

Letting employees go

When you have no other choice **Interviewed by Chelan David**

Allowing a disruptive or poor-performing employee to remain on staff will only create a hindrance toward meeting business objectives. If handled improperly, however, giving notice of termination can result in a wrongful discharge claim. Prior to terminating an employee, it is important to conduct a fair and comprehensive investigation.

“Terminations should occur only after thorough investigation and in conjunction with established principles and procedures within the company,” says James Bradley, an executive partner at Secret Wardle.

Smart Business learned more from Bradley about how companies can best protect themselves from wrongful discharge claims and the importance of management setting a good example.

What are the most common types of wrongful discharge claims?

Some of the more common wrongful discharge claims in Michigan are brought pursuant to the Elliot-Larsen Civil Rights Act. These claims may allege constructive discharge based upon harassing conduct associated with race, gender, age or national origin, but they may also be based upon improper retaliatory discharge such as whistleblower-type conduct, wherein employees are terminated for raising concerns with management about improper conduct by other employees. Often they will include allegations of both improper conduct and wrongful discharge, and claims brought under this act may also subject an offending party — and the employer — to the payment of not only damages but also additional sanctions, such as attorney fees.

Other claims may be founded in alleged violations of conduct outlined in employee office manuals, such as smoking, taking drugs or other activities banned pursuant to established company policy.

How can companies protect themselves against wrongful discharge claims?

First, have a well-documented company policy in place that outlines employment



James Bradley
Executive partner
Secret Wardle

expectations and job responsibilities as well as unacceptable employee behavior. This manual should be updated regularly, and employees should be thoroughly trained on what the policies are and how the policies will be enforced.

Second, insert a signature page into the employee manual that each employee must sign. By signing this page and returning it to the personnel office prior to beginning work, the employee signifies not only his or her understanding of what constitutes unacceptable behavior but also what the ramifications will be for violation of those policies.

Third, remember that every termination of an employee is an invitation to a wrongful termination claim. Terminate each employee with the expectation that a lawsuit could ensue. Disciplinary actions should, in most cases, be progressive, well-documented and fully discussed with the employee. Witnesses to the offending behavior should be identified in the company personnel files, along with any tangible evidence of the violation. The penalty imposed should also be outlined in the file, along with reference to any prior conduct of this nature.

JAMES BRADLEY is an executive partner at Secret Wardle. Reach him at (517) 886-9024 or jbradley@secretwardle.com.

How should a company communicate its policies to employees?

In well-published, strictly enforced directives from the highest levels of the business. While it is important to have policies against sexual and other forms of harassment well documented in employee manuals, it is equally important that they be adhered to at all levels of management. In many ways, businesses are like families. In fact, statistics show that other than your family, you will spend more time at work than in any other social setting.

Why is it so important for management to set the tone in regards to appropriate behavior?

First, because it is the right thing to do, and secondly, because it can save your business the needless loss of productivity and money spent defending litigation. Businesses do not exist in a vacuum. They act through their employees. Likewise, their exposure for the acts of their employees depends in many cases upon how fast and in what way(s) management reacts to the behavioral issues of its employees. If management is accommodating of bad behavior, or worse yet, complicit in the acts, it may expose itself to additional liability to a claimant for allowing injurious behavior to continue. Damages in harassment cases are often a function of not only what the offensive behavior was but how long the harassment was allowed to continue and what steps management took to abrogate the offending behavior.

How should a harassment complaint be handled?

With compassion, understanding and seriousness. Always remember that this issue is important to the claimant who is feeling wronged in some way. By taking the allegations seriously and investigating the allegations thoroughly, businesses demonstrate to the complainant and their other employees that harassment is a serious issue within the company and that it will not be tolerated. <<