

Beware backlash when blaming the victim

Employee assistance programs can be useful for workers facing stress or other challenges. EAP counseling is supposed to be confidential, which means that, except under very rare and unusual safety-related circumstances, information uncovered by the EAP should never be used against the worker.

Recent case: Francis, who emigrated from the Philippines at age 12, worked for East Penn Manufacturing for more than 15 years until he quit, alleging constructive discharge.

He sued, alleging he had experienced national origin and racial discrimination and harassment over the years, including finding a racially derogatory term scrawled on his locker.

The incident that led to his resignation began after a co-worker allegedly harassed him, constantly calling him “dumb” and “the short f***ing Asian.” He claimed to have reported this to his supervisor, who did nothing. Francis decided he would “stand up for himself” and confronted the co-worker, telling him that one day East Penn would hire someone unwilling to take the harassment that would “knock out.” The co-worker took this as a threat and reported it to the personnel director.

After investigating, HR concluded that Francis should be suspended for a few days. It ordered him to undergo anger management counseling through the employee assistance program. Francis attended and the counseling service sent a report to East Penn urging it to correct the harassment Francis described. But East Penn asked the counseling service to amend the report to remove the recommendation, and it did.

Francis claimed that nothing changed when he returned to work, so he quit and filed his lawsuit.

The court said the case could go forward, based in part on the lack of effort to stop the co-worker harassment and the apparent solution that consisted of sending Francis (but not the co-worker) to anger management counseling. (*Cada v. East Penn Manufacturing*, ED PA, 2018)