



Virginia Workplace Law

When Your Super-Star Employee Loses His Sheen

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Imagine you are the owner of a business with about 50 employees. Your product is well-known and there are limited suppliers in the United States. Your best salesman generates about 50% of your company's gross sales – or about \$100 million a year. He is on salary plus commission under his employment contract and is earning at least three times as much as any other employee.

Now imagine that this super-star has a very messy personal life, and he's well-known around town for partying and womanizing. He's been divorced three times (once after being discovered in bed with another woman by his first wife), experienced a brutal custody battle, was accused of beating his second wife and now he's missed a key sales meeting in New York. Turns out he was found by hotel staff drunk and naked in a hotel room that's been trashed. He is hospitalized in New York (his mother rushed to be with him and says it is very serious). Upon his release, he enters a three-week rehab program.

He comes back to work. At the local Arts Council fundraising dinner, where your VP of Marketing is getting an award and your company has a table, the employee complains loudly about what a "stupid, stupid man" you are, how your company is exploiting his sales experience and contacts, he doesn't get paid enough for all the crap he has to put up with — and your company would be nothing without him.

Can you even fire someone for their outside conduct that reflects unfavorably on your company? What are your potential legal liabilities? Does it matter if the employee had an illegal drug problem? A booze problem? Would it matter if he were bi-polar or otherwise mentally ill?

Would the answer be any different if the employee were [Charlie Sheen](#)?

If we were the [employment attorneys](#) advising the company and its owner in this scenario, first we would look to the employment contract. Is this employment-at-will where the employee can be fired at any time for any reason that is not discriminatory? Are there notice provisions? Or are there specific guidelines for termination that must be met before the employee can be fired?

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We would make sure the personnel record is up to date and all performance-related conversations and observations are entered. We would look at how the company treated other employees in similar situations.

In light of the very liberal definitions of disability under the [Americans with Disabilities Act](#) (ADA), we would have to consider whether the employee is in a [protected class](#) and whether the termination would be in violation of the ADA. And if his “stupid, stupid boss” comment is made in front of co-workers, we would also consider whether this [public comment](#) is protected activity under the [National Labor Relations Act](#).

The stakes are high if you handle it wrong. Charlie Sheen was in fact fired after his off-the-clock antics, and in fact [sued](#) the studio, the producer and the production company for \$100 million. The complaint alleges breach of contract, conspiracy, and breach of state and federal laws that protect ill employees.

What do you do when your super-star employees lose their Sheen?

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