

EMPLOYEE DISCIPLINE AND TERMINATION ADVICE FOR THE SMALL EMPLOYER

Annual Employment Law Seminar

November 15, 2012

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LAWS GOVERNING DISCIPLINE AND TERMINATION

EMPLOYMENT AT WILL

- No contractual duration for employment
- *The employee can quit at will; the employer can terminate at will. . . . This is true whether the discharge by the employer was malicious or done for other improper reasons. . . .*
- *An employee can be terminated for a good reason or bad reason... or no reason at all.*

Hinrichs v. Tranquillare Hospital, Ala. Sup. Ct.

BUT...

LAWS GOVERNING DISCIPLINE AND TERMINATION

If more than 3 Employees:

- **You cannot discipline or discharge an employee for serving on jury duty**
- **You cannot fire an employee for filing a Worker's Compensation claim**
- **You cannot fire an employee for complaining about safety violations**
- **You cannot discipline or fire an employee for serving on active military duty**

AND FURTHERMORE....

LAWS GOVERNING DISCIPLINE AND TERMINATION

If 15 or more Employees:

- You cannot *discriminate on the basis of race, color, religion, sex or national origin in the terms, conditions or privileges of employment.*

Title VII of the Civil Rights Act of 1964

-15 or more employees in each of 20 weeks in the current or preceding calendar year

LAWS GOVERNING DISCIPLINE AND TERMINATION

If 15 or more employees:

- Prevents Discrimination in Hiring, Firing, Promotions, Wages
- Prevents Discrimination in *other Terms and Conditions of Employment*
 - Requires equal treatment in discipline for similarly situated employees
 - Protects against hostile environment, harassment based upon protected class status
- Protection from religious discrimination requires efforts to accommodate employee religious conflicts with work rules

LAWS GOVERNING DISCIPLINE AND TERMINATION

15 or more employees:

Americans with Disabilities Act

- You cannot discriminate against an individual because of a real or perceived disability or a record of disability.
 - Cannot inquire about disability or require medical exam until after job offer made
 - Must keep employee info separate from personnel file and limit access
- You must make efforts to reasonably accommodate an employee's disability to allow them to perform the essential functions of the job.

LAWS GOVERNING DISCIPLINE AND TERMINATION

If you have 20 or more employees:

- You cannot discriminate in hiring, discharge or other terms and conditions of employment on the basis of age 40 or over.

Federal Age Discrimination in Employment Age

Alabama Age Discrimination Act

LAWS GOVERNING DISCIPLINE AND TERMINATION

RETALIATION

- **Employees who complain about any type of discrimination or harassment are protected from retaliation.**
- **Employees who participate or testify in a discrimination or harassment investigation or proceeding are protected from retaliation.**
- **Employees who complain about a company's violations or participate in a proceeding related to wage and hour violations are protected from retaliation.**

LAWS GOVERNING DISCIPLINE AND TERMINATION

RETALIATION

- **Employees who complain about violations or participate in Federal investigations under most Federal Regulatory statutes (i.e. OSHA), are protected from retaliation.**
- **Employees who make a claim for Worker's Compensation are protected from retaliatory discharge.**
- **Employees who complain about a company's violation of safety rules are protected from retaliatory discharge.**

WHY WORRY ABOUT DISCIPLINE?

Effective Discipline Policy – A Building Block

- Establishes expectations and predictability
- Applies consequences fairly and consistently
- Corrects inappropriate behavior and poor performance
- Helps rehabilitate employees with potential
- Protects against complaints and lawsuits

DISCIPLINE POLICY

- Reassures “good” employees
- Puts potential offenders on notice
- Protects employees from inappropriate actions of co-workers
- Gives violators the opportunity to improve

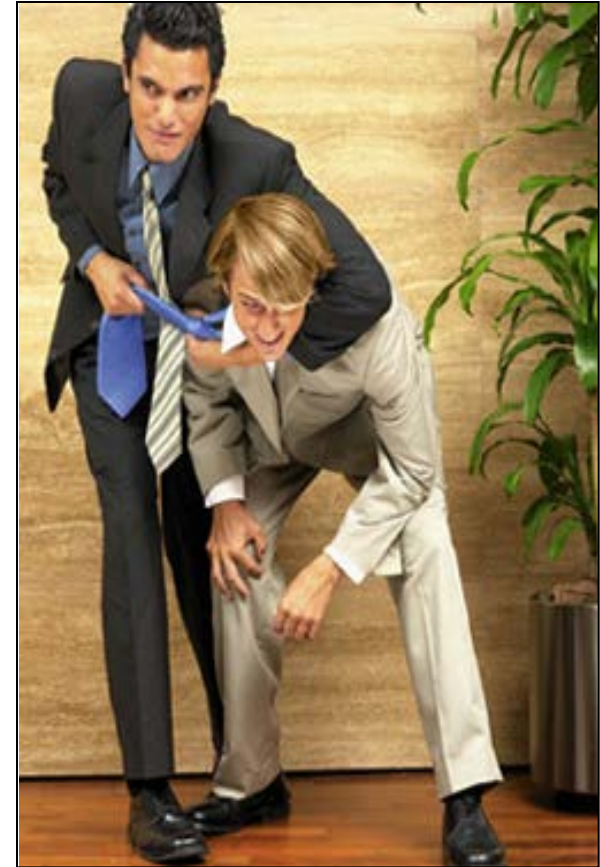
EMPLOYEE HANDBOOK

- Informs employees of policy
- Advises that the policy will be enforced
- Allows some flexibility



COMMON DISCIPLINE PROBLEMS

- Attendance
- Performance or behavior
- Safety



COMMON DISCIPLINE PROBLEMS (CONT.)

- Equipment and materials
- Substance abuse
- Harassment, fighting, or violence



CONSISTENCY

Managing the Discipline Process

- Always follow the company's discipline policy
- Respond to all rule violations immediately
- Use discipline only for genuine violations

CONSISTENCY (CONT.)

- *Discipline all similar offences in the same way*
- Make discipline *appropriate* to the offense
- Give the employee an opportunity to correct
- HR oversight and guidance
- HR should also monitor “consistency” of supervisors

INVESTIGATIONS

- Make sure you have all the facts
- Give workers the chance to explain
- Interview witnesses
- No hearsay (gossip)
- Avoid opinions
- Support conclusions with facts
- Document findings



DISCIPLINARY MEETINGS

- Talk privately and promptly after offense
- Be calm and objective
- Let the employee explain
- Have a witness



DISCIPLINARY MEETINGS (CONT.)

- Determine the facts
- Emphasize the seriousness of the situation



DISCIPLINARY MEETINGS (CONT.)

- Determine the best discipline
- Agree on a plan of action
- Document the meeting

Note: If you have progressive discipline policy, follow it!

DOCUMENTING DISCIPLINE

- Include key information
- Keep records for as long as policy mandates



KEY POINTS TO REMEMBER

Be consistent and follow company policy

- Help employees correct discipline problems
- Protect yourself and the organization by documenting disciplinary actions


DISCHARGE

- Use only as a last resort or for very serious violations
- Consult with HR and investigate carefully
- Follow required termination procedures
- Meet with the employee
- Document the meeting in a signed report



PRACTICAL ADVICE

TERMINATION

- **Get your Ducks in a Row**
 - Check documentation
(disciplinary memos, evaluations, etc.)
 - Red Flags? 
 - Protected class protection?
 - Can you articulate reason?
 - Consider precedent/consistency.



PRACTICAL ADVICE

TERMINATION

- **Conduct Termination Interview**
 - Be honest and specific
 - Have witness
 - Consider some severance if reason for termination is not egregious conduct
- **Carefully consider response to unemployment claim**
- **Refer all reference calls to one person**
- **Stay neutral in references**

PRACTICAL ADVICE

Leave of Absence/Return to Work Issues

- If more than 50 employees, FMLA governs
- If no FMLA, follow policy – treat everyone the same... surgery, childbirth, etc.

PRACTICAL ADVICE

- Can treat Worker's Comp injured employees differently
- No legal obligation to provide light duty
- If no policy, consider past practices

–what have you done before?



PRACTICAL ADVICE

ADA issues

- **If permanent impairment upon release to work, conduct job accommodation analysis**
 - Can job be modified to accommodate disability?**
 - Is there another available position which employee can perform even with disability?**



QUESTIONS