

Is your supervisor getting you in trouble?

Jeff Schanbacher for Progressive Dairyman

AT A GLANCE

Regularly train your managers about state employment laws and your dairy's policies to avoid discrimination and unlawful termination lawsuits.

Many employers spend thousands of dollars and hundreds of hours trying to meet state and federal mandates on labor law compliance posters, employee policies, training, mandatory forms and professional certifications each year. Yet that may not be enough.

Often, the thing that gets you in trouble is not your policy or procedure but the words used by your supervisor or representative. It only takes one or two errant comments to put you and

your company in court. Consider this scenario:

You may have a very good meal policy or a state-mandated meal break. Moreover, you may be very cautious to make sure everyone gets their meal break so you are not in violation of the law. You have three employees standing around talking, and the on-duty supervisor comes by and sees these people talking and not working. He or she addresses the group, "You need to get to work."

A few days later, you receive a letter telling you that you are being sued for violating meal break policy or law by not allowing employees to have an uninterrupted meal period.

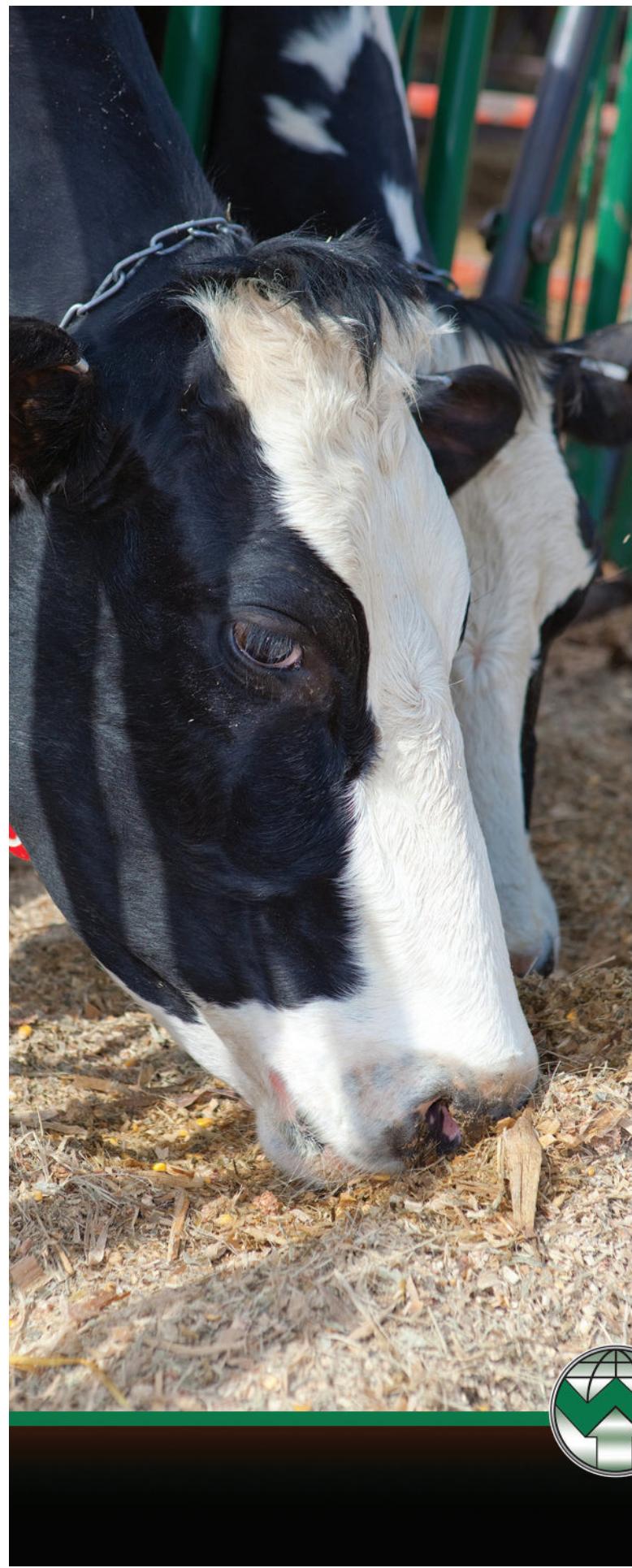
What just happened? Your supervisor used the wrong words and turned a simple statement into a legal problem. If the supervisor had asked the employees why they were all standing around, he or she would know they were on a break. If the supervisor said, "When you are done with your break, this needs to be done," then there would be no lawsuit.

There were actually two things the supervisor missed in this hypothetical situation. First, they assumed instead of asking a simple question like, "Are you on a break?" Then, they acted on the assumption instead of acting on the facts, directing the employees to do something (return to work) and implying they must do this immediately. The assumption and action combined together appear as though the supervisor interrupted their break, which creates the lawsuit.

To be fair, one incident does not necessarily lead to a lawsuit. However, if your supervisor uses phrases like "get back to work" in the wrong context, it sets up an adverse working relationship where employees can claim they are being harassed if they take a break.

Another common scenario involving supervisors that can get ownership in trouble is the "I was fired; no, you quit" employment termination situation. In many states, this question is very important because a person who quits may be denied unemployment benefits. It may also have legal ramifications in discrimination-retaliation cases, including employees on modified work status or under a doctor's care (ADA issues).

If a supervisor says, "You were late



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again today. I am tired of this. Don't bother coming in tomorrow either." Was this employee suspended, terminated or something else? It is a common statement, and it leaves everything to interpretation. If the employee never comes back to work, he or she can claim they thought they were fired.

The supervisor should have said, "You are suspended for tomorrow, and you need to report back to me." It is even better if the suspension is in writing. In fact, the best scenario is: The employee had written warnings on file when they were late to work before this incident.

These two scenarios are just quick reviews of a major issue that can really affect your business: the behavior of your supervisors, who act as legal agents for you and your business. I would recommend at least once a year, you sit down with your supervisors, review your company's employee policies, important state employment laws and any recent changes to those laws. Make sure they are not creating their own laws, misinterpreting the law or are ignorant of the law. Teach them words are important. They must

Jeff Schanbacher

Director of Operations
HR Mobile Services

be direct, concise and informative. Instruct them to always tell an employee what they did wrong, what the consequences will be if the behavior continues and what happens next. Show them how to document their corrective actions in writing so they or you as the owner will not be misquoted later.

Encourage them to always act, not react. Last, consider hiring an HR company or attorney to help you with the wording of difficult terminations or disciplinary actions. Money spent on their communications training may be well invested. 

Jeff Schanbacher is director of operations for HR Mobile Services. HR Mobile Services has offices in California and Arizona. The company specializing in loss prevention, safety training and human resource compliance for small businesses. They have dairy clients in 15 states.

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