

WIT AND WISDOM OF WINTHROP

WEBINAR RECAP

Earlier this year, the Winthrop & Weinstine employment litigation team held a virtual webinar entitled Behind the Curtain: A Plaintiff Employment Attorney's Perspective on What Makes a Compelling Case with special guest Chris Jozwiak, Partner at plaintiff's employment law firm Baillon Thome Jozwiak & Wanta LLP. A short summary of what was discussed is below; [watch the entire webinar here](#).

What does a plaintiff's employment litigator consider in deciding whether to take an employee's case?

- > It's commonly thought that the cases with the highest damages carry more incentive, but those pose unique challenges for trial because of the lack of sympathy that can be garnered for the plaintiff
- > Many statutes have attorney's fees-shifting provisions that incent plaintiffs' lawyers to take smaller cases with the hope of being able to collect their attorney's fees if they win

What steps can employers take to avoid being sued and/or improve their defense?

- > Proper and factual documentation
- > Draft all documentation with the understanding that a third party is going to review it
- > Create a roadmap as to why an employer terminated an employee
- > Documentation needs to be consistent, accurate, and recorded as close to the time an event occurred as possible

Do plaintiffs' attorneys tell their clients to request their personnel files after they are terminated?

- > It depends on the situation, who opposing counsel is, and whether requesting the personnel file may cause the employer to be more hostile
- > If the employer pads the file or does something out of the ordinary, it can be very useful for the plaintiff's case

What is best practice for employers handling personnel files?

- > Be consistent with how you document in a personnel file, use the same process, and include similar types of information in everyone's files
- > Don't add to a personnel file once you get a request for one
- > Make sure to contact legal counsel when you receive a request for a personnel file, so they can help determine what must be included, what may be missing, and what does not need to be included

What to expect when you receive a request for a personnel file?

- > In Minnesota, the employer must provide the personnel file within 7 working days after the request is made
- > The statute defines what should be in the personnel file, including job application, salary history, notices, withholdings, benefits, etc.
- > You don't need to include more than what is defined in the statute (Minn. Stat. § 181.960 and 181.961)

What mistakes do employers most commonly make?

- > Treating similarly situated employees differently: usually a plaintiff's attorney will do a comparative analysis on how the employer treated other employees in order to prove pretext
- > Issuing a PIP (Performance Improvement Plan) but then not following through with everything stated in the PIP

How can employers avoid these mistakes?

- > Provide thorough performance documentation; be sure that you are being accurate and consistent
- > PIPs are not required, so be thoughtful about whether you want to issue one and what you include in the PIP
- > Be familiar with your handbook and any employment agreement, and use those documents as a guide for continuing evaluation, documentation, etc.

What are some employment litigation trends?

- > There has been a rise in retaliation, discrimination, and wage and hour lawsuits
- > More matters are actually being litigated, and fewer matters are being resolved administratively
- > In 2022, we have seen an increase in litigation related to restrictive covenants/non-compete provisions

HAPPY HOLIDAYS FROM THE EMPLOYMENT LITIGATION TEAM!

WHAT IS YOUR FAVORITE HOLIDAY TRADITION?



Aimée Dayhoff
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"My favorite holiday tradition is going to cut down our Christmas trees (we cut down two) the Friday after Thanksgiving, and then we spend the entire afternoon and evening decorating the tree and the house for Christmas."



Laura Pfeiffer
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"My mom used to make us all play 'holiday charades' to make sure everyone was interacting, especially in the teen years when my kids and their cousins were very involved with their phones. We still play as a way to keep my mom's memory alive during the holidays!"



Chelsea Ahmann
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"We used to travel to a tiny town in North Dakota every year for Christmas, which involved 12 hours in the car, and inevitably at least one snowstorm. Even though it should have been miserable, I still remember those drives with my family as some of the best adventures."



Olivia Cooper
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"I love spending Christmas with my grandmother in Estes Park, CO. Christmas in the mountains is magical. The town puts up lights on every tree, there's always lots of snow, and as I kid I believed the elk tracks I saw were reindeer tracks!"



Cianna Halloran
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"Every other year we spend Christmas in Brazil with my mom's family; this year we'll be reunited after three years apart, due to the pandemic. We play a massive game of white elephant with the entire family, which can be 40+ people, and the laughter is uncontrollable."

Put the law to work.