

Help Wanted: Boss always on your tail

March 25, 2013 by CARRIE MASON-DRAFFEN / carrie.mason-draffen@newsday.com



DEAR CARRIE: I have been working at the same company for many years. A few months ago my boss began following me everywhere. She follows me to the bathroom. When I go out to eat, she follows me to the parking lot. I know she is not out there for a smoke, because we have another area assigned for that. When I make eye contact with her, she quickly turns around or pretends she is looking at the walls. Am I being stalked? Is this legal for an employer to do? -- **Stalking Boss?**

DEAR STALKING: It certainly sounds creepy. It just might help to walk over to her during one

of those on-your-trail moments and politely ask if she needs to speak with you.

I asked an employment lawyer to weigh in on this unusual situation. Whether the boss' actions are illegal depends on her intent, said Michael J. Borrelli of Borrelli & Associates in Great Neck.

"If the boss is following the writer around and is doing so because the boss is motivated by a discriminatory bias, stalking an employee would certainly constitute an illegal hostile work environment," he said.

Illegal workplace discrimination includes disparate treatment driven by such things as race, religion, gender and national origin.

Employers have a right to ensure that their employees are following company policy, Borrelli said, but the companies have to tread carefully. "They have every right to monitor their employees if they suspect some sort of wrongdoing, so long as they are doing so absent a discriminatory motive," he said.

If things deteriorate and you feel extremely uncomfortable, he suggests you consider lodging a complaint with human resources or going to



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the police.

"First and foremost, if employees think that their safety is endangered, they should take affirmative steps to preserve that safety," Borrelli said.

DEAR CARRIE: After superstorm Sandy hit, everyone in our office received four days off with pay. The school where we work had no electricity and was closed. I was on vacation in Florida. I could not come home on time because we drove, and with road conditions so bad, we stayed a few extra days. Since I was on vacation I had to use my vacation time for those extra days. Is this right? I somehow feel I was cheated because of the free days my co-workers got. --

Cheated on PTO

DEAR CHEATED: Despite the disparity, it appears your company acted legally.

If you are a nonexempt employee, which generally means hourly, your employer has to pay you only for the hours you work. Paying hourly employees when they don't work is not only generous but perfectly legal, because companies can always give employees more than the law requires. And they can legally exclude hourly workers on vacation, said employment attorney Craig Roberts, a partner at Jackson Lewis in [Melville](#).

"Nothing under applicable law would prohibit an employer from only paying those employees actually scheduled to work under the circumstances presented," said Roberts said.

Even if you are an exempt employee, that is, salaried, the company could have required you to use your paid-time off to cover your extended vacation, a topic this column has dealt with several times in the aftermath of superstorm Sandy. When businesses close because of bad weather they still have to pay the exempt employees but can require them to cover that time off with vacation days. Exempt employees fall into the executive, administrative, professional and outside-sales categories.

The bottom line: You are a victim of bad timing, not of any illegalities by your employer. For more on what constitutes illegal workplace discrimination, go to <http://1.usa.gov/X5n0OJ>, For more on state laws and employers' vacation policies go to <http://bit.ly/OhVNDt>.

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