

Disgruntled Employee Claims and the Importance of Record Keeping

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Terminating an employee is always difficult and stopping a former employee from asserting an unsubstantiated claim cannot be prevented. However, there are steps that an employer can take to maximize its success in defeating such claims.

New York State adheres to the employment at will principle which means that an employer does not need "cause" to terminate someone's employment. Notwithstanding this principle, employers should be cognizant that there are times when they might encounter a former employee who, subsequent to termination, files a claim based on some type of discrimination. While an employer certainly cannot forecast such a situation, it is good practice for an employer to keep detailed personnel files documenting all instances of employee misconduct. An employee's personnel file should keep contemporaneous notes about all instances of employee misconduct, including copies of all written warnings that may be given to an employee. Accurate and complete personnel files are extremely important when faced with what might be an unsubstantiated claim by a disgruntled employee.

In an effort to minimize employee misconduct, it is extremely important for an employer to set forth its expectations and policies from the outset. The best tool for doing so is in an employee manual/handbook where policies related to vacation, sick time, dress code, internet use, administrative policies, safety guidelines (depending on the nature of the industry) and the like are addressed. The employee manual/handbook should be presented to and reviewed with the employee on the first day of employment. Also, it is extremely important that the employer have the employee sign a form acknowledging receipt of the employee manual/handbook and that the same has been reviewed and explained to the employee. The signed acknowledgement should be placed in the employee's personnel file.

Although proper documentation is not always a failsafe tool, it certainly does not hurt for an employer to maximize its chances of defeating a frivolous claim.

Please contact me or the attorney in our firm with whom you typically work if you have any questions or want to explore some of the issues raised in this article at further length.

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