

Reasons Given for Termination Are Critically Important

By Scott M. Wich August 15, 2018



Proper documentation is an important component of human resource management, an employer victory in a discrimination case shows. In circumstances involving termination, documentation can be of critical significance. Stating the reasons for a termination can, depending on the circumstances, play a pivotal role in the ultimate outcome of a lawsuit.

In this case, the employee had worked for the company for 18 years. He was fired for an altercation with a company manager. However, he was brought back to work pursuant to a last-chance agreement (LCA), which, among other things, required the employee to meet with an employee assistance program (EAP) counselor. The LCA provided that "any incident, considered to be insubordination, either direct or indirect, [would] result in his immediate discharge."

After he returned to work, the employee had a number of performance-related problems. On one occasion the employee, who is black, was assigned by his supervisor, who is white, to floor sweeping rather than more substantive duties. He complained about the assignment to his EAP counselor who, in turn, relayed the complaint to the company's employee relations department. While the EAP counselor believed the floor sweeping assignment might have been racially motivated, he never shared that belief with either the employee or the company.

The employee was fired after violating company rules prohibiting the leaving of foreign object debris in the vicinity of manufacturing areas. In the termination notice, the

company cited the employee's history of committing the same infraction. Although the employee disputed the infraction immediately preceding his discharge, he agreed that the earlier infractions had occurred. The termination notice stated that the termination was also based on his unauthorized use of overtime despite having been told of overtime rules.

The employee sued the company and alleged race discrimination and retaliation. On a motion for summary judgment, the case was dismissed by the lower court. The appeals court affirmed.

With regard to the claim of race discrimination, the appeals court held that the employee could not show that the reasons given for his termination were a pretext for unlawful discrimination. It noted that the unauthorized overtime work, after the employee had been advised of the rules for overtime, could be considered as insubordination sufficient to trigger termination under the LCA. Further, with regard to the performance issues, the termination notice cited the employee's history of infractions as the basis for discharge. It did not rely solely on the final occurrence. The fact that the employee disputed the validity of the last infraction, while not disputing the remaining history, was of no significance in the court's opinion.

On the retaliation claim, the court found that, while the employee had complained about his assignment to floor sweeping, there was no evidence that the company was aware the complaint arose from alleged racial discrimination. The fact that the EAP counselor believed the floor sweeping assignment might have been discriminatory was immaterial. As the court concluded, there was no basis upon which to conclude that the company knew that the employee was engaged in protected activity (i.e., complaining of race discrimination, as opposed to merely complaining of a work assignment).

Vaughn v. The Boeing Company, 3rd Cir., No. 17-1398 (May 22, 2018).

Professional Pointer: The words chosen for a termination memo can be a double-edged sword. As a best practice, a termination memo should clearly state the reasons for termination. However, employers should take care not to pile on other reasons that are not motivating the discharge. In such cases, it can be relatively easy for a former employee to show that the reasons stated were not the true reasons for the discharge—an essential element for a plaintiff in pursuing a discrimination claim.

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