



Fig. 1 Double Entry Bookkeeping: Debits and Credits | Source: (Accountancy Learning, n.d.)

## When Does A Child Become A “Debit”? Taking Leave of the Family Medical Leave Act

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### ABSTRACT

This disguised mini-case study describes the actions of a manager at one of the top accounting firms in the world and how their actions impacted the firm’s compliance with discrimination and labor laws. The Universal Accounting Firm (UAF) is well known on the street for providing top notch customer service.

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**Citation:** Cassandra Antoine, Herbert Sherman, *When Does A Child Become A “Debit”? Taking Leave of the Family Medical Leave Act*, International Journal of Current Business and Social Sciences. 8 (2), 10-18, (2022).

Their Human Resources department is second to none and employees are proud to work at the firm. This was how Ana John felt prior to that faithful morning when she returned to work from maternity leave.

### **CASE INTRODUCTION**

"Why are you here? I assumed that you would not be returning to work after having your third child." Ana stood still, almost frozen as her manager spoke those words. She was grateful that she had decided to walk into Karen's office to greet her, on this, her first day back from maternity leave. For Ana, the magnitude of the embarrassment of the situation had become a physical weight on her shoulders holding her in place, but there was more still to come. Karen seated behind her wooden desk with matching bookcases, simply uttered four more words before dismissing Ana from her office; "you have two weeks."<sup>1</sup>

### **Behind the Scenes: The Firm**

Universal Accounting Firm (UAF)<sup>2</sup>, headquartered in New York City, is one of the top accounting firms in the world with services that include auditing, taxation, and consulting.

of hard work, diversity, and respect. UAF is one of the most sort after accounting firms by college graduates and after being invited into the UAF "family" one rarely ever leaves, even if the new opportunity pays more than UAF.

### **ANA'S STORY**

#### **A Great Place to Work (Or so it Seemed)**

Ana John has been an accountant at UAF for the past seven years. She started working at the company during the fall of her junior year in college as a part-time employee through her college internship program. The following summer when she graduated she was accepted into their own summer internship program and later into their new hire training program. Ana joined the Internal Accounting & Finance department (See APPENDIX A Accounting Firm Organizational Chart) under Karen Anderson, after her prior department was relocated out of state. Karen has been characterized as being a stern administrator and running a very tight department, yet despite Karen's style of leadership Ana learned to work well with her. A consultant was brought in to assist another staff accountant in the department named Sophie with a time sensitive project. Shortly after the consultant's arrival, Ana announced that she was expecting her third child. Everyone seemed happy for Ana; both Sophie and Karen had their own children and appeared to support Ana in every way. Karen stated that all would be fine as she would keep the consultant on to cover Ana's work while she was away on maternity leave. Ana bid the team so long and went off to have her baby in December. She took the 12 weeks paid maternity leave that the company offered as well as an additional 12 weeks of unpaid leave under the Family and Medical Leave Act (FLMA).

#### **The Return**

In March the UAF completed its last merger and Ana's department was moved to a new location in mid-town Manhattan. Ana was made aware of these changes while on maternity leave through a

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<sup>1</sup> This case occurred prior to the COVID outbreak and working from home was not a viable option at the time.

<sup>2</sup> The information provide on the UAF is purely fictitious and in no way associated with any of the big 6 Accounting firms.

friend and reached out to Karen in April to let her know of her return date and to inquire as to the new location. It was a warm morning in July when Ana eagerly reported back to UFA. She relished being back in her business suit and was more than ready to get into the thick of it working with her colleagues, her firm and in her profession. As much as she enjoyed child rearing and her time with her newest daughter, it was time for a change of scenery and to get back to the job and firm she loved. As she rode the elevator to the 27<sup>th</sup> floor, all she could think about was how good it felt to be there and how she was not at all worried about this morning's juggle with her husband about getting her three darling daughters ready for their day. She was so grateful that it had all worked at well with her husband and her children and day one was off to a great start. She bubbled with anticipation of not only seeing her old friends but also anxious to share photos and stories of her family with her colleagues whom she has missed over the past six months.

### **How Did It Go So Wrong?**

As she exited the elevator banks, she immediately recognized Sophie and the consultant sitting in two corner cubicles. She approached and her excitement quickly faded to something ominous. By the looks on their faces, she knew that something was not as it should be. She greeted them with the brightest "good morning" and got cold stares in return. Ignoring the coldness, she asked "so where do I sit"? Sophie stood and bluntly replied, "You will have to wait until Karen gets in." As other colleagues made it into the office Ana's discomfort grew but before she knew it Karen had arrived. With a gentle knock she entered through Karen's already opened office door. Before she could utter a word of greeting, Karen those intolerable words. "Why are you here? ... I assumed that you would not be returning to work after having your third child." Ana was quite taken aback since it had been arranged through Human Resources that she would take a 24 week leave of absence and then come back to her old job. When she stated this to Karen, Karen merely shrugged her shoulders and explained that the consultant had been doing such a great job that she was hired on permanently to cover Ana's role. Karen further went on to say that since the move following the merger, there was no seat in her department allocated for Ana and that she should find an empty seat and start looking for a new role. Karen ended the conversation abruptly with "You have two weeks", stormed out of her office and uncharacteristically closed the door behind her. With that, Ana stood all alone for a moment, gathered her wits and exited Karen's office to stares and whispers from the office staff. It seemed clear to Ana that everyone knew of the conversation that had taken place, that her treatment by Karen was common knowledge. Ana felt ashamed and betrayed not only by Karen but by her coworkers and the firm she came to regard as her second home.

### **Where Do I Go from Here?**

After a week of being bounced from one department to the next, one supposedly vacant seat to the next, Ana realized that it was hopeless to find a new role/job in the current work environment. No one seemed to have "planned" for Ana's return and clearly no one really cared – how frustrating! The merger had resulted in a duplication of roles throughout the firm and departments simply were not hiring – in fact just the opposite had occurred and was still in process as indicated by the increasing empty desks on the 27<sup>th</sup> floor. There was nothing left for Ana to do but swallow what was left of her pride and head to the Human Resources department. She planned on pleading her case and begging for an extension so she could have more time to look for another role at the firm. If that didn't work, Ana decided she would call her lawyer and sue to get her old job back. She was not sure what her options were, but she just knew this was not only unethical but just plain wrong.

## PRELIMINARY TEACHING NOTE

### Usage and Course Placement

This case was primarily written for an introductory course (undergraduate or graduate) in Human Resource Management (HRM) since its focus is on questions revolving around maternity leave and job reinstatement. This case could also be employed in an introductory management and/or organizational behavior course since the case addresses the human and managerial impact of M&A's surrounding the implementation of maternity leave and work return policies and procedures. For the HRM class it is recommended that this case be assigned as an "end-of-chapter" case dealing with the subject of compensation and benefits while in the management and organizational behavior courses the chapter on human resources would suffice.

### Theoretical/Legal Underpinnings for Case Analysis

The following support material may be shared with students prior to and conjointly with the case itself as supplemental to the assigned textbook chapter since the below concepts and regulations will help focus and position students' analyses of the case.

#### Overview

"Human resources theory is a general term for the strategies, tactics and objectives used by business owners and managers to administer policies and procedures related to employees" (Bradley, 2020). Numerous approaches and theories could be applied to this case but we chose two specific motivation theories (equity theory and learning theory) that we thought were pertinent to understanding Ana's mindset as well the underlying legal framework that might have supported her perspective on the situation.

1. **Equity Theory.** True for any employee, his or her perception of being treated fairly affects his or her attitudes toward work and hence his or her performance. (Lussier & Hendon, 2018)<sup>3</sup> Perceived fairness, as defined as workplace equity, is the driving force underlying worker motivation – a worker who perceives the workplace as unbiased will put forth maximum effort. On the other hand, if the employee identifies inequities in the workplace, specifically the worker perceives a negative difference in the reward/performance relationship between him or herself and fellow employees (other employees are perceived as having a higher reward/performance ratio than him or herself), the employee will seek to adjust the reward/performance ratio to reach perceived equity. (Hawks, n.d.) Ana may have *perceived workplace inequities* based upon several related human resource laws and regulations.
  - **Family and Medical Leave Act of 1993 (FMLA)**<sup>4</sup>: The FMLA allows eligible employees of covered employers the right to take unpaid leave. This Act states that upon returning from maternity leave, the employee must be restored to their original role within the Firm or an equivalent role. It further states that time off under FMLA may not be held against employees on FMLA leave in employment actions. (dol.gov, n.d.) Returning to work mothers furthermore have the legal rights under FMLA to not be discriminated against because maternity leave was taken and have the right to return to an altered schedule or part-time work. (Lipsky Lowe LPP, 2019)

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<sup>3</sup> *Equity theory: Theory that employees are motivated when the ratio of their perceived outcomes to inputs is at least roughly equal to that of other referent individuals*

<sup>4</sup> *Employers are required to notify employees of their FMLA leave rights in two separate ways. First, employers must notify new employees of FMLA rights upon hire and secondly, employers must post FMLA rights for employees either electronically or posted at the business location (Duran, 2017).*

- **Pregnancy Discrimination:** Pregnancy discrimination involves treating a woman unfairly as a result of a pregnancy, childbirth, or a related medical condition. (EEOC, n.d.). The Pregnancy Discrimination Act (PDA) was an amendment to Title VII of the Civil Rights Act of 1964 that specifically prohibited pregnancy discrimination. (JUSTIA, 2018) PDA made illegal employment discrimination based on pregnancy, including hiring, firing, job assignments, layoff and any other term or condition of employment. (EEOC, n.d.)
  - **Harassment:** Harassment is employment discrimination and violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA). According to the Equal Employment Opportunity Commission (EEOC), harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy). Harassment becomes unlawful when the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating or hostile. (EEOC, n.d.) If the behavior distresses the victim enough to adversely affect their emotional well-being at work, then it constitutes a hostile work environment<sup>5</sup>. Employers are liable for the actions of the managers that result in termination, failure to promote or hire, and loss of wages.
2. **Learning Theory.** Learning theory is about changing the behavior of the employee in the organization resulting in altered attitudes, behaviors, knowledge, skill sets and competencies. Three common learning theories are classical conditioning (behavioral responses are based environmental stimuli), operant conditioning (behavioral responses are based on positive and negative reinforcement), and social learning (learning from the consequences of the actions of others)<sup>6</sup>. Karen's perceived attitude and behavior toward Ana could have been derived from operant conditioning (she was somehow being rewarded, positively or negatively for making Ana feel unwanted) or from mediated responses/behaviors learned from observation of others (Karen may have observed others, especially her superiors, treating women back from maternity leave in a similar fashion). (McLead, 2016)<sup>7</sup>
- **Compliance Training:** The industry that the employee works in dictates what areas the firm and its employees need to be compliant in. In the United States, most organization have to be compliant with Anti-Harassment Training, Workplace Safety (OSHA), Diversity Training and HR Law. Failure to comply with these training requirements can result in significant penalties to the company. (Quigley, 2018) The Human Resources Department/Compliance Officer is responsible for thoroughly understanding compliance laws, as well as providing adequate training to managers and employees about such laws. (Pribanic, 2019)

## **Problem Statement/Issue and Literature Support<sup>8</sup>**

### **Case Summary**

Karen hired the consultant to a fulltime position to replace Ana knowing full well that Ana had not stated that she would not be returning back to work. This treatment of Ana is not only unfair but is

<sup>5</sup> "When investigating allegations of harassment, the EEOC looks at the entire record: including the nature of the conduct, and the context in which the alleged incidents occurred. A determination of whether harassment is severe or pervasive enough to be illegal is made on a case-by-case basis" (EEOC, n.d.).

<sup>6</sup> Classical conditioning was made famous by physiologist Ivan Pavlov; Operant conditioning was made famous by B.F. Skinner; (Lussier & Hendon, 2018). Social learning was created by Albert Bandura (HRSolution, 2014).

<sup>7</sup> In this case we are hypothesizing that social learning was a factor in Karen's attitude and behavior and suggest that compliance training is a way to change that behavior of not just Karen but for the entire firm.

<sup>8</sup> Not to be shared with students until after they have conducted their own case analyses.

also in direct violation of the Family and Medical Leave Act of 1993 (FMLA). Under FMLA Ana is entitled to return to work in the same or an equivalent role. It was not Ana's job to "find" a new role in the firm but her boss's – Karen should have worked with HR before Ana returned to the work to make sure that an equivalent job was waiting for her. Penalties for violation of FMLA include actual monetary losses sustained by the employee as a direct result of the violation as well as other penalties. In 2017, "one employer was fined a penalty of \$200,000 for firing an employee improperly during FMLA leave." (Duran, 2017)

Second, the assumption made by Karen that Ana would not be returning to work after giving birth to her third child was an act of pregnancy discrimination and is illegal as per the Pregnancy Discrimination Act (PDA). Penalties for noncompliance of employee discrimination under PDA include back pay, reinstatement and punitive damages (Federal Labor Law Penalties). In 2019, UPS agreed to pay \$2.25M to settle a pregnancy discrimination lawsuit in addition to training of HR and supervisory employees. (Gallagher, 2019)

Third, Karen's comments regarding Ana not returning to work because she had a third child was not only discriminatory under PDA; it was harassment and created a hostile work environment for Ana. Ana not only had to deal with the whispers of others knowing how Karen felt about her family choices but also the embarrassment and degradation that resulted from having to ask around the floor each morning if someone would be out that day so she could use their desk to look for a new job. Employers are liable for the actions of their managers that result in employee termination, failure to promote or hire, and loss of wages. Employers cannot retaliate against employees for complaining to HR about a violation of PDA, ADA, or FMLA, or associated harassment." (Justia, 2018)

Last, Karen appeared ignorant of the discrimination and labor laws with regards to Ana's return to work. This may be a direct result of inadequate communication and training by the Human Resources Department on this subject.

### **Alternatives/Solutions Strategy<sup>9</sup>**

**Immediate Action.** A quick solution to this problem would be for the HR department to intervene and instruct Karen to apologize for any confusion and immediately reinstate Ana to her role. She must assure Ana that her role with the company remains secure and that a permanent cubicle/position would be assigned to her. Additionally, the consultant should be assigned to another role if no other positions were available.

**Policy Change.** All employees should be notified of their FLMA rights at the time of hire. We recommend creating an HR tool to track FLMA leave, to indicate when an employee would become eligible for FMLA and to notify both HR and the employee's supervisor of the employee's scheduled return to work date. The HR tool should contain information on all the policies required by law to be communicated to the employee and the employee's supervisor. The same information should be included in the Employee Handbook and provided at the time of hire.

**Training.** Compliance training should be provided to all employees within the firm. In this case the training should include FLMA so as to ensure employees understand FLMA rights and recognize leave and return to work protocols. (Duran, 2017) Anti-Harassment Training, and Diversity Training should also be included as part of overall firm compliance. Human Resources Management at this firm needs to focus on diversity training and inform employees that the organization has put in place a mechanism to give employees a voice in the decision processes, independent from their own identity.

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<sup>9</sup> *Ibid.*

This is achieved through training programs that increase the employees' diversity awareness. The training will provide the employees the ability to recognize the dangers of discrimination and the skills to decrease the likelihood that discrimination spreads throughout the organization. (Basaglia, Palomino, Simonella, n.d.) Management training should include basic HR techniques like the OUCH (Objective, Uniform in application, Consistent in effect and Has job relatedness) test. (Lussier and Hendon, 2018). The OUCH test is a rule of thumb and employee should use whenever you are contemplating any employment action. If Karen considered OUCH with regards to Ana's return to work, she would not have come up with her notions about Karen not returning to work.

**Disciplinary Actions.** Karen should be reprimanded for her actions regarding the harassment. The reprimand should include additional training on anti-harassment. Equal Employment Opportunity Commission (EEOC) Acting Chair Victoria Lipnic noted that "When considering best practices for anti-harassment measures, the focus should be on prevention. Waiting around until something rises to [be] legally actionable is going to be a problem for your organization." (Nagele-Piazza, 2018).

### **Conclusions and Observations Post Analysis**

It is lucky for the Universal Accounting Firm that Ana was not fully aware of her rights and selected to first seek aid from her HR Department rather than reaching out to a lawyer. We are confident that if Ana would have sought a legal solution, both civil and criminal, that UAF would have lost and would have had to pay penalties for the numerous discrimination and labor law violations. Furthermore, UAF would have received some bad press based upon these legal actions and their reputation as an accounting firm would have been tarnished.

One cannot help but ask, how could a firm of this magnitude have an HR department that would have allowed this to happen, even if this was purely accidental? This case highlights the fact that even for an organization as large as UAF, it is difficult to control the actions of all their supervisory employees. Managers do not always act in the best interest of the organization and therefore HR must be vigilant and continuously work to keep managers adequately trained, informed and to implement the firm's HR policies and rules.

The role of the HR Department, although not revenue generating, has evolved into a critical component of the firm, not only in terms of assuring firm compliance with HR laws but also as a partner with the firm's line managers. HR focuses on leverage the human assets in a firm and helping managers best utilize those assets – even those assets that may take a leave of absence and plan on retuning at a later date.

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## APPENDIX A

### Accounting Firm Organizational Chart

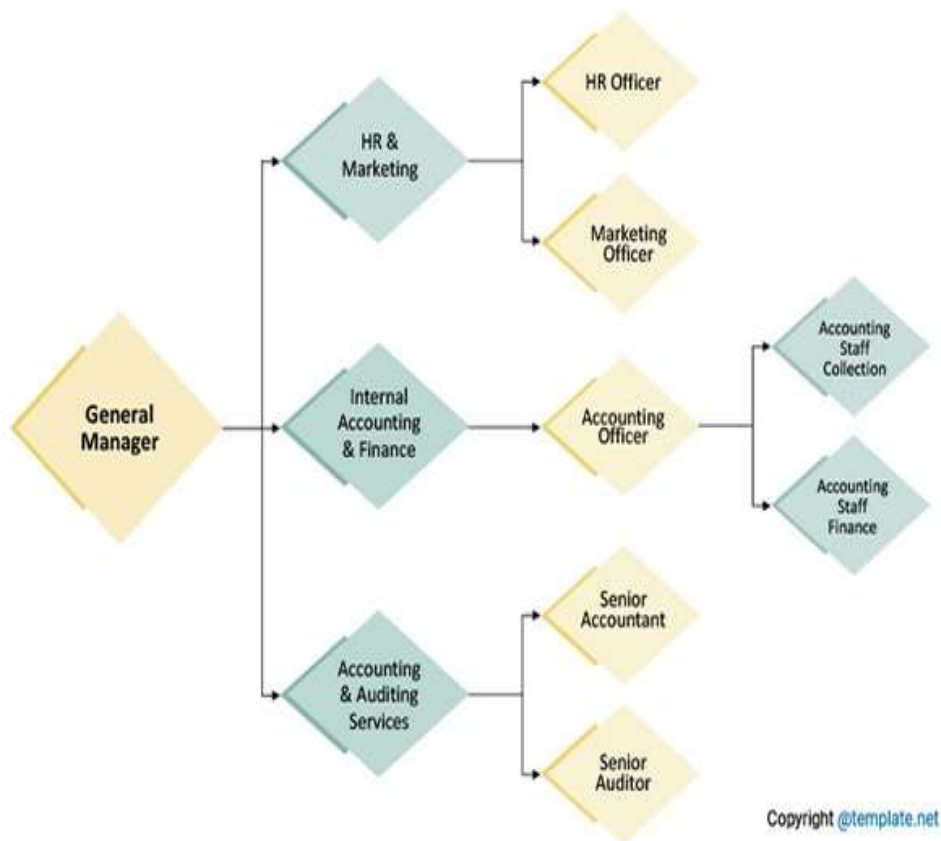


Fig. 2 Accounting Firm Organizational Chart | Source: (Template.net, n.d.)