

Be Careful What You Say

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A recent case demonstrates the frustrating quandaries that employers can find themselves in if they do not choose their words carefully. In *Gulden v. Pratt & Whitney Rocketdyne, Inc.*, Case No. BC468909, a 76-year-old engineer sued his employer for age discrimination after he was laid off. His employer had what would seem to be a good multi-faceted defense: The engineer was just one of 81 employees who were laid off (most of whom were significantly younger than him), he was the only part-time employee in his department, the project that he was working on was nearly complete, and his job duties could be easily absorbed by other employees. Nevertheless, the case survived summary judgment. The director of the engineer's department allegedly told the engineer that he had been selected for the lay off because the director "had to consider the future of the company" and because the engineer had been with the company for "a long time." These statements, the engineer argued, were veiled references to his age.

How can a company keep itself from getting sued, one might ask, if such seemingly benign statements are enough to convince a judge that a reasonable jury could infer discriminatory intent? That's a good question. Employers can take some solace in the fact that the case was brought in California – a state that is notoriously employee-friendly – and that the jury found for the company after just 34 minutes of deliberations. That an expensive trial was necessary underscores something that should be commonsense to any seasoned human resources professional, however. Be careful what you say to a newly laid-off employee. Even the most innocuous-seeming statements could come back to haunt you.

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