

Legal Bits

a publication
for the business-
minded

Electronic Edition

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UNemployment Law

Hopefully, our economy is finally on the upswing. However, employers are still having to cut costs and many employees remain in fear of losing a job. An employer that is contemplating terminating an employee should be cautious, even if due to economic reasons. On the other hand, an employee should be aware of his/her rights, especially with these challenging economic times.

AT WILL

An employment relationship in Oregon is generally deemed to be "at will," unless the parties agree otherwise. In an "at will" relationship, an employer may discharge an employee at any time for any reason, with some exceptions. Likewise, an employee may quit for any or no reason. The most common exceptions include a claim for discrimination or wrongful discharge, as briefly described below.

FOR CAUSE

An employee may negotiate an employment arrangement with a "for cause" termination provision, requiring that the employer may only terminate the employee for cause. In such an arrangement, a written employment agreement should define what constitutes "for cause." If not clearly defined, the employer and employee may find themselves in litigation and relying upon a judge or jury to determine whether the termination was for cause.

Even without a "for cause" provision in a formal employment agreement, an employee may turn to an employee manual or the sloppy practices of the employer to dispute a termination without cause. The

savvy employer will ensure that the "at will" nature of the employment is clearly understood and recorded in documentation provided to the employee.

WRONGFUL DISCHARGE

Oregon courts have recognized a claim for wrongful discharge. To prevail in a wrongful discharge claim, an employee must prove that he/she was discharged for fulfilling a societal duty or exercising rights of public importance. For instance, terminating an employee because the employee refused to make a false statement on an insurance claim form has been held to constitute wrongful discharge for fulfilling a societal duty. Exercising a right of public importance has been held to include resisting a supervisor's sexual harassment.

DISCRIMINATION

Federal law prohibits discriminating against race, color, sex, religion or national origin. Oregon law adds prohibition against discriminating on the basis of marital status, age if over 18, an expunged juvenile record, and the race, religion, color, sex, national origin, age, or marital status of a person with whom a person associates. As of last year, Oregon now prohibits discrimination based on sexual orientation or gender identity. Employers should revise any nondiscrimination statements to include such categories. Employers without such stated policies should consider implementing and drafting nondiscrimination statements.

Discrimination can involve not only how one is treated but a policy that may appear neutral but has a discriminatory impact on a protected group.

Most legal disputes over termination can be reduced to a single question: why was the employee terminated?

An employee may argue that he was wrongly terminated because he reported a safety violation to OSHA. The employer may argue that the termination was solely the result of poor job performance. The best strategy to avoid the he-said-she-said dispute involves preparation and documentation before the dispute even arises.

This Legal Bits only provides an overview of a few issues involved in employment claims. Please contact this office for more information or needed assistance.