

**"Use Good Judgment" and "Follow the Golden Rule" just don't cut it in today's legal climate**

By [Robin E. Shea](#) on November 12, 2010

[Bruce Carton of Legal Blog Watch](#) (via [Overlawyered.com](#)) notes the passing of Nordstrom's employee "handbook," which consisted of a single index card with the admonition to "use good judgment in all situations." Meanwhile, at [Minding the Workplace](#) and [Jottings By An Employer's Lawyer](#), the authors note that many, if not all, of our workplace problems -- particularly harassment and "bullying" -- would go away if everyone simply followed [The Golden Rule](#).

I don't disagree. I will go on record right now as being unequivocally "pro-Golden Rule." I think it would be great if we all knew what "good judgment" was and exercised it on a regular basis. Arguably, all the problems, not just of the workplace, but of the world, would go away if we always used good judgment and followed The Golden Rule.

But of course this isn't going to happen. That we have evil and stupid people in the world goes without saying. Even intelligent people who mean well sometimes act foolishly or do bad things.

And apart from the fact that we live in a fallen world, there is our counter-intuitive legal climate. Let's face it -- from a legal standpoint, who even knows what "good judgment" is? One recurring theme of any management training I conduct is to emphasize that one **cannot** use one's common sense in dealing with workplace issues. Here are two recent examples showing why not:

To most of us, it shows good judgment not to bad-mouth your boss in a public forum, but the [National Labor Relations Board](#) says that you are engaged in "protected concerted activity" and can't be fired or disciplined for that. (The employer in this case says that it terminated the employee for other reasons.)

To most of us, it is "doing unto others as they would do unto you" when you tell your boss that your mother has cancer, when the boss follows up with some polite and concerned questions about your mother's condition. But, according to the [final regulations interpreting the Genetic Information Non-Discrimination Act](#), such follow-up questions would be a violation of the law because they would elicit your "genetic information," which includes family history.

And how about respecting your wishes when you are being harassed at work but ask your boss not to intervene just yet because you think you can handle it yourself? How about refusing to give credence to hearsay or gossip about whether you are being harassed? How about trying to soothe resentful co-workers by (tactfully and gently) telling them that you are getting special treatment on the job not because of favoritism but because you have a serious medical condition? What employer would dare do these things any more? All too often, the desire to "do the right thing" is not only frowned upon, but is also actively punished, by our legal system.

And so, Nordstrom has reportedly had to replace its index card with a real handbook full of rules and regulations. No employer serious about avoiding liability would dream of merely telling employees to "do unto others." Doing the right thing isn't good enough anymore.

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