

Chicago Ophthalmology Administrator Seminar

Employment Legal Nightmares:

Terminating Chronically Absent Employees

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Employment Legal Nightmares: Terminating Chronically Absent Employees

Employment-At-Will

Federal & State Law

Mitigating Risk

Case Study

Employment-At-Will

Default rule

Exceptions

Major Federal Employment Laws

Americans with Disabilities Act

Family & Medical Leave Act

Title VII

Age Discrimination in Employment Act

Americans with Disabilities Act ("ADA")

15 or more employees

20 or more weeks per year

Actual, Record, Regarded

Reasonable accommodations

Americans with Disabilities Act 2008 Amendments

“Disability” expanded

Effective January 1, 2009

Americans with Disabilities Act **Impact of 2008 Amendments**

EVERYONE

Reasonable Accommodations

Americans with Disabilities Act **Reasonable Accommodations**

Reasonableness

Accommodations

Family & Medical Leave Act ("FMLA")

50 or more employees

1,250 hours in prior year

12 weeks of unpaid leave

Illinois Worker's Compensation Act

Post-employment claims

Retaliatory Discharge

Fiscal Year	2000	2005	2010
Total Charges	79,896	75,428	99,922
Age	20.00%	22.00%	23.30%
Disability	19.90%	19.70%	25.20%
Equal Pay Act	1.60%	1.30%	1.00%
GINA			0.20%
National Origin	9.80%	10.70%	11.30%
Race	36.20%	35.50%	35.90%
Religion	2.40%	3.10%	3.80%
Sex	31.50%	30.60%	29.10%
Retaliation - All Statutes	27.10%	29.50%	36.30%
Retaliation - Title VII only	24.70%	25.80%	31.00%
Note: Claimants may assert more than 1 charge, therefore sum is greater than 100%			

Terminating the Chronically Absent Employee

- Employment-At-Will
- Contact Counsel

Mitigating the Risk in Terminating an Employee

Can't prevent all lawsuits
liability v. risk

Unemployment insurance

Mitigating the Risk

Legitimate Nondiscriminatory Reason

Application of policies and standards

Mitigating the Risk

Employee Handbook/Policies

- Employment-At-Will
- Attendance
- No-Call-No-Show
- Accident Reporting

Mitigating the Risk Job Descriptions

- Written
- Essential functions, knowledge, skills, and abilities

Mitigating the Risk

Disciplinary Steps and Cause of Termination

- All employees
- “Verbal” warnings – documented
- Written warnings – countersigned
- Probation & suspension

Case Study: No Fault Attendance Policy

In a rolling calendar year, no fault termination at 15 Points:

1 point for every tardy / early leave

2 points for any tardy / early leave over 2 hours

2 points for an absence with a doctor's note

3 points for any other absence

No-call-no-show 3-days in a row is deemed a voluntary resignation

Case Study: Interplay with the FMLA

Count qualifying leave

Case Study:

The Chronically Absent Employee

In the past 9 months, Emma has been . . .

. . . Tardy 6 times (less than 2 hours)

(6 points, 6 total points)

. . . Absent 1 time with a doctor's note

(2 points, 8 total points)

. . . Tardy by 2-hours 2 times

(4 points, 12 total points)

Case Study: Disability (or “Disability”)

Step 1: Disabled under ADA?

Step 2: Essential Functions
(w/ or w/ accommodation)

Case Study: Accommodation

Step 3: Determine accommodation

Case Study: Reasonableness

Step 4: Reasonable, or undue hardship?

Case Study: Termination

EEOC v. Seventh Circuit

Case Study: Lesson 1

Legitimate Nondiscriminatory Reason

No Safe Harbor

Does not prevent claim

Case Study: Lesson 2

Reasonable Accommodation

The new legal inquiry

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Questions?

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Thank you!!

We would be happy to discuss this or other topics more in-depth with you.

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