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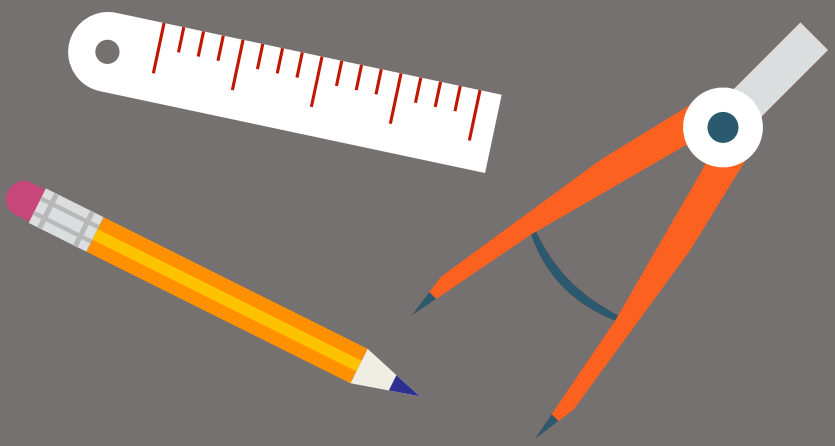
When Terminations Go To Court

9 Legal Cases To Guide You



PRACTICAL TOOLS

When Terminations Go To Court: 9 Legal Cases To Guide You

The difference between a legal termination that stands up and a wrongful termination heading to a hefty award against your company can often be a very thin line.

To provide you with some guidance on how to avoid lawsuits and not run afoul of the law, here are nine legal cases involving terminations, some of which were decided in favor of the employer, and some of them going the other way.

Hopefully, the cases and the issues they present can provide you with some guidance on some of the knotty legal personnel questions facing you.

1. Dealing with habitual lateness

As a preliminary step to dismissal, the employer (New York City in this case) issued a three-day suspension without pay to an employee for habitual lateness about which he had been warned before.

However, the employer lost and had to retract the suspension – and its plans to eventually dismiss the employee – because he argued he was entitled to a reasonable accommodation for his disability under the Americans with Disabilities Act (ADA).

His disability? He was a schizophrenic, and the medication he had to take to keep his condition under control made him sluggish in the morning. But he always made up the time by working through his lunch hour and stayed late to make up for lost time. The judge said that was a reasonable accommodation.

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The lesson: The case shows that you have to handle certain classes of protected people (people claiming ADA status are a big one) with some caution. You may have to offer reasonable accommodations.

Cite: McMillan v. City of New York

2. Taking special precautions with FMLA

After using up all her allotted Family and Medical Leave Act time off without pay, a teacher was still medically unable to return to work and failed to take a required fitness-for-duty exam. The employer, a school district, fired her and replaced her, but she sued for wrongful dismissal, saying the employer violated her FMLA rights because it sent out a formal FMLA eligibility notice three weeks late.

The employer won when the judge said she was terminated because she was unable to work, and the late notice had nothing to do with that central issue.

The lesson: The case shows that minor paperwork errors won't always sink you. However, if the paperwork had been done correctly, the lawsuit might have been avoided altogether. The employer still incurred legal costs defending itself.

Cite: Bellone v. Southwick-Tolland Regional School District

3. Retaliation claims continue to soar

After leaving their employer (the Coyote Ugly chain of bars) on not-so-good terms, a group of female employees filed a claim with the Department of Labor's Wage and Hour Division for unpaid overtime and hours worked off the clock.

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While the case was pending, the president of the company posted a comment on the company's website saying "f--k that b--h," referring to the lead plaintiff. The lead plaintiff's supervisor also posted a comment on Facebook, saying "Dear God, please don't let me kill the girl that's suing me," adding, "Why does everyone sue? I'm tired of these b-----s taking their issues out on the company."

The ex-employees then filed an additional lawsuit for retaliation for interfering with their right to claim fair pay.

The company tried to have the retaliation case thrown out, but a judge allowed it to proceed, forcing the employer to offer a substantial settlement over and above the amount of the wage-and-hour claim for overtime.

The lessons: The case holds at least three lessons for employers.

1) Be careful what you say on corporate websites or on social media;

2) Treat departed employees with dignity and refrain from heaping insults on them as they are on their way out the door; you probably only give them ammunition to sue you if they get their backs up; and

3) Be careful not to retaliate against employees for exercising their legal rights. Often, disgruntled employees lose their original case against an employer, but win on retaliation – it's the fastest-growing type of suit in employment law – and easier to win for plaintiffs' attorneys.

Cite: Stewart v. CUS Nashville

4. E-mails must be preserved for legal disputes

This case established that record retention obligations extend to electronic files as well, and that companies have the obligation to preserve all evidence when they have notice "that the evidence is relevant to litigation or when a party should have known that the

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evidence may be relevant to future litigation."

Often, there is a so-called "smoking gun" in a manager's or supervisor's e-mails that shows a particular bias and proves the discrimination a disgruntled employee alleged.

Conversely, electronic discovery may also help companies when it is discovered from a personal e-mail that an employee knew the company was right all along and that he or she was just out for a big payday.

The lesson: The case underscores the importance of this message to all managers and supervisors:

All your e-mails may eventually see the light of day in a court of law, so don't say anything that will embarrass you or your company. Don't fly off the handle.

Before proceeding to terminate anyone, better find out if there are any "smoking guns" hiding in managers' e-mails.

Cite: Zubulake v. UBS Warburg LLC

5. Independent contractor or employee

Workers in three different states in the same industry claimed they were employees and should be allowed to collect overtime, while their employers all treated them as independent contractors.

The workers were exotic dancers, all working under similar circumstances. These types of ongoing disputes are typically allowed to simmer as long as the workers continue to provide their services. But once an employer fires someone – or someone quits in a huff – a hefty claim for overtime follows.

The verdicts were split.

In an Arkansas case, the employer won a ruling that the dancers were indeed independent contractors, but a similar employer lost in Georgia and had to pay a $1.55 million settlement .

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And in California, another employer settled a bigger case for $12 million.

The lesson: Employers need to resolve employee or independent contractor status (or exempt vs. non-exempt status) while the people are still working at your company.

If there is any gray area, and if you have to get rid of them for any reason, you can be sure a hefty claim for overtime will follow.

Cite: E.D. Ark. 2012; N.D. Ga. 2012 and C.D. Calif. 2012

6. When disgruntled workers take to Facebook

Five off-duty co-workers used personal computers to post objections on Facebook to another co-worker's assertion that their work performance was substandard.

After the co-worker complained, all five were terminated.

The National Labor Relations Board determined that the Facebook exchange was protected activity (people have a right to openly discuss wages, working conditions and performance issues with each other) and that the firings were illegal.

The lesson: Employers should be extremely careful if they want to fire someone for a social media comment. It may be a protected activity to protest working conditions.

In another case, a current employee simply clicked "like" on a Facebook rant by a former employee calling a manager an "a--hole." That was a protected activity, too, and the termination was declared illegal.

Cite: Hispanics United of Buffalo, Inc.

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7. Digging into an employee's past

During the discovery phase of a lawsuit for wrongful termination, it was discovered that the fired employee had – previous to being fired – done something so heinous that it certainly would have been cause for instant dismissal, although the employer did not know about it at the time.

Even though the later firing over a completely different issue may still have been illegal, the new discovery severely limited the employer's liability.

It limited back pay and barred all front (future) pay, which often can get very expensive as litigation drags on.

The lesson: Employers need to keep digging into an employee's past even after a lawsuit for wrongful termination has been filed. You may find some new fact that can help the company immensely.

Cite: McKennon v. Nashville Banner Publishing Co.

8. Handling religious accommodations

Costco fired an employee for facial piercings because the employee had to be in touch with customers and the public's perception of facial piercings detracted from the company's image.

The employee alleged the firing was illegal religious discrimination because his facial piercings were an expression of his religion, the Church of Body Modification, headquartered in Round Rock, a suburb of Austin, Texas.

The judge upheld the termination, saying it would have been an undue business hardship on the employer to obligate Costco to make a religious accommodation for the piercings.

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The lesson: You never know these days what can be held to be a religion or not. The judge in the case had been asked to declare that the Church of Body Modification wasn't a real religion, but he sidestepped that issue. Fortunately for the employer, Costco could prove a compelling business reason for banning the facial piercings – they made customers uncomfortable and the company would have lost business.

Cite: Cloutier v. Costco

9. Engaging in the 'interactive process' for ADA requests

A supervisor in a field-drilling operation fired an employee with a slight disability who was unable to work hours as long as his co-workers, rather than consider his request for an accommodation to let him work shorter hours.

The supervisor told him that "other drillers who work 25 days a month might quit if I don't fire you."

That statement itself was held to be evidence of a discriminatory attitude on the part of the supervisor, and the termination was held to be a violation of the Americans with Disabilities Act (ADA).

The lesson: In requests for accommodations by people potentially covered under the ADA, you must always engage in an interactive process with the employee to see if a reasonable accommodation can be made without undue hardship to the employer. Shooting from the hip – or blaming a termination on co-workers – is not going to pass muster under the ADA. This supervisor might have won the case if he had promised to think about possible solutions and shown solid business reasons why the request could not be met.

Cite: Carter v. Pathfinder Energy Services, Inc.

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