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Riggins Law Firm, P.A., wants you to be informed about your rights. Attorney Danialle Riggins will zealously represent you to protect your rights.

How To Avoid being Sued By Your Own Employees.

Top ten policies that will guarantee you lose in an employment lawsuit:

(1) *Fire all employees over the age of 40 to have a younger and hipper look in your medical office for your patients.*

Violation No 1: Firing employees for a new and younger look

While firing everyone over the age of 40 may increase and improve the appearance of your office, you may be violating your employees' rights under the Age Discrimination and Employment Act of 1976 (ADEA) and/or Chapter 760, Florida statutes. The ADEA is based on the Fair Labor Standards Act. The ADEA prohibits employers, labor organizations, and employment agencies from discriminating against individuals in employment on the basis of age if the individual is above forty (40) years of age or older. See 29 U.S.C §623. An employer is a person engaged in industry affecting commerce who has 15- 20 or more employees for each working day in each 20 or more calendar weeks in the current or preceding year.

The ADEA makes it "unlawful for an employer to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, his conditions, or privileges of employment because of such individual's age.

(2) *Fire anyone at anytime because all my employees are at will.*

"At-will" at any time with or without reason- employers thinks that it means fire at-will

- Wrong! It does not mean that employers can act in discriminatory manner
- still look at federal, state, and local anti-discrimination laws protected whistleblower
- public policy
- contract vs. at- will
 - implied contract possibly formed- project, terms more than salary duration termination/ disciplinary policies-- in place can also face a wrongful discharge
 - if handbook states that employees are entitled to receive- for example two written warnings for misconduct or poor performance before terminated-- maybe successful



(3) *Don't address infractions or violation for work procedure until you are firing the employee.* Most employers follow a policy for discipline- but you still have employees feeling or claiming that – they were never told that they were doing something wrong. If jury believes this—the employer is going to pay out. Juries condemn an employer's failure to give an employee notice of her failings and not giving them a chance to improve. Although the burden is on the employee to prove a wrongdoing—in the real world if the case makes it to a jury- the employer must persuade a jury that it was fair to fire the employee for unsatisfactory performance without first warning her that she was not cutting it. Spend enough time communicating with office staff and providing both positive and corrective critiques. Make sure that evaluations are both completed and truthful—balanced is best pros and cons

(4) *Pay no one overtime because they are all exempt under the law.*

- Salary DOES NOT automatically mean pay no overtime. FLSA requires an employee to pay time and a half for any work over 40 hours in a workweek unless the employee is exempt, regardless if the employee is paid a salary or by the hour.
- most of the office staff will be non-exempt therefore entitled to overtime
- other employees like may fall into exemptions categories
- like administrative-- Human Resource managers
- professional registered nurses, physician assistants , registered medical techs

(5) *Apply nepotism/favoritism and don't be consistent in hiring, firing, and discipline practices because no one will catch it.*

- Treat employees differently than comparable employees have been treated in the past
- Employees will remember disparate treatment even if employer does not—especially if terminated
- Usually hard for employer to justify the different treatment
- Intelligent consistency will keep you out of court

(6) Be quick to terminate employees who obviously have health problems.

- When an employer contemplates actions against an employee who they know and speculates has some sort of a medical problems – need to consider, ADA, FMLA, or state laws like workers compensation law-
- **Laws designed from retaliation**
- ADA- requires reasonable accommodation of qualified individuals who have a disability defined by the act
- ADA- reasonable accommodations may include additional equipment or work structures as well as additional time away from work or transfer into an available position for which the employee is qualified
- FMLA- employer must have 50+ employees
- FMLA- Employee has to be eligible to receive
- FMLA-Birth ,adoption, foster care or serious health condition
- FMLA 12 weeks unpaid leave

(7) *Hey, I'm a employer; the jury will definitely believe me. . . so write nothing down.*

- Although the title doctor will you give some credibility points with the jury, the title “defendant/employer” will diminish some of these points.
- Written documentation is the “ace in the hole”- hard to overcome
- Employer should strive to document important discussion with employee about performance
- Normal conversations need not be reduced to writing

- Writings at first could be by emails—if problem persist- there should be a meeting and memo that summarizes the employers efforts and the problem.

(8) *I don't have to worry about discrimination or harassment lawsuits because my handbook has an equal employment policy in it somewhere.*

- equal employment policy-- legal exposure for discrimination and harassment
- due to the boom of sexual harassment suits and discrimination claims-
- virtually every employer institute an equal employment policy stating that they do not and will not tolerate discrimination and have a hostile work environ.
- need more than bare- bones policy
- commitment to maintaining a workplace
- define prohibit conduct including examples
- the blanket statement how employer is committed to reasonable
- accommodation of religious beliefs and disabilities
- an internal complaint procedure that gives employees multiple avenues fore reporting violation of the policy
- A PROMINENT, EXPLICIT promise that the employer will not tolerate retaliation against nay employee who makes a good faith complaint.
- **Employees how it know about it**

(9) *I don't need an employee handbook because I am a small office and we're going to operate under a "family-style business."*

- Good thing to have and must be updated regularly
- Notice to all employees of policies and procedures

(10) *I terminated that employee for "cause" so can tell all the other future employers about what the employee did.*

- most employers required past reference-- especially in the medical community- liability is high for the former employer
- there's a difference between gossip and reference info-- sometimes-- fact not opinion
- effect of statement exposing a person of distrust , hatred, contempt, ridicule - causing shunned or avoided treatment, injuring the person office, occupation, business or employment
- published to third party
- Qualified privilege-- employers have
- but must be without malice; in furtherance of the welfare of society, generally or of the legitimate interests of particular groups or individuals
- codified 768.095
- get recent decision from Texas of hospitals the had to pay out for liability for not disclosing Dr.'s infractions and malpractice

Damages- What you could pay out

If you are unsuccessful at defending a claim, the employee may be entitled to the following remedies:

- Back pay and benefits.
- Liquidated damages.
- Reinstatement and front pay.
- Injunctions, compensatory and punitive damages, and attorney's fees and costs.

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