’s Act (PAGA), which many printing businesses have suffered from. We plan to be part of this conversation.

A ballot initiative seeking to eliminate PAGA in California has already qualified for the November 2024 general election. Something to keep in mind is that the legislature has the power to pull a measure like this back off the ballot if there is an agreement between the parties that renders the measure unnecessary.

Because of this, what typically happens when there is a big ballot initiative that has already qualified is that the opponents of that measure will attempt to try to “cut a deal” in the legislature that will take the place of the ballot initiative. Their goal will be to somehow water things down so that the end result is more palatable to them.

A new class of legislators has been sworn in

With the start of this new legislative session, the legislature has sworn in over 35 new members from around the state. If they get reelected, these new legislators can serve up to 12 consecutive years before California’s term limit laws kick in.

With every new class of legislators comes new opportunities and new challenges. It’s up to us to educate these new policy makers about the importance of our industry, and what our main policy priorities are. After all, they can potentially be our allies until 2035.

How you can help

In order to have successful legislative victories it is imperative that we host this new group of legislators at our businesses, so that they can see first-hand how vital the printing industry is to our state’s economic well-being.

We need to get to know these people. Hosting them at our businesses, and taking the time to introduce ourselves and build a rapport with them is vital to the next 12 years.

If you are interested in hosting a tour of your facility with your elected representatives, please let PIASC staff know, and we will coordinate with you to make it happen.

HUMAN RESOURCES

Can Rap Music in the Workplace Create a Hostile Work Environment?



Is the playing of obscene and misogynistic rap music in the workplace discriminatory on the basis of sex if it offends women? A former Tesla employee has asked the U.S. District Court for Nevada to answer “yes” to that question. She filed suit against her former employer alleging that, among other things, the obscene and misogynistic rap music, as well as the actions and statements made by her co-workers related to that music, amounted to sexual harassment.

In a previous case, both men and women brought suit

Interestingly, in December 2021, the Nevada court dismissed a similar music-based claim against S&S Activewear that was brought by both male and female plaintiffs. The court concluded that the plaintiffs did not plausibly allege discrimination “because of sex” in violation of Title VII, since the music offended both men and women. The court also reasoned that the music-based claims should be dismissed because the music was played throughout the employer’s entire warehouse and thus did not target or single out any individual or group. The plaintiffs have appealed the district court’s ruling to the U.S. Court

of Appeals for the Ninth Circuit, raising the issue of whether the music played in the warehouse could constitute sex discrimination under Title VII.

The Tesla case is different

In the Tesla case, however, only one woman filed suit. She stated that she was subject to a hostile work environment when Tesla allowed its employees to play offensive music which referred to women as “bitches,” included graphic references to sex and contained other offensive references. The former employee alleged that management personnel heard the music, but didn’t stop it even after the employee complained to Tesla’s Human Resource personnel. The employee alleged that the hostile work environment was so severe that it forced her to quit (i.e. “constructive discharge”).

Some music may create a hostile environment

The ultimate answer of whether offensive music can create a sex-based hostile work environment claim under Title VII is pending before the Ninth Circuit and the District of Nevada. However, the Tesla lawsuit and the amicus curiae brief from the EEOC filed in support of the Plaintiffs-Appellants

in the S&S Activewear case make clear that employees and the EEOC may find music like the ballads of Too \$hort and 2 Live Crew to be hostile and/or offensive. And although these cases have focused on sex discrimination, we note that rap music also may contain racially-charged language that some employees could find objectionable.

Accordingly, these cases should serve as another reminder to employers to be proactive in addressing employee complaints relating to potentially offensive actions or practices in the workplace. Pay particular attention to complaints related to a protected characteristic, such as sex or race. Consider revising workplace policies such as anti-harassment policies to proactively address possibly offensive actions in the workplace before a complaint is lodged—even if most employees enjoy the music.

Source: Evan Conder is an Associate at Shawe Rosenthal, a management-side labor and employment law firm based in Baltimore, Maryland and representing employers nationally. He can be reached at conder@shawe.com or 410-843-3475.

FEATURE

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duties out to another individual who is not an employee of the company. You must review your on-boarding processes to ensure that remote employees are properly vetted, and then supervised in a manner that requires regular on-camera availability and accountability.

Performance issues at the management level

What if your discussion regarding a manager’s corrective action plan for a quietly quitting employee reveals a pattern of unproductivity for other employees reporting to that same manager?

You must remain vigilant for performance issues at the management level that create or exacerbate the employee relations issue that is resulting in employee underperformance. You must ask the right questions of frontline managers to determine whether the manager’s management actions are in line with company policy or if they are the root cause of the lack of productivity by employees.

Quiet quitting is not a new phenomenon, but navigating the increasingly complex compliance issues raised by unproductive employees may present thorny legal issues for you.

Source: Benjamin E. Stockman and Ayelén R. Rodriguez are lawyers in the Labor & Employment Group at Venable LLP, www.Venable.com.

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PAPER BY DAMIEN

Finally – Some Good News on the Paper Front!

After many months of extremely challenging supply chain issues I am extremely excited to say the pendulum is swinging back in a positive direction. There have been significant improvements and we are moving back toward a more “normal” market dynamic. This is great news!! Here’s what we’re seeing...

Paper supply is improving

There are a number of areas in which the supply chain has improved:

- **Containers and vessels** – Containers, and the vessel space to accommodate these containers, have both greatly improved, which is giving our mill partners the ability to ship more product. Lack of containers and vessel space had been a major deterrent to distributors building inventory.
- **West Coast ports and lead times** – The unprecedented backlogs at the ports continue to improve, and we are now seeing a normal cadence of containers moving through the West Coast ports. As an added bonus, we have not seen any significant disruptions to port operations during the current labor negotiations. We are seeing close to normal lead times from order placement with the mills to delivery to the port. With less

- congestion and delays at the port we are now receiving containers into our warehouse in a timely manner.
 - **Imported products** – A good proportion of the product that comes into the West Coast comes from Asia, and the disruptions in this supply chain for the most part are now behind us, falling back in line with historical levels. There are no significant issues with manufacturing, capacity or shipping.
 - **Domestic products** – The domestic mills are slowly starting to build their inventories and have recently started offering additional volumes above our allocations. Although inventory levels are not yet where we would like them to be, domestic supply is definitely moving in the right direction.
- While we are starting to see some inventory relief, it should also be noted that domestic mills will continue to be capacity constrained. SAPPI recently announced a \$418 million investment at their Somerset mill in Maine to support the expansion of their packaging business. This project will convert a mix of coated woodfree graphic paper and CIS Label paper to SBS board. The graphic and label paper now produced in Maine will be moved to other assets in North America and Europe.

Demand for print remains strong
Most printers I have spoken to have provided feedback suggesting demand for print continues to be strong. Printers remain optimistic for 2023.

Distributors are building inventories
Each day we continue to build our inventory. As a printer you should be confident we are moving closer to the distributor supply chain model that existed prior to the pandemic, where distributors warehouse inventory and deliver to printers next day. We’re not completely there yet, but as we move into 2023 we are getting closer and closer to that reality.

If you are like most printers, you probably have significant inventory on your floor. As you work down your inventory, feel confident that with the improvements in the supply chain, distributors are building their inventory to meet your future needs.

In time these developments should eliminate a major source of stress and anxiety for your business. All of which is very good news indeed!

Damien Bradley, Vice Chair, PIASC Board of Directors, and Sr. Vice President Print and Wide Format, Kelly Spicers.

CLASSIFIEDS

SELLING: Antique shed filled with printing items, including a paper cutter dating back to the 1880s, a handled letterpress from 1899, antique perforator, antique saw, furniture cabinet, wood type, type case full of drawers, etc. Also selling some more modern items including an older Miehle Vertical folder and a pin ruling machine. Items are located in Kennewick, Washington. If you are interested please contact Skip Novakovich at skip@novakovichllc.com.

PLANT LIQUIDATION: Will consider all offers. All equipment is currently running. 3-Clamshell Die Cutters. 2-28” X 40” 1- 20” X 27” Presstek Dimension 425 Turnkey CTP. Contact Keith at 818.257.9330 or L84teex@earthlink.net.

OFFICES FOR RENT: Ideal for Print Brokers, small Ad Agency, or Creative/ Graphic Designers. Month-to-month rental of various size office spaces, in prime industrial Culver City / Hayden Tract. Great location inside established offset printing company. Rent negotiable depending on office size needed. Parking onsite available. Call 310.839.3828 or email production@colourprintusa.com.

Want to place a classified ad? Contact Kristy Villanueva at 323.728.9500, Ext. 215, Kristy@piasc.org.

PIASC

Holiday Schedule

Christmas

December 23rd - closed at noon
December 26th - closed

New Years Day

January 2nd & 3rd - closed



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- Feature Article
- Business Management
- Human Resources
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For full list of events, please visit www.piasc.org/events

PIASC

Events Calendar

JAN 11

Talkful Webinar - Sensory Marketing
Wednesday, January 11
10:00 A.M. PT
https://bit.ly/Talkful-Webinar

JAN 19

Cocktails & Conversations
Wednesday, January 19
5:30 P.M. - 7:30 P.M.
Costa Mesa, CA
https://bit.ly/23Cocktails_Conversations

FEB 17

Print Excellence Awards
Call for Entries Deadline: Feb. 17, 2023
Send in pieces to:
5800 S. Eastern Avenue #400
Los Angeles, CA 90040
https://www.piasc.org/printexcellence/

MAY 4

Graphics Night 2023
Thursday, May 4
Marconi Automotive Museum
Tustin, CA
https://bit.ly/GraphicsNight2023