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For Employers Facing Their Own 'Charlie Sheen'

Employment Law Alert

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By: Jennifer Donnellan

Every employer has at least one challenging employee who makes the employee's manager want to rip his or her hair out. Very few employers, however, have an employee who thinks he is a "high priest Vatican assassin warlock" who is made up of "tiger blood and Adonis DNA" and who makes his employment complaints known through tabloid television shows, tweets and webcast rants.

Yes, Charlie Sheen, the "rock star from Mars," is a class unto himself and is engaged in a self-described "war" with Warner Brothers and the creator of "Two and a Half Men," Chuck Lorre. Sheen's latest move in this war is the filing of a lawsuit against Warner Brothers and Lorre alleging a variety of employment claims. These claims include disability discrimination under the California Fair Employment and Housing Act (FEHA), failure to pay wages as required by the Labor Code, and penalties under the Private Attorneys' General Act (PAGA).

Although most employers do not have a character quite as colorful as Sheen, all employers can learn something from the Sheen situation.

Make Sure Your Behavior Is Consistent

Sheen in his lawsuit makes a big point of how inconsistent Lorre and Warner Brothers' position has been. The lawsuit points out that in May of 2010, while both felony and misdemeanor charges were pending against Sheen, Warner Brothers negotiated a deal with Sheen to perform for two additional sessions on the show. Sheen notes that Warner Brothers and Lorre were fine with having Sheen as a convicted felon on the show. Sheen alleges this demonstrates that Warner Brothers and Lorre's claims are simply pretext for discrimination.

While most employers are not negotiating multimillion-dollar agreements with their problematic employees, many employers exhibit inconsistent conduct, and this leads to lawsuits. Frequently, managers and supervisors overly inflate an employee's performance ratings. When the employer

later terminates the employee, this performance review is usually the first exhibit that the employee uses to demonstrate that the employer's reason for termination was simply a pretext for discrimination. As Sheen did, the employee questions, "how could I have gotten such a good review [or in Sheen's case, been rewarded with a multimillion-dollar contract] and then months later be terminated? " Managers and supervisors should be directed to be thorough, accurate and, above all, consistent in their performance reviews.

Reasonably Accommodate Employees Who Voluntarily Enter a Rehabilitation Program But Don't Excuse Violations of Workplace Rules

On "Two and a Half Men," the production shut down while Sheen was in "rehab dealing with substance abuse issues." Employers in California with 25 or more employees must "reasonably accommodate" any employee who volunteers to enter a drug or alcohol rehabilitation program, provided that the reasonable accommodation does not impose an undue hardship on the employer. Most employers provide unpaid leaves of absence as reasonable accommodations. Employers are not required to shut down their facilities as that would be an undue hardship.

Allowing employees a reasonable accommodation to pursue treatment does not mean that employers must excuse violations of workplace rules. The law does not protect an employee from discipline for violating workplace rules, including rules for current drug or alcohol use.

Only Enter Into Employment Agreements That You Are Ready, Willing and Able to Perform

Sheen had a contract with Warner Brothers and Lorre, and Sheen alleges that they violated that contract when they canceled the show. Sheen alleges that he was guaranteed to be paid for at least eight more episodes that will not be filmed.

Employers do not usually enter into employment contracts with their rank-and-file employees. Usually, employers only have contracts with a few executives, if anyone. The other employees are employed on an at-will basis. An at-will relationship allows the employer or the employee to terminate the employment relationship without reason or notice.

However, some employers have inadvertently bound themselves in a contract through careless language. For instance, an employer who says, "you will have a job here as long as you perform well" may have just limited its ability to terminate that employee other than for poor performance. Employers should have employees sign written acknowledgements that the employment relationship is "at will" and should avoid making any promises regarding employment duration.

As most employers have the benefit of "at will" that Warner Brothers and Lorre arguably did not have, employers must protect that benefit.

Keep Criticism of Employees Limited to Those Individuals With a Reasonable Need to Know

Sheen's lawsuit alleges that Lorre made derogatory public remarks about Sheen. These include putting notes at the end of the credits saying,

- People viewing the show should not drink to excess and "avoid degrading yourself by having meaningless sex with strangers in a futile attempt to fill the emptiness in your soul."
- "We employ a highly paid Hollywood professional who has years of experience with putting his life at risk. And sadly no, I'm not talking about our stunt man."

Although the remarks did not refer to Sheen by name, the lawsuit alleges that these remarks "obviously referred to" Sheen.

It is understandable that a frustrated manager may want to vent about the employee; however, employees have privacy rights that should not be violated. For instance, information regarding an employee seeking drug or alcohol treatment is considered confidential medical information and must not be disclosed to anyone other than to those who have a reasonable need to know. Similarly, performance problems of employees should only be shared with the employee or individuals who have a reasonable need to know. Sharing an employee's performance problems with others (such as millions of television viewers) is simply not a good idea.

Pay Employees Their Final Wages When Terminating Employees

Sheen alleges that Warner Brothers failed to pay him his wages when it announced that it was not renewing the show (note: he also alleges that he should have been paid his wages for episodes that were not shot). Employers should remember that when they terminate employees, they must have the employee's final wages ready for them. If the employee terminates and has not given the employer any notice, the employer must provide the final wages within 72 hours of learning of the termination. Employers should notify employees that the paycheck will be available at the employee's regular place of employment and should not mail the final paycheck unless the employee gives express permission (preferably in writing).

Be Aware That Employees Can Sue for Labor Code Penalties on Behalf of Other Employees

Under PAGA, which some call the "Sue Your Boss" law, an aggrieved employee can bring a lawsuit for penalties for Labor Code violations that previously only the state could recover. Under PAGA, the employee can recover these penalties for himself and all similarly situated employees. The employee does not have to bring the claim as a class action to recover the penalties. If the aggrieved employee recovers these penalties, he keeps 25 percent of the penalties and the remaining 75 percent is remitted to the state.

Sheen alleges to be an aggrieved employee and seeks to recover penalties from Warner Brothers for not paying Sheen and all the cast and crew their final wages, including the wages for the final episodes that were not shot.

Engage in the Interactive Process With Employees Who Are 'Regarded as' Having a Disability

Sheen does not admit in public statements or in his lawsuit that he has any disability. However, Sheen alleges that Warner Brothers has stated that he is "manic and/or bipolar" and that he "is very ill." Notably, although Sheen denies that he has a disability, he alleges that Warner Brothers failed to reasonably accommodate him.

As illogical as this seems, a court has held that California law requires that employers reasonably accommodate employees whom it regards as disabled, even if the employee is not actually disabled.

All employers should engage in the interactive process with employees whom they regard as disabled or whom they believe may be suffering from disabilities that may need accommodation.

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Besides being entertained by the rants and diatribes, the lawsuit between Sheen and Warner Brothers and Lorre provides good reminders to employers on employment issues. Paying attention to these issues could keep you "winning."

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