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CONFIDENTIAL INFORMATION

HR manager fired for downloading, e-mailing himself company documents

by Tom Harper
The Law and Mediation Offices of G. Thomas Harper, LLC

A recent case before the federal appeals court with jurisdiction over Florida involved claims by a senior HR official at a Kia Motors plant who believed he was being directed to violate the law by reducing the number of African-American and older workers at the plant. After complaining about the allegedly illegal directive, the HR manager filed his own charge of discrimination with the Equal Employment Opportunity Commission (EEOC).

The employer realized that the HR manager had access to a lot of confidential information, maybe even sensitive personnel records that he could use in his EEOC charge, so it took steps to prevent him from using it. What can you do to prevent an employee from using your inside information to make a case against your company? Here's what happened at Kia.

Friends from Toyota reunite

Kia Motors hired Robert D. Tyler to work as an HR manager at one of its manufacturing plants in 2007, reporting to an old friend, Randy Jackson. Tyler had worked in HR for many years, including a stint with Jackson at Toyota Motors. Jackson was Kia's vice president of HR and administration and Tyler's immediate supervisor.

At Kia, Tyler was responsible for attracting and retaining quality employees. He was also responsible for establishing systems to monitor Kia's affirmative action compliance, and he set up a database to track the required EEO-1 reporting data. In addition, Tyler was responsible for providing HR support for up to 2,000 team members at the plant. Over his four years at Kia, he received several promotions and salary increases as well as bonuses.

Tyler claimed that after he began working at Kia, Jackson instructed him to track every applicant's sex, race, and age in preemployment assessments to control the number of hires who were African-American or older than 50. Tyler said he complained to Jackson several times that his directive was illegal.

According to Tyler, Jackson and certain "Korean coordinators" at Kia told him that they didn't want to repeat the minority population concerns at another vehicle manufacturing plant. Tyler claimed he was instructed not to hire production team members who were older than 50 and to reduce the number of African-American hires because there was an imbalance in the minority population at the plant compared to the nonminority population.

Tyler claimed that Jackson told him he couldn't let Kia get into the same situation as its "sister plant," whose

workforce was approximately 60 percent African-American. (The court noted that in January 2011, about 50 to 60 percent of Kia's team members were African-American.) To comply with the directive, Tyler was "forced" to keep a chart listing each applicant's age, race, and sex to determine who would receive job offers.

Mutiny begins

In late September 2010, Tyler decided that he couldn't just go along anymore, so he sat down and authored a memo outlining his concerns about Kia's allegedly discriminatory hiring practices and sent it to company officials. He felt that Kia management appeared uninterested in his concerns.

Around the same time, one of Tyler's subordinates in HR, Andrea Gogel, filed a charge of gender discrimination against Kia with the EEOC. Gogel claimed she had been denied a promotion to head of the department of team relations because of her gender. Tyler didn't notify anyone in upper management that Gogel was considering filing an EEOC charge because he "didn't feel it was his place to discourage her."

A few days later, on November 19, Tyler filed his charge with the EEOC alleging discrimination based on his national origin (American) and retaliation in violation of Title VII of the Civil Rights Act of 1964. In his charge, he claimed that he had reported widespread systemic discrimination to Jackson, but management responded by attempting to force him to retract his report and excluding him from weekly meetings with the Korean president of Kia.

Kia policies

As the court noted, Kia relies on "trade secrets and proprietary information in conducting its business," and it is therefore "highly sensitive" to any business information being disclosed to third parties outside the company. To protect its proprietary information, Kia began restricting the copying of files in 2008. Tyler was aware of the restrictions that prohibited employees from using any "peripheral access device," including thumb and flash drives, unless they were granted specific permission to do so. Moreover, while he was at Kia, he signed a confidentiality agreement stating that "[he] understood [that] all information on Kia's networks shall not be copied."

Tyler was included in the approval process for Kia's IT User Policy, which became effective in 2009. The IT User Policy stated:

> The electronic systems shall not be used to send or receive unauthorized copyrighted materials, trade secrets, or other proprietary information without prior authorization. . . . Team members who [violate] this policy or use the system to violate local, state, or federal laws will be subject to corrective action[,] up to and including termination, and may be held liable in a civil action or prosecuted under applicable criminal law.

In addition, Tyler had approved other employees' access to Kia's electronic systems, using a form titled "Network & Computer System Access Form." The form included the following language:

> The [Kia] network belongs to [Kia] and may be used only for official [Kia] business purposes. . . . [A]ny and all information/data stored or accessed on the [Kia] network is the sole property of [Kia] and shall not be copied, or communicated to unauthorized persons. . . . [T]he communication of [Kia] trade secrets to unauthorized individuals is expressly prohibited and may result in termination of employment. . . . All copies of [Kia] materials made in violation of this policy will be immediately returned to [Kia] upon termination of employment.

Company becomes suspicious

In early December 2010, an employee in the HR department informed Jackson that Tyler had requested detailed confidential employee information in a computer report. Jackson was concerned that Tyler might access the documents to support his charge of discrimination against Kia. As a result, on December 3, Tyler was asked to sign a statement in which he agreed that he wouldn't discuss his EEOC charge or similar claims against Kia with team members or use his position in HR to solicit or influence team members to make claims against the company. The agreement also stated that he wouldn't seek access to any files or documents that related to the merits of his EEOC claim in any way. Gogel was asked to sign a similar agreement, but she refused.

After Gogel refused to sign the document, Jackson asked the IT department to review the downloads that had occurred that day. IT found that Tyler had downloaded several files. In particular, on the morning of December 3, he downloaded 15 files that contained personal and corporate documents. When questioned about the documents, he responded that he had merely downloaded personal information from his work computer.

Jackson issued Tyler a new company computer. However, two weeks later, Tyler downloaded 44 additional documents. After IT discovered the downloads, Kia immediately began an investigation and suspended Tyler.

On December 24, Kia's counsel e-mailed Tyler's lawyer to schedule the return of all company data. Tyler returned 15 electronic files to Kia on December 29. Eleven of them were Kia documents, while four were personal documents.

Tyler claimed he had returned all the files in his possession, but Kia's IT records revealed that he had failed to account for four electronic files downloaded on December 3 and another four downloaded on December 14 and 15. As a result, Jackson reviewed Tyler's e-mails to determine whether any other files had been taken. He discovered that Tyler had forwarded hundreds of e-mails and documents from Kia networks to his personal e-mail accounts between June 1 and December 15, 2010.

Retaliation claim

Tyler's employment with Kia was terminated on January 6, 2011. In the termination letter, he was instructed to return all Kia files still in his possession. When he failed to comply, Kia filed a complaint against him in state court to retrieve its files. A year later, while Tyler's administrative charges were still being investigated by the EEOC, the court determined that his removal of the records wasn't authorized and issued a permanent injunction ordering him to return all documents to Kia within 10 days. He turned over more than 20,000 files on a thumb drive.

When the EEOC issued him a right-to-sue letter in 2014, Tyler sued Kia, claiming it had retaliated against him in violation of Title VII when it suspended him and later fired him for complaining about its discriminatory hiring practices and filing a charge of discrimination with the EEOC.

After discovery (the pretrial exchange of relevant information) was completed, Kia asked the district court to dismiss Tyler's lawsuit without a trial. The federal judge assigned Kia's request to a magistrate judge, who found that Tyler hadn't presented sufficient evidence to show that Kia's reasons for terminating him were a pretext, or excuse, for discrimination. The federal judge agreed with the magistrate judge's decision and dismissed the case. Tyler then appealed to the U.S. 11th Circuit Court of Appeals in Atlanta (whose rulings apply to Florida employers).

Court's analysis

The appeals court agreed with Tyler that an employer is prohibited from retaliating against an employee for "opposing any practice" made unlawful by Title VII. To prove his case, Tyler was required to establish a *prima facie,* or minimally sufficient, case by showing that (1) he engaged in a statutorily protected activity, (2) he suffered an adverse employment action, and (3) there was a causal link between the protected activity and the adverse action.

The appeals court found that Tyler had established a *prima facie* case of retaliation. The burden of proof then shifted to Kia to articulate a legitimate nonretaliatory reason for taking the adverse action—i.e., terminating him. The court found that Kia met its burden by showing that it had implemented policies to protect its confidential information and Tyler didn't have permission to e-mail confidential information to his personal e-mail account or download company documents to his personal computer.

Once Kia met that burden, Tyler was required to point to evidence showing that the company's reasons for the adverse action were unworthy of belief. He argued that Kia had authorized him to download and copy company documents throughout his employment. But the appeals court believed he had made only "conclusory statements" to support his retaliation claim. The court noted that he did "not cite [any evidence in] the record to support [his] argument. Moreover, he has not tried to cast doubt on other evidence that tends to show that his actions were unauthorized. He has not provided any evidence . . . demonstrating that he was authorized to copy (or download) [the] records onto his personal computer or to blind copy sensitive [documents] to his personal e-mail address."

Because Tyler failed to show that Kia's policies, motives, and reasons for his termination were pretextual, the appeals court affirmed the rulings by both of the lower court judges and dismissed his case. *Robert D. Tyler v. Kia Motors Manufacturing of Georgia, Inc.,* Case No. 16-16431 (11th Cir., July 12, 2017).

Takeaway

A company's trade secrets are protected in Florida even without a signed agreement by the employee. Nevertheless, employees with access to sensitive information have the ability to misappropriate confidential documents quickly and covertly. This case shows how you can rely on consistently enforced IT policies to protect your confidential information, even in cases involving claims of discrimination by senior officials.

You may contact the author at tom@employmentlawflorida.com. ✤

FAMILY AND MEDICAL LEAVE

How much FMLA leave is too much?

Bar none, the Family and Medical Leave Act (FMLA) is the hardest employment law to administer for employers and the easiest to abuse by employees. That double whammy often results in frustrated employers making rash decisions, which, of course, lead to lawsuits. And so goes the following case, in which the employer gave the employee more than the required amount of FMLA leave and then terminated him for taking several vacations during his time off.

Textbook FMLA leave

Rodney Jones worked as the activities director for Accentia, a long-term-care nursing facility, from 2004 until he was fired in 2015. His duties included keeping up with resident charting and care plans, providing calendars for programs and events, organizing volunteer programs, planning parties, arranging entertainment activities for the residents, and generally overseeing his staff to ensure that various programs were carried out. His job involved substantial desk work and planning, but his duties also included regular physical tasks, such as unloading vehicles, decorating for parties, shopping for supplies, and traveling around the community for outreach programs.

During the last two years of his employment, Jones also organized and participated in resident outings, which involved traveling around the community with residents, helping them get on and off the Accentia bus, and clearing paths for wheelchairs during the outings. Although he had five assistants to help him organize and execute activities, he preferred to be "hands-on" with the planning and was always physically involved in setting up for volunteer events.

Jones learned in 2014 that he needed to undergo shoulder surgery to repair a torn rotator cuff, and he would have to take time off work to recover from the surgery. Accentia determined that he was eligible for FMLA leave and granted him time off from September 26, 2014, until December 18, 2014, so that he could undergo the surgery and fully recover. He was scheduled to return to work on December 19. But on December 18, his doctor reported that he wouldn't be able to return to work and resume physical activity until February 1, 2015. The doctor's report also stated that he needed to continue physical therapy on his shoulder.

When 12 weeks isn't enough

Despite the recommendations of his doctor and his physical limitations, Jones still wanted to return to his job as activities director at the end of his FMLA leave. He understood his doctor's report to simply mean that he needed to continue physical therapy, not that he was prohibited from working entirely. He therefore asked his supervisor, Donald Daniels, to allow him to return to work on light duty.

Jones wanted to perform desk duty and computer work, with his staff covering the physical aspects of his job. However, Daniels refused to reinstate him as activities director until he could submit an unqualified fitness-for-duty (FFD) certification, which his doctor failed to issue before the end of his FMLA leave.

Jones maintains that if Daniels had allowed him to return to work on light duty, his doctor would've certified him to return to work in that capacity. But because Daniels was adamant that he couldn't return to work on light duty, Jones didn't ask his doctor for a light-duty certification. He instead requested additional time off from Accentia and was granted another 30 days of non-FMLA medical leave so he could complete his physical therapy. He claims that he felt Daniels forced him into requesting the additional leave.

Recovering on the beach

While he was on the 30 days of additional leave, Jones twice visited Busch Gardens in Tampa Bay, Florida, and went on a trip to St. Martin island in the Caribbean. He spent his time at Busch Gardens walking around and taking pictures of the park's Christmas decorations. He sent the pictures to his staff via text message, hoping to give them ideas for decorating Accentia's facilities. He also visited his family in St. Martin for three days. He posted photos from the trips on his Facebook page, including pictures of himself on the beach, posing by a boat wreck, and in the ocean.

Jones eventually returned to work on January 19, 2015, as planned, meeting with Daniels at the beginning of the day. During the meeting, he presented Daniels with an FFD certification confirming that he could immediately resume his job as activities director. Daniels responded by showing Jones the photos from his Facebook page, which depicted the trips he had taken while he was on medical leave.

When Jones asked how he had obtained the photos, Daniels responded, "You can thank your wonderful staff[—]they just ratted you out," but also remarked, "Maybe if you're going to have a Facebook account, you shouldn't have it on public." Daniels then informed Jones that "corporate" believed, based on the Facebook posts, that he had been well enough to return to work at an earlier point. Jones was subsequently suspended so that Daniels could investigate his conduct during his medical leave. Although he was given an opportunity to respond to the charges in a letter, he failed to do so. Several days later, his employment was terminated.

Jones sued under the FMLA, advancing two related but distinct types of claims. First, he alleged that

Accentia "interfered" with his right to take leave under the FMLA, and second, he claimed that the company "retaliated" against him because he chose to exercise his right to leave under the Act. A trial judged kicked the case to the curb without a trial, and Jones appealed.

Interference claim

Jones' interference claim was based on Accentia's refusal to allow him to return to work with certain physical limitations, even though it had allowed two other employees with different job functions to return with restrictions. He had requested on multiple occasions that he be allowed to resume his job as activities director on "light duty," but he was denied such a reinstatement.

Accentia's response was twofold: (1) that Jones forfeited his right to reinstatement when he requested and obtained extended medical leave at the end of his FMLA leave and (2) that Jones failed to provide an FFD certification, which the company uniformly requires employees to submit before returning from FMLA leave.

Importantly, the FMLA provides for only 12 weeks of leave and doesn't suggest that the 12-week entitlement may be extended. Jones' FMLA leave began on September 26, 2014, and ended on December 18, 2014. At the expiration of his FMLA leave, he requested and was given another 30 days of separate medical leave. Significantly, the additional medical leave wasn't an extension of his FMLA leave.

According to the court, an employer doesn't interfere with an employee's right to reinstatement if it terminates the employee after he takes more than the 12 weeks of leave permitted by the FMLA. Jones argued that was irrelevant because he asked to return to his job as activities director at the end of his FMLA leave but was instead forced to request an additional 30 days of medical leave. However, he wasn't "forced" to take the additional leave; rather, he requested the 30-day extension because he was physically unable to resume his job duties at the end of his FMLA leave.

In November and December 2014, Jones told his supervisor, Daniels, that he wanted to return to work on light duty. As part of that light duty, he hoped to perform his desk-duty functions but have his assistants perform the physical aspects of his job. But Daniels refused to allow him to return to work in a diminished capacity, instead requiring him to submit a full FFD certification before returning. The FMLA regulations provide that an employee returning from FMLA leave who cannot perform the essential functions of his job because of a physical condition need not be reinstated or restored to another position.

Retaliation claim

To support his claim that he was retaliated against for taking FMLA leave, Jones argued that Accentia offered inconsistent reasons for his termination. The formal termination stated only, "As you have declined to provide any additional information, the decision has been made to terminate your employment effective immediately based on the information available." According to Jones, the only explanation he was provided at the time he was suspended and then terminated was that he was being fired for abusing and misusing FMLA leave by engaging in activities, posted on his Facebook page, that demonstrated his ability to return to work earlier.

Jones wasn't told when he was fired that he had violated Accentia's social media policy or that his posts on Facebook indicated poor managerial judgment. And during his deposition testimony, Daniels cited myriad additional reasons that purportedly influenced his decision to terminate Jones, including his view that Jones unnecessarily prolonged his recovery and went on vacation when he should have been recuperating from his surgery.

Daniels could point to no company policy requiring Accentia employees to remain at home or refrain from traveling while they were on medical leave. Instead, he maintained that Jones violated the "spirit" of medical leave—to rehabilitate and recover. Daniels also remarked that the posted photos indicated that Jones didn't receive therapy for a week and that he was exceeding his medical restrictions. But a letter from Jones' physical therapist stated that he was a model patient who never missed a therapy session. Daniels also acknowledged that before terminating Jones, he was aware that Jones had never missed any therapy sessions.

On appeal, Accentia also argued that Jones was terminated for posting on Facebook photos that violated the company's social media policy, which states that employees can be terminated if their social media posts have an adverse effect on coworkers. Daniels claimed that Jones' posts had an adverse effect on Accentia employees, noting that they were anonymously reported and he heard gossip about them circulating throughout the workplace. Accentia maintained that the photos therefore created a morale issue among employees.

But Jones wasn't informed during his suspension meeting or in his termination letter that he had violated Accentia's social media policy. In addition, Daniels conducted no further investigation into the anonymous complaint, and neither he nor any other Accentia official could identify any employee who was adversely affected by Jones' Facebook posts.

Finally, there was evidence that the purpose of Accentia's social media policy, as discussed during managerial training, is to prevent employees from posting harmful or negative comments about the company's staff or facilities. According to the court, Jones' Facebook posts were clearly far afield from that area of concern.

Because Accentia offered multiple inconsistent explanations for Jones' termination (some of which were implausible), the court of appeals concluded that his retaliation claim should go to a jury. *Jones v. Gulf Coast Healthcare of Delaware, LLC* (11th Cir., 2017).

Learning from our mistakes

This case is chock-full of teaching moments. First, even though this issue didn't come up, after Jones exhausted his FMLA leave, the Americans with Disabilities Act (ADA) might have required Accentia to provide additional leave (which he was given) or reasonably accommodate his light-duty restrictions (which wasn't considered). Be cautious about demanding a complete release to return to work without restrictions.

Second, the FMLA requires employers to provide leave when employees meet certain requirements, but you aren't allowed to dictate that an employee stay home during his leave (as long as the activity isn't inconsistent with his restrictions). And finally, you should be careful and thorough in describing the reasons for termination at the time of termination. If you later add to, change, or try to spin the reason, your shifting explanations may be used to argue that none of your reasons are true. ✤

TERMINATION

Preparing for battle: how to avoid termination land mines

by Lisa Berg
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.

Termination meetings are one of the most challenging aspects of the employment relationship. Adequate preparation is the key to reducing your organization's exposure to potential claims. The following checklists will help you plan for termination meetings.

Preparing for a termination

As you prepare to terminate an employee, check these steps off your list:

√ Collect all documents that pertain to the employment relationship (e.g., personnel records, including attendance records, performance reviews, and disciplinary records).

√ Review the paperwork supporting the termination decision, and determine if credible documentation or evidence supporting the reason for termination exits.

√ Interview relevant supervisor(s), and conduct an independent verification of the facts (if possible).

√ If the supervisor failed to follow progressive discipline or document performance deficiencies, ask her to draft a memorandum to HR explaining the reasons for the employee's termination (and copy legal counsel).

√ Determine whether the termination decision complies with company policy.

√ Conduct a disparate treatment analysis (i.e., make sure similarly situated employees who engaged in the same conduct were treated the same way).

√ Delay the termination to allow for additional warnings, counseling, or opportunity for improvement if warranted based on the review of supporting documentation.

√ Review the terms of the employee's offer letter and employment agreement (if one exists) to determine the requirements for terminating him (e.g., prior notice or severance pay).

√ Review the employee's file for any posttermination contractual obligations (e.g., a confidentiality or noncompete agreement).

√ Assess the litigation risk with legal counsel, and review any pending or potential claims.

√ Prepare a general release if appropriate.

√ Prepare a "script" of what you are going to say and how you will respond to questions.

√ Decide whether to offer notice of termination or wages in lieu of notice.

√ Calculate the employee's final wages, and prepare a final paycheck.

√ Assess your obligation to pay the employee for any unused paid time off (PTO), vacation, or sick time.

√ Determine whether the employee is owed other moneys (e.g., unreimbursed business expenses, earned bonuses, stocks, or other securities).

√ Review the governing plan documents with regard to the termination of employee benefits.

√ Address any employee debts or outstanding loans.

√ If the employee had health insurance, coordinate the preparation of a COBRA notice.

√ Prepare internal termination paperwork in accordance with company policy.

√ Decide the employee's eligibility for reemployment in the future.

√ Consult with a public relations or crisis management firm if necessary.

√ Determine the appropriate procedure to facilitate the return of company property. Make a list of company property that needs to be collected from the employee (e.g., cell phone or other portable communication device, building card key or fob, car, parking pass, computer, laptop, portable electronic devices, employee handbook, keys, uniforms, credit card, ID badge).

√ Evaluate whether there is company information on the employee's home/personal computer or on the cloud. Check whether consent has been granted to access the cloud.

- √ Collect boxes/tape/bubble wrap/paper for the employee to pack up his personal items.
- √ Alert your IT and security departments about the employee's termination date/timing.
- √ Select a witness to be present during the termination meeting.
- √ Prepare an announcement of the employee's departure and decide the appropriate dissemination to coworkers, customers, and vendors.
- √ Plan the transition of the employee's job duties.

Just before the termination

Just before the termination meeting, make sure you have done the following:

- √ Ask your IT director to terminate the employee's computer access (both at work and remotely).
- √ Remove or change all of the employee's passwords before or during the termination meeting (e.g., computer system, online banking, and other remote-access services).
- √ Advise building security that the employee is no longer authorized to access the property. (Do *not* tell security the reasons for the separation unless the circumstances lead you believe such a communication is reasonably necessary to protect other employees or your property.)
- √ Consider whether any locks need to be changed, and change the entry code on keypad locks.
- √ Determine whether the employee needs to resign as an officer, a director, or some other management position.
- √ Remove the employee from the company's website.
- √ Transfer, cancel, or review the employee's e-mail and voicemail accounts.
- √ Prepare to notify the employee's contacts (e.g., customers, suppliers).
- √ Contact the bank and other financial institutions, as necessary, to notify them of any changes in signatory authority. Cancel the employee's credit card account authorization and request the balance and billing statement immediately.
- √ Change company passwords for online banking and other remote-access financial services.
- √ Review the employee's time sheets (if he is nonexempt)
- √ Carefully choose a private location and time, decide who will inform the employee of his termination, and determine where everyone will sit during the meeting. (Company reps should sit closest to the exit door for security purposes.)

At the termination meeting

Cover the following bases during the termination meeting:

- √ Meet with the employee in a private location.
- √ Inform the employee that the door is closed for privacy, but he is free to leave at any time.
- √ Inform the employee of the termination decision. Don't engage in a lengthy discussion with him or allow him to debate the company's decision. The emphasis should be on the future; don't rehash past discussions. Keep the message concise and clear.
- √ Refrain from interjecting personal commentary, derogatory remarks, or other extraneous information. Remain professional, and treat employee with dignity and respect.
- √ Inform the employee when he will receive his final paycheck and when he should expect to receive a COBRA notice, if applicable.
- √ If the employee decides to resign, request written confirmation of his decision.
- √ Discuss the employee's obligations with regard to the confidentiality of trade secrets (such as customer lists) as well as noncompetition or nonsolicitation agreements if applicable.
- √ Collect any company property in the employee's possession.
- √ If the company decides to offer a general release, present it to the employee.
- √ Conduct an exit interview if applicable.
- √ Give the employee his final paycheck if possible. If it isn't yet available, don't invite him back to the office to pick it up. Instead, tell him that it will be mailed when it's ready.
- √ Verify the employee's current address (for his COBRA notice and final paycheck).
- √ Explain the company's job reference policy (e.g., that you will only confirm his last position, dates of employment, and salary).
- √ Inform the employee whom he should contact if he has any questions after the meeting.
- √ Finish the meeting and accompany the employee to his office to gather his personal belongings. If the meeting is contentious or the employee poses a security risk, respectfully escort him to the exit, and inform him that his personal belongings will be boxed and shipped to his home.
- √ Do *not* allow the employee access to his computer.

Final steps after the termination

After the termination meeting, wrap up the remaining loose ends:

- √ Prepare a memorandum to the employee's file summarizing the termination meeting, and send a termination letter if appropriate.
- √ Inform the person who authorizes entry to the company's offices that the employee is no longer with the company and should be denied access.
- √ Remove the employee from the company's website, social media sites, and staff lists.
- √ Terminate the employee's status in the HR information system if applicable.
- √ Communicate the employee's departure to the rest of the staff, simply saying, "John Doe is no longer with the company." If employees question why, respond, "It is not the company's policy to discuss personnel decisions, and we respect employee privacy."
- √ Mail the employee's final paycheck and COBRA notice if he doesn't already have them.
- √ Ensure that the employee has been reimbursed for all additional compensation he is owed (e.g., commissions, expense reports).
- √ If the employee files a claim for unemployment, analyze whether the company will dispute the claim, consulting with legal counsel if necessary.
- √ Respond to any reference checks on the employee consistent with company policy.

Practical tip

The way you treat an employee during the termination meeting can affect what happens after the termination, including whether the employee commits an act of workplace violence or decides to challenge the termination, either through an administrative action or a lawsuit. Therefore, you are well-advised to follow the golden rule during all termination meetings: Treat others as you wish to be treated.

Lisa Berg is an employment lawyer and shareholder in the Miami office of Stearns Weaver Miller, P.A. You may reach her at lberg@stearnsweaver.com or 305-789-3543. ✤

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