Don't fire EAP counselor for backing worker

Most employers outsource employee assistance plans (EAPs), which offer confidential counseling to help workers deal with personal problems, work-related stress and other concerns. But some organizations handle EAP services in-house.

That can cause a potential conflict of interest if an EAP counselor’s advice creates liability for the employer or calls into question its actions.

In the following case, an EAP counselor suggested that an employee who alleged he was being harassed might have a legal case against the employer. As the court pointed out, punishing the counselor only served to multiply the employer’s legal risk.

**Recent case:** As an EAP consultant for Carilion, a large health care organization that owns and operates several hospitals, Neil often referred employees for counseling.

John sought help from Neil, telling him that his department manager had been harassing him for several months. John described how the manager had twice fondled himself in front of John on hospital grounds, asked for oral sex and invited John to look at his genitals.

Neil told HR about John’s complaint, and following an investigation, the manager was fired. However, John soon contacted Neil again, telling him his co-workers were giving him a hard time, blaming him for the manager’s termination.

Neil called HR to try to come up with strategies to curtail the backlash, but he came to believe that Carilion’s investigation and resolution efforts were inadequate. Then he told John that he may have “legal options.”

Soon after, Carilion fired Neil for being “disloyal” to the company.

Neil sued, alleging he had engaged in protected activity when he criticized HR’s response to John’s complaint.

The company moved to have the case tossed out because as a manager, anything Neil said was not protected activity—he was merely doing his job.

The court disagreed and said the so-called manager rule had no place in the context of a Title VII lawsuit. In other words, it said, don’t shoot the messenger. (*DeMasters v. Carilion*, et al., No. 13-2278, 4th Cir., 2015)

**Final note:** This ruling would also apply to any HR professional taking an employee’s side against an employer.