



ST. CLOUD STATE UNIVERSITY
CENTER FOR CONTINUING STUDIES



Key Employment Law Issues for New Clerks

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Goals and Outcomes for Training

Understand key legal issues related to interviewing job applicants

Discuss best practices for employee discipline and documentation

Discuss best practices to protect the municipality from legal claims

Dealing with “problem” employees

Discrimination Claims, Wrongful Termination Claims, and Hostile Work Environment Claims

Questions?

Interviewing Job Applicants

Key take away: All questions of job applicants should focus on this question:

- *Is there a job-related necessity for asking the question?*
- Does the question asked help determine the applicant's qualifications, skill level, or competence to perform the job duties?
- Both Minnesota and federal law prohibit an employer from discriminating against a job applicant based on the applicant's membership in a protected class (e.g. race, gender, age, sexual orientation, etc.).
- The purpose of the interview should be to determine the applicant's ability to perform the key functions of the job. If there are concerns about an applicant's ability to perform the job duties, those inquires should not be raised until after a conditional offer for employment is made.
- We want people to get their foot in the door first. Then, we can inquire into matters related to a person's disability, familial status, age, etc.

The protected classes are:

- Race
- Color – the darkness or lightness of a person’s skin
- Creed
- Religion
- National Origin
- Sex (This includes both gender-based discrimination and sexual harassment)
- Marital Status
- Disability
- Public Assistance
- Age
- Sexual Orientation
- Gender Identity
- Familial Status
- Natural Hair (CROWN Act 2023)

Hypotheticals

- The applicant who is significantly overweight. Can he/she perform the job duties?
- The applicant who appears to be pregnant. How much time will she need off from work?
- The applicant who appears to not speak English fluently. Where is your nationality?
- The applicant with the bad back (bad leg, limping, hunched over)
- The applicant who appears to be Muslim. Are you going to have required prayer times?
- The applicant who appears to be over 65. How long do you plan on working?
- The applicant who appears to be transgendered or dressing like the opposite sex. Are you a man or a woman? Are you going to be able to handle comments from our other employees?
- The female applicant who applies for a labor-intensive position. Are you sure you can handle this job?

Unintentional Discrimination (Disparate Impact)

- Does our process for hiring employees involve unintentional discrimination?
- Is there something about our process that makes it more difficult for certain individuals to get hired? (e.g. weight lifting requirements).
- Do we need to provide accommodations to certain applicants to ensure we are not discriminating against them (e.g. interpreter? An application that is easy to view for someone who is visually impaired? An application that can be read by someone who is blind?)
- Would a review of our hires make someone believe our hiring processes are discriminatory (even if unintentional)? (E.g. all recent hires are male, 20-30 years old, even though women or older individuals could perform the key job duties).

Ban the Box: Criminal Backgrounds

- MN law prohibits employers from asking an applicant about his/her criminal background until after the applicant has been selected for an interview or, if there is not an interview, before a conditional offer for employment has been made.
- An employer cannot ask about an applicant's criminal background on the job application. There are a few exceptions (e.g. employers who work with vulnerably adults, children, medical field, corrections officers, etc.)
- Why? We want to give individuals with criminal backgrounds a foot in the door. Once the applicant has their foot in the door, then you can inquire about their criminal background.



Applicant Wage History (New Law)

Preventing Pay Discrimination Act – Effective January 1, 2024

- Employers are prohibited from inquiring into, considering or requiring disclosure of the pay history of an applicant for employment for the purpose of determining wages, salary, benefits, or other compensation for that applicant.
- The applicant can still voluntarily share the information.
- This does not apply if the pay history is of public record.

Key Take-Aways

- Focus on the JOB DUTIES the applicant will be performing. This is our safe spot. The laws permit questions that relate to an applicant's ability to perform the key functions of the job.
- In most cases, it's best to ask questions that relate to an applicant's membership in a protected class after a conditional job offer has been made.
- If there anything about our hiring practice or policies that result in unintentional discrimination?
- Perception is reality: An interview may not intend to discriminate against the applicant. But if the applicant perceives they are being treated differently than other applicants, they are much more likely to file a claim against the employer for discrimination.

Employee Discipline and Documentation

Employee disciplining must be balanced against two key factors:

1. The need to address workplace issues with the goal of maintaining high levels of employee morale and employee productivity

2. Minimizing the likelihood of litigation

= Protecting the municipality from legal action

Minimizing the Risk of Litigation

- Here's the key thing to remember: **Perception is reality.** Employees who **believe** they have been treated differently or unfairly from other employees are far more likely to bring claims for discrimination or wrongful termination, **whether or not** the employee actually has been treated unfairly or different from other employees.
- An employee who is upset by their termination or treatment but believes they have been treated fairly and similarly to other employees **is far less likely** to bring a claim against their employer.
- The employee's perception is their reality. Therefore, the goal is not to avoid terminating or disciplining, but rather to ensure:
 1. The employee is provided information ("has knowledge") (what exactly have they done wrong, what was the violation of the company's policy, etc.).
 2. The information is clear and consistent (no mixed messages or varying messages from the employer's supervisors and/or HR).



The Importance of Documentation

Example: Terry – an employee who is consistently late.

1. Identify the issue with Terry.
2. Explain to Terry why it is important to be on time.
3. Provide a copy of the employer's policy (if there is one).
4. Determine whether Terry will receive a verbal warning, written warning, or be terminated.
5. Ensure that how Terry is being treated for being late is consistent with how other employees are being treated when they are late.
6. Keep documentation of who spoke with Terry, when they spoke with Terry, and what was said. In some cases, provide a written statement and have Terry sign it.
7. If Terry's tardiness improves and Terry is no longer late for work, great. Problem solved.
8. If Terry's tardiness continues, you have now started to create a record to prove Terry's consistent tardiness. This will be "evidence" if Terry is ultimately terminated and challenges his/her termination.



Documentation

The FIRST thing the City's attorney and employee's attorney will ask for is copy of the City's records related to the issue.

Examples (in Terry's situation):

1. Documentation of exact dates Terry was late for work. This should include what time Terry arrived for work (was Terry 2 hours late or 20 minutes late?).
2. Documentation of what was done to address Terry's tardiness? Is there documentation of a supervisor speaking with Terry? The documentation should include who was present during the meeting, the date of the meeting with Terry, and additional information, if helpful to the case.
3. If there is a pattern of Terry being late, document the file to show Terry's consistent pattern of being late.



MN Law Regarding Employee File and Reason for Termination

MN Law states:

- Upon written request by an employee, the employer shall provide the employee with an opportunity to review the employee's personnel record.
- An employee who has been involuntary terminated may, within 15 working days following such termination, request in writing that the employer inform the employee of the reason for the termination. Within 10 working days following receipt of such request, an employer shall inform the terminated employee in writing of the truthful reason for the termination.

Example of Documentation

- On July 23, 2023, Terry Smith was scheduled to start work at 8:00 a.m. At 7:45 a.m., Terry called Barbara Johnson, the team supervisor, to report Terry was running late due to car problems. At 9:00 a.m., Terry arrived for work. When Terry arrived, Barbara spoke with Terry and informed Terry our policy prohibits employees from arriving late to work. Barbara explained that it is important for Terry to be on time for work because without Terry running Machine 123, the other employees running Machines 456 and 789 cannot get their work done. Terry, being late, slows everyone else down. (Or, because Terry was late, we had to pull another employee from a different department to start operating the machines).
- On July 25, 2023, Terry Smith was scheduled to start work at 8:00 a.m. By 8:30 a.m. Barbara called Terry to find out if Terry was coming to work. Terry did not answer the phone. Barbara left Terry a voicemail. At 10:00 a.m. Terry arrived to work and said he/she overslept. Barbara spoke with Terry about being tardy for work. Terry was given a written warning. See attached.

Example of Written Warning

TO: Terry Smith

FROM: Barbara Johnson

DATE: July 26, 2023

I am writing as a follow up to our meeting and discussion on July 25, 2023.

On July 23, 2023, you were scheduled to start work at 8:00 a.m. At 7:45 a.m., you called me to report you were running late due to car problems. At 9:00 a.m., you arrived for work. After you arrived, we spoke about you being late and I reminded you that our policy prohibits employees from arriving to work late. We discussed the importance of being on time for work and how your tardiness affects the productivity of other employees and overall production. You were issued a verbal warning for being late on July 23, 2023.

On July 25, 2023, you were scheduled to start work at 8:00 a.m. By 8:30 a.m. I had not heard from you, so I called and left you a voicemail message. At 10:00 a.m., you arrived for work and reported you had overslept. You and I again spoke about our need for you to be on time and that being late for work is a violation of our policies.

This notice serves as your written notice of your continued violations of our attendance policy. If you continue to be late for work, termination of your employment may occur. [or, "if you are late any more times in the next 90 days, your employment may be terminated].

Barbara Johnson

Date: July 26, 2023

Employee Signature: Terry Smith

Received: July 26, 2023

Why is Documentation so Important?

1. Good documentation minimizes the likelihood Terry will claim he/she didn't know or didn't understand the issue or the employer's policies.
2. Good documentation shows employees are treated fairly and similarly. Terry is not being singled out.
3. Good documentation can serve as evidence that could be used if Terry challenges the termination or claims he/she was discriminated against because he/she is transgendered, African American, 65 years old, etc.
4. When written documentation is created and provided to the employee, if the employee disagrees with the claims against him, the assumption is the employee will do something to correct the error. (e.g. "I was not late on July 23, 2023. I arrived for work at 8:00 a.m., my scheduled start time).
5. If the documentation from the employer were provided to a Judge or Jury, it would be difficult for Terry to claim he was discriminated against when the evidence shows he was consistently late, and he was notified his employment could be terminated if he continued to be late.

The Keys to Documentation

We are all busy, so finding time to document all employee issues is tough. Here are a few practice tips:

Find the method that works best for you. Should you send yourself an email to remind yourself of the key facts? Should you keep a notebook at your desk to jot down notes until you can write a formal report?

Make sure to include dates on all reports. “Last Thursday” is not very helpful. July 22, 2023 is much more helpful. Our memories will naturally fade with time, so include the exact date.

Refer to employees by their real names and full names. If Terry’s nickname is “Bubba” that becomes confusing if the case goes to Court. Refer to Terry as Terry or Terry Smith. Sometimes you have many Barbara's at the office. Be clear about which Barbara you mean.

More Complex Discipline Issues

Terry's situation is pretty cut-and-dry. Be on time for work or be terminated. But what about a more complex case?

1. Follow the same steps we did for Terry.
2. What did Terry do that violates the employer's policy or expectations?
3. Why is it important for Terry to comply with the employer's policy or expectations?
4. Use numbers or concrete data when helpful: Between January 1, 2023 – July 31, 2023, you have produced 100 widgets. Our expectation is that you are able to produce 500 widgets in 7 months time.
5. If the issue is inaccuracies or errors, give specific examples.
"Terry, we have consistently seen repeated errors from you. For example, on July 23, 2023, you did not provide the X Report to Barbara as is required on a monthly basis. On July 25, 2023, you forgot to run the month end productivity reports. On July 27, 2023, you sent an email in error to Suzy instead of Barbara, which included data Suzy should not have received or seen."



Key Practice Points

1. **Consistency** – apply these same rules and practices to all employees, no matter their tenure, their positions, or how much you like or dislike them. Applying these rules and practices consistently will dramatically decrease the likelihood the employer will be accused of discrimination.
2. **Be Specific.** Reports that are vague or are unclear are not very helpful. Remember, the goal is to try to ensure Terry is “in-the-know” about what he is doing wrong, the employer’s policy, and why it is important for him to comply with the policy.
3. **Stay Organized.** We all have a lot of information and data to maintain. Figure out a system that works best for you. If an attorney asks for your records or you are subpoenaed, you don’t want to be scrambling to get the information together or to locate old reports.
4. **Timely Reporting.** A document drafted the day of or within days of the incident is much more valuable. Writing a report that is dated 6 months after the event seems suspicious, especially if the report is written around the same time the employee files a report or claim of discrimination.
5. **Remember the Audience.** Draft the report knowing that a third party may read it in the future. In other words, if a third party, with little to no knowledge of the employer’s policies, procedures, etc. picks up the report to read it, will they understand it? Does it make sense? Is there enough information?

Discovery and Litigation

Whenever a legal claim is brought against a municipality, there is a time period where the parties to the claim/lawsuit do “discovery.” Discovery is the process of exchanging information and known facts to a case.

Examples of Discovery:

1. Terry’s Attorney requests copies of documents from the employer related to Terry’s employment, including timecard records and policy violations.
2. Terry’s Attorney asks the employer (or the employer’s supervisor, team lead, etc.) to answers certain questions in a written format. (e.g. “Provide the dates the employer alleges Terry was late for work”).
3. Terry’s Attorney deposes Barbara Johnson. The value of a deposition is that the person being deposed (Barbara) is forced to answer questions, while under oath, and a written record of the testimony is being transcribed. The deposition testimony may be used later for motions or during trial.

This is why GOOD documentation is so important and critical to a legal case!



Unemployment Claims

When a terminated employee files for unemployment, the central question is whether the employee was terminated for “misconduct” or “not for misconduct.”

Employment misconduct means:

1. Any intentional, negligent, or indifferent conduct
2. On the job or off the job
3. That is a serious violation
4. Of the standards of behavior the employer has the right to reasonably expect of the employee.

**** The documentation is SO important.





The “Jokester”

- Example of a workplace “Jokester”
- What are the concerns?
 - Are the jokes affecting other employees?
 - Are the jokes affecting productivity?
 - Are the jokes offensive, discriminatory, etc.?
 - Do the jokes single out a single person or a certain group of people?

The “Jokester”

How to handle the “jokester”

- A. So long as the jokes are not offensive (e.g. racist, sexist, ageist, etc.), there probably is no need to rush to formal discipline.
- B. Evaluate the situation for a while. Are the jokes continuing? Are they getting worse (e.g. more frequent, more offensive?)
- C. All team members should be on the same page. At what point does the jokester’s behavior need to be addressed?
- D. Documentation – Be careful. If the jokester’s personnel file indicates concern about the jokester’s behavior and an issue later arises, it could be argued the employer knew of the jokester’s offensive behavior long before they addressed it. If no employees have complained of the jokester’s jokes, it is likely too soon to document the personnel file.

The “Complainer”

Example of a workplace “Complainer”

What are the concerns?

- Is the complaining affecting other employees?
- Is the complaining affecting productivity?
- Is the complainer making general complaints (“last year’s holiday party was boring”) or specific complaints (“My employer is not following OSHA requirements”)
- If the complaints are just generally a negative/complaining attitude, determine whether the complaints need to be addressed. Does a supervisor need to speak with the Complainer and explain how the complaints are causing problems with other employees?

The “Complainer”

- If the complainer is alleging the employer is violating the law, the employer should look into whether the allegations are true and determine whether the employer is in compliance. The Complainer does not need to be part of this evaluation or initial discussion (even though he/she may want to be).
- If necessary, the Complainer could be called into a meeting to demonstrate to him/her that the issue is being looked into and how the employer is complying with the law.
- Part of a “whistleblower” claim requires that the complainer have a “reasonable belief” about a violation of the law. If the employer shows the Complainer that the employer is complying, the Complainer may not have a “reasonable belief.”
- Going forward, inform the Complainer of the employer’s contact person he/she should report his/her complaints or concerns. This prevents the Complainer from telling everyone all of his/her complaints.
- The Complainer may also just be looking to feel important or validated. A quick conversation may help fill that need.
- Risk of a retaliation claim – if the Complainer makes a formal complaint to OSHA, the employer wants to ensure the Complainer is not retaliated against. He/she should not be treated differently than other employees because he/she is a complainer or has made a report to OSHA.

The “Complainer”

- Document, document, document.
- Having a written procedure for employees to make complaints is helpful. It puts everyone on the same page regarding where concerns should be addressed.
- Handling these issues internally is advantageous for the employer rather than having an external/third-party investigation.
- If adverse employment actions need to be taken against the Complainer, Human Resources (or an attorney) should be consulted before taking any action.
- Now suppose the Complainer starts missing too much work or is coming in late. Be sure to address that issue separately and distinct from his/her “complaints.” Document the absenteeism and/or tardiness and treat the Complainer the same as all other employees who have been absent or late too much.



The “Gossip”

Example of a workplace “Gossip”

What are the concerns?

- Is the gossiping affecting other employees?
- Is the gossiping affecting productivity?
- Is the gossip simply general gossiping? (“Suzy goes from boyfriend to boyfriend quickly”) Or is the gossip more specific ? (“Suzy is having an affair with the CEO of one of the employer’s competitors”).
- Depending on the circumstances, the employer may need to investigate to determine whether the gossip is true. This means credibility determinations may need to be made. The employer has the legal right to make those credibility determinations.
- The employer needs to be concerned about potential defamation claims made by Suzy. Suzy’s employer could be liable if they knew the Gossip was defaming Suzy’s character but did not do anything to stop it.
- Does the Gossip need to be terminated? If the gossiping is affecting workplace productivity or the employer’s potential for liability, termination may be necessary.

The “Bad Attitude”

- Example of an employee with a “Bad Attitude”
- What are the concerns?
 - Is the bad attitude affecting other employees?
 - Is the bad attitude affecting productivity?
 - Does the employer want to part ways with this employee?
 - If the answer is yes, establish a record (documentation) of addressing this person’s bad attitude. Don’t wait until you are fed up with this person’s attitude and decide to immediately terminate him/her without a well-documented file.
 - If the answer is no, set up a performance improvement plan and clearly identify the concerns regarding this person’s bad attitude. What are examples of their bad attitude? What is expected from the employee? What should the employee do to “improve” in the next 30 to 60 to 90 days?
 - Be careful this employee does not believe they are being singled out for their gender, race, age, etc. If the concern really is their bad attitude, the records and notes should address (specifically) the bad attitude to protect the employer.

The Employee with Mental Health Concerns

- Example of an employee with perceived mental health issues
- What are the concerns?
 - Is the person's mental health affecting other employees?
 - Is the person's mental health affecting productivity?

Does the employer have knowledge of the employee's mental health issues?

If the employee has already informed the employer he/she suffers with mental health concerns, the employer should consider whether the employee needs to take time off from work to address their mental health issues or whether the employee needs to be "reasonably accommodated." These are issues for HR to decide and fully evaluate.

If the employee has not informed the employer he/she suffers with mental health concerns, should the employee be approached if there are performance issues? If the concerns are serious enough, yes, but always ask questions that relate to their job duties. For example, it would not be proper to say, "It looks like you are very sad lately. Do you have depression?" Instead, "I have noticed your ability to run 10 rounds on the machine in an hour has decreased to about 5. Is there a reason why the machine isn't running at 10 rounds an hour anymore?"



The Employee with Mental Health Concerns

While HR should address whether the employee needs to be approached regarding their perceived mental illness, the main things for supervisors to remember is to:

- Not treat the employee differently if it is determined the employee has a mental illness. “Mental illness” is a disability under the law and therefore a person with a mental illness is a member of a protected class.
- Don’t share with other employees any knowledge of this person’s mental illness or perceived mental illness. That’s embarrassing for the person with the mental illness.
- Don’t say things like “She’s crazy” “She’s clearly bipolar.”
- Retaliation can be a big concern. Even if the employee has a mental health issue, be sure to treat him/her the same way as other employees. If it is learned the employee has mental health issues, a transfer in assignment, demotion, cut in hours, etc. is not recommended as it can be seen as retaliation against the employee due to their mental illness.

Potential Liability of Supervisors

- Generally speaking, employers are vicariously liable for the actions of its supervisors. This means that unless certain exceptions are met, a supervisor is usually not held personally liable for their actions.
- HOWEVER, it is EXTREMELY likely that if a claim or lawsuit is brought, a supervisor will be required to be deposed, testify, or answer certain questions about the supervisor's actions, statements, and reports.
- When a claim or lawsuit is commenced, all of the employer's communications – including written documentation, emails, reports, etc. – become open for review. For this reason, what you state in an email or report is very important. Proceed with caution. It's easy for a third-party to misconstrue your intended statement in an email. Every time you send an email you should consider how a third-party would view/interpret the email. Even emails or message exchanges between employees are subject to disclosure during a lawsuit or investigation.

MN is an “At Will” State

- Minnesota is an “at will” state, meaning, an employee can be terminated for whatever reason or no reason at all *So long as the basis for the termination is not discriminatory or in violation of the law.*
- So, while it is true an employee can be terminated for any reason or no reason, it is still important to ensure certain precautions are made to avoid potential litigation.
- **MN Human Rights Act and Equal Employment Opportunity Commission (EEOC)**
- At both the state and federal level, there are laws to prohibit discrimination against members of the “protected classes.”
- The MN Human Rights Office and EEOC have the authority to investigate claims (called “charges”) by employees of alleged discrimination in the workplace.



Discrimination

- Discrimination claims generally fall into one of these areas:

Failure to Hire

Failure to Promote

Hostile Work Environment

Termination of Employment

Failure to Accommodate

The protected classes are:

- Race
- Color – the darkness or lightness of a person’s skin
- Creed
- Religion
- National Origin
- Sex (This includes both gender-based discrimination and sexual harassment)
- Marital Status
- Disability
- Public Assistance
- Age
- Sexual Orientation
- Gender Identity
- Familial Status
- Natural Hair (CROWN Act, 2023)

EEOC Statistics

	2000	2022
Race	36.2%	28.6%
Sex	31.5%	27%
National Origin	9.8%	7.5%
Religion	2.4%	18.8%
Color	1.6%	5.6%
Age	20%	15.6%
Disability	19.9%	34%
Retaliation	27.1%	51.6%

Two Types of Discrimination

Intentional:

- An employer refuses to hire Gerald, who is 60 years old. The cost to carry Gerald on the employer's health plan will be high, compared to Jared, a 20 year old man.

Unintentional:

- An employer seeks workers to fill its machine operator positions. Time and time again, the employer hires only male employees. Although qualified, none of the female employees get hired for the machine operating position.

OR

- For its open position, an employer requires a physical endurance test. While the vast majority of the male applicants pass the physical test, none of the women pass the physical test.



Retaliation

- The most prevalent form of discrimination is retaliation. The law prohibits employers from retaliating against employees who file or serve as a witness in an EEOC charge, complaint, or lawsuit, inform a supervisor/manager of discrimination, request accommodations based on disability or religious practices, etc.

It is **illegal** to retaliate against employees by:

- Reprimanding the employee or giving poorer performance evaluations
- Transferring the employee to a less desirable position
- Engaging in verbal or physical abuse
- Increasing scrutiny
- Making the person's work more difficult

The “Charging” Process

If an applicant or employee believes they have been discriminated against, they can:

1. File a lawsuit in court.
2. File a “charge” with the MN Department of Human Rights or EEOC

There is a huge advantage to the employee to proceed with filing a charge with the MN Department of Human Rights rather than taking their case immediately to court.

- The Department will do an investigation at no charge to the employee
- The Department will help draft the “charge.”
- The Department can require an employer to respond to questions, inquiries, etc. and produce certain documentation. In a lawsuit, it takes a substantial amount of time before that information can be obtained by the employee’s attorney.

The “Charging” Process

- When the MN Department of Human Rights or EEOC receives a “charge”, the Department sends notice to the employer and can require certain information to be disclosed to the Department.
- Copies of reports, warnings, performance improvement plans, disciplinary actions
- Copies of the employer’s handbook, policies, etc.
- Copies of email exchanges or other correspondence
- Copy of the employee’s personnel file

The Department can also ask to speak with supervisors, HR staff, other employees, or other team leads.

Religious Accommodation

- A Frito-Lay employee alleged his employer terminated him because he could not train for the position on Saturdays due to his religious beliefs. Saturday is his Sabbath. After five weeks of training without having to train on Saturdays, Frito-Lay scheduled him to train on a Saturday and then terminated him after he failed to report for the training session.
- Frito-Lay was ordered to pay \$50,000, provide its employees with specialized training on reasonable accommodation, require all accommodation requests to be reviewed and decided by Frito-Lay's corporate office, and report requests for accommodation to the EEOC.
- **RED FLAG:**
An employee reports he/she cannot do something due to their religious beliefs. Or, the employee reports he/she needs to do something during the workday due to his/her religious beliefs.

Religious Discrimination

- A woman was hired by the City of Blue Springs, MO as a crisis counselor. At the time she was hired, she did not have an advanced psychology or social work degree or Missouri Licensure required for the position. When she was hired, she was told she would need to complete her education to be guaranteed continued employment.
- She started work 1996. In 2021, she disclosed to her employer she observed tenets of Native American spirituality rather than Christianity. She reported her supervisor started treating her differently. Her supervisor became unfriendly and critical and began to imply the employee was not a good fit for the job. She was excluded from employee meetings.
- She attempted to complete her necessary education (to meet the requirements for the position) but her supervisor did not respond to the employee's request to attend required meetings for her dissertation. Then, the supervisor accused the employee of being insubordinate for not getting permission to attend the dissertation meetings.
- She was passed over for promotions. It was not until her last day of work she alleged discrimination based on her religion.
- Evidence seems to suggest positive performance evaluations during her employment.
- Jury awarded her \$79,000 for back pay and compensatory damages.
- Court agreed with Jury: months of harassment and criticism by her supervisor because her supervisor wanted a Christian to be in the position.

Race-Based Discrimination

- A Somali woman applies for a position. During the interview process, the interviewer mentions several times there are several Somali people working at the workplace. The interviewer also asks about the woman's hijab and whether the applicant believes the hijab will affect the applicant's ability to operate machinery. The interviewer did not ask many questions about the applicants work history, previous job duties, skills, etc.
- Ultimately, the woman is not hired for the job.
- The woman files a complaint (charge) with the MN Department of Human Rights alleging she was not hired for the position because she is Somali.

TAKE AWAY:

- Even if the reason the applicant did not get the job was due to non-discriminatory reasons, the applicant's perception may be that she didn't get the job because she is Somali.

Sex-Based Discrimination

- An employer fired a long-time employee for being homosexual. The employee was fired after his employer told him it was “unbecoming” for the employee to participate in a gay recreational softball league.

OR

- An employee began her employment as a man. Later, the employee reported to HR the employee intended to “live and work full-time” as a woman. The employer was concerned how it would explain the employee’s transition to other employees and outside vendors. Ultimately, the employee was fired. The employee’s file showed a consistent history of top performance and no disciplinary issues.

TAKE AWAY? Are we treating this employee differently because he is a man? A woman? Homosexual? Transgendered? Will the employee perceive our decision was made because he is a man (she is a woman, he is homosexual, she is transgendered).

Disability-Based Discrimination

- A 16 year employee of Walmart has Down Syndrome. Walmart changed the employee's work schedule which did not meet the employee's medical needs. The employee requested to be put back on her regular schedule or for her start time to be adjusted by 60 to 90 minutes. Walmart refused and later terminated her.
- Records show the employee had consistently received positive reviews over the past 16 years.
- It was determined Walmart turned down her request regarding her schedule and later refused to rehire her due to her disability and need to be accommodated.
- Walmart was ordered to pay \$125 million. (FYI – the Judge lessened the jury's damage award)
- TAKE AWAY? We have to take certain requests on a case-by-case basis. It does not seem fair Walmart had to adjust this employee's schedule (when no one else's schedules were adjusted). In some cases, the law requires us to accommodate the employee's request.

Retaliation

- A Florida nurse reported to her supervisor and HR that one of the doctor's inappropriately touched her twice. The Hospital, over her objections, transferred her to a different location causing her "personal hardship" and resulting in her earning fewer overtime hours. The Hospital also prevented her from working on the doctor's patient files.
- The EEOC determined the Hospital retaliated against the nurse for her complaint of the doctor's inappropriate touching. Instead of addressing the doctor, the Hospital retaliated against the nurse by moving her to a different location which resulted in her earning less.
- The Hospital was ordered to pay \$50,000, update its sexual harassment policies, provide required training to staff members, post anti-discrimination notices, and provide annual reports to the EEOC.

Hostile Work Environment/ Wrongful Termination Claims

- In general, an employee cannot successfully win a lawsuit for “hostile work environment” or “wrongful termination” simply because he or she did not like the work environment or he or she disagreed with the reason for their termination.
- HOWEVER, it is a valid claim to state “I was discriminated against because I am a woman, and my employer created a hostile work environment by failing to stop the sexist comments that were made to me.”
- HOWEVER, it is a valid claim to state, “I was wrongfully terminated when I was terminated due to my skin color (my age, my disability, etc.)”
- Hostile work environment and/or wrongful termination claims CAN BE successful if there is underlying discrimination.

Thank You!

Questions?

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