Firing and the Law

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Before letting someone go, it's important to understand the laws that protect workers from wrongful terminations. Be cautious before firing anyone, and consult an attorney if an employee or ex-employee so much as voices a complaint that he or she has been treated unlawfully in the workplace.

According to the seven lawyers we consulted, the following are the most important laws employers should know when thinking about firing a worker. A few simple rules apply in abiding all of them: treat everyone equally and fairly, document employee performance, and carefully follow company policies.

Title VII of the Civil Rights Act of 1964

Also known as:
Title VII

What the law says:
Companies cannot discriminate against workers on the basis of race, religion, national origin, and gender. Various state and local laws also protect workers on the basis of sexual orientation and marital status.

What employers should know:
Treat all employees the same and never allow special circumstances. For example, if company policy says that five unexcused absences results in termination, then all employees with five unexcused absences must be terminated.

The Age Discrimination in Employment Act

Also known as:
ADEA

What the law says:
Companies cannot discriminate against employees over age 40.

What employers should know:
If a termination involves a severance package, workers over 40 get more time to review and rescind the offer. For individual severance packages, an over-40 worker gets 21 days to review the deal and

seven days to rescind after accepting. For group layoffs, those older workers get 45 days to review and seven days to rescind.

The Americans with Disabilities Act

Also known as:
ADA

What the law says:
Companies cannot discriminate against employees on the basis of physical or mental disability.

What employers should know:
Not every illness and disease necessarily qualifies as disability. The law says a disability must substantially limit major day-to-day activities, such as waking, sleeping, eating, or concentration. Still, people with disabilities are not exempt from losing their jobs for related reasons. For instance, a company can fire a worker if that person's condition causes them to be disruptive and violent in the workplace.

Retaliation Laws

Also known as:
whistle-blower laws

What the law says:
Companies cannot fire someone out of retaliation for lodging complaints of discrimination.
Anti-retaliation statutes are included in many laws, including occupation safety laws and the federal Sarbanes-Oxley Act of 2002, which says a person cannot lose their job because they report such problems as misconduct, illegal activity, unsafe conditions, or accounting irregularities.

What employers should know:
If a worker has a complaint of wrongdoing, have your HR department do a thorough investigation of the accusation. Just because a worker reports such a problem doesn't mean an employer can't fire him for legitimate, documented reasons, such as failing to show up to work. But the closer in time the firing is to when the person filed the complaint, the more the firing looks like retaliation, and the bigger the legal problem the company might have.

Family Medical Leave Act

Also known as:
FMLA

What the law says:
Full-time employees with a year of service get 12 weeks of unpaid leave to deal with their own or a relative's serious health condition.

What employers should know:
Employers cannot discharge a worker because she has taken FMLA leave or to prevent her from taking a leave. When she comes back to work, the worker must get her same position or an equivalent job. Just because a worker is on FMLA leave does not give him a greater right to a job than a person who is not. For example, a worker on leave can still get laid off if it's for good faith business reasons.

Employee Retirement Income Security Act of 1974

Also known as:
ERISA

What the law says:
Employers cannot suspend, discipline, fire, or discriminate against an employee to interfere with their rights to receive benefits from a 401(k) retirement plan, pension, severance package, healthcare plan, or long-term disability.

What employers should know:
Just because a person loses their job and incidentally loses benefits, it doesn't spell legal trouble for an employer. But an employee can claim the company fired him specifically to keep him from attaining a plan benefit or in retaliation for exercising ERISA rights. For instance, a company will run into problems if it let someone go the day before he was to be fully vested in a 401(k) plan or if it fired a worker and the next day laid off his department but gave those workers severance packages. Check an employee's benefits before you terminate them, and once again, be sure there's a legitimate, documented business reason for letting them go.

Sources:
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