

Implications of Wrongful Termination Suits in Industrial Facilities

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Abstract In every industrial facility, situations arise that involve the termination of employees. The process of termination can be a risky endeavor. Companies often face charges of wrongful termination when dismissing an employee. This paper provides unique insight into the legal ramifications of terminating an employee. The focus here is on legal precedent in cases that have involved addiction and lifestyle issues. Many factors often contribute to the merit or lack-there-of in the litigation of such cases.

Keywords: *termination, discrimination, addiction, manufacturing*

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1. Introduction

The primary subject matter for this case is internal policy, along with the United States Federal Guidelines that are required for terminating an employee. The setting is a manufacturing facility with 75 employees. The company is a privately held company. The leadership has been in place for many years and has had very little turnover. The case is designed for senior level and first year graduate students in leadership, management, ethics and organizational theory.

2. Case Synopsis

FabDEV is a company that manufactures high-end specialty products for clients. Their CEO Trish Barker has a special relationship with one of her subordinates. Chad Gates is her best friend. After the untimely death of Trish's husband, Chad is a constant source of support. Unfortunately, Chad has an alcohol addiction. After treatment, Chad has a relapse and Trish is forced to Terminate her best friend.

3. Case

Trish Barker walked away from a graveside ceremony for her husband Michael. His untimely heart attack at 52 was a shock to everyone Family members and a few close friends left the cemetery for a quiet meal. Chad Gates, a co-worker and Trish's best friend drove her away. For the past five years Trish had been very close to Chad. Chad was an openly Gay man. That fact gave Trish comfort that she could have a man around to fill Michael's void without anyone thinking something untoward was going on, so

soon after his death. Chad turned out to be a truly great friend. Six months had past and she couldn't believe what she was about to do.

FabDEV is a full feature Design, Engineering and Fabrication company. Trish Barker had been the CEO for 4 years. The company has the ability to take any idea to prototype to production. The facility is state of the art with laser cutters, rapid prototype equipment, 3d printers and every high tech piece of equipment on the market. Like any manufacturing facility, there is an element of danger inside FabDEV's labs. Hearing and eye protection are mandatory. Walking through the facility has the feel of a modern art museum, complete with prototype exhibits and awards.

The meeting was more like an intervention than a conference. Trish laid out the memo that she had carefully prepared. As she passed a copy to Chad, she couldn't help but feel bad. Chad had been her best friend for years. When Michael passed away, Chad was there every day. She had cried on his shoulder for hours. Now it had come to this. He looked at the memo, eyeing every bullet. With tears in his eyes, he said, "Is it really this bad?" Trish replied, It's worse than this. These were the only ones that were formally documented. I have smelled bourbon on your breath many times and never said anything about it. I feel personally responsible for your condition. You helped me when I needed it now I am going to return the favor. This is a dangerous place to work. I won't be responsible for you getting hurt in my shop. I have arranged for you to go to the Peacehaven Center to get straightened out. Right now you can't be here. It's dangerous for you and everyone else in the shop.

Chad was dumbfounded. He started to argue that she was wrong about his problem, but he knew she was right. As he stared out the window, he asked what if I won't go? Trish replied, "you will have to find work somewhere else". As this sunk in, he thought about all of his friends at FabDev, how much he liked his work, but most of all how

much he enjoyed Trish's friendship. Maybe she could see a bigger picture than he could. Turning to face her, he asked when do I check in? Trish replied they are expecting us there for lunch. "What do you mean us?" Chad reflexively said. Trish stood up and said "I am a going to help you beat this".

3.1. Treatment

Peacehaven was the best treatment center around. The center felt like a resort. They had pools, saunas, workout facilities, nutritionists and gourmet meals. The patients quarters were plush with king size beds, jetted tubs and multi head showers. Trish looked around and wondered aloud if she could stay for a week or so herself. Chad laughed and felt at home right away. There were people battling all forms of addiction. People were in treatment for everything from drugs and alcohol to eating disorders, both too much and too little. Trish left Chad and knew in her heart that she had done the right thing. Peacehaven was very expensive but it would be worth it to have Chad clean and back to work.

After a grueling 6 weeks of sobriety at the Peacehaven Center, Chad emerged as a new man. Clean and sober he went back to work and felt like a weight had been lifted off of his shoulders. He got more work done in less time than ever before. He had lost 15 pounds while at Peacehaven and looked as good as he felt. There was nothing but sunshine on the horizon for Chad.

While watching a band at a local bar, the temptation to have a cocktail was too great. He had been there many times and never had the urge to have more than a club soda. Surely, one beer wouldn't hurt. So he had one. Later that week he was pleased with his self-control in only having one. He decided to try again. That worked too. For a couple of months, Chad was fine with a random cocktail. He had made a few mistakes at work that were not noticed. A couple of times clients had refused products that were inferior because of some sloppy work, but no one had linked it to him. He would be fine on his current path.

3.2. The Wrong Path

While at a New Year's Eve party, one drink turned to two and to four then he couldn't remember how many. He woke up New Year's Day in a strange apartment. He had no clue how he got there and his head ached terribly. He needed a drink to settle down. He kept a drink in his hand for the rest of the day.

He went into the office the next day and started his daily routine. He began cleaning one of the machines as part of the daily maintenance. All of a sudden, the machine came to life and he narrowly snatched his hands out of danger. Every employee has a "lock out tag" that they use to cover the power switch when doing maintenance. His was on his lanyard. He had forgotten to lock out his machine and another employee had unknowingly started the machine. When Jim saw Chad, he immediately hit the kill switch. Jim was visibly shaken by the near miss. Chad didn't seem as bothered. They talked and Chad said he would report the incident to Trish for her to document.

Chad didn't tell Trish about the near miss. Somehow he knew she would know about his drinking. He decided to

go home for the day. He unfortunately neglected to tell anyone that he was leaving. As Chad opened his 3rd beer at home, he realized that he didn't tell anyone about his early exit. After his 6th beer, he rationalized that they would take up the slack for him.

Jim saw Trish in the break room and wiped his brow about the close call earlier in the day. Trish was thunderstruck, she told Jim that Chad had not come to her to report the near miss. Trish went back to her office to come to grips with the decision that she knew had to be made. She started to gather the paperwork to terminate an employee. She had documented all of the sloppy work that was because of Chad's lack of attention to detail. She had monitored and detailed all of the late arrivals and early departures, including today. She knew this would be much more difficult than the earlier intervention. She wasn't sure of how Chad would react but somehow she knew it would be bad.

3.3. Termination

As Chad arrived the next morning, Trish was waiting for him. She asked him to come to her office. She told him that he had become a danger to himself and the other employees. Even though they were very close friends, his services were no longer needed at FabDEV. She said that she wanted the best for him, but wanted the best for the company more. We need more than you have been giving. Thank you for all of your service but you don't work here any more.

Chad was furious. He still had some alcohol in his system and it only fueled his anger. He told Trish that it was her fault and she couldn't fire him. He said that his next stop would be a lawyer. He would sue FabDEV and make them take him back. Wrongful termination, he shouted, that's what it is. You can't get rid of me!!!

4. Instructor's Notes

The following section provides guidance in discussing the case with a group.

4.1. Objectives

The objectives of the case are to:

1. Understand the implications of the Americans with Disabilities Act.
2. Understand the implications of the protections of LGBT workers.
3. Develop an understanding of legal and ethical decisions when terminating employees.
4. Be able to recommend the best practice when disciplining and terminating employees.
5. Understand the proper applications of performance standards for employees.

4.2. Recommendations for Teaching Approaches

Before presenting the case, begin the class discussing the EEOC guidelines concerning disabilities and sexual orientation. Discuss the court rulings that have challenged

the ADA concerning alcohol. The Old Dominion case is very valuable here. The LGBT information is presented as a factor to consider in the termination and information of which to be aware. However, the sexual orientation of “Chad Gates” was never an issue in his termination. [<http://www.eeoc.gov/eeoc/newsroom/release/1-16-15.cfm>, https://www.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm, http://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm]

Discuss the Small Business Administration (SBA) guidelines on terminating employees. Specifically discuss the “at-will” policy in effect in every state except Montana and how that affects any decision to terminate an employee. The additional SBA guidelines on situations that protect employees from improper termination should be discussed in-depth. These include all federal protections, whistleblowers and employees on family or medical leave. [<https://www.sba.gov/blogs/how-fire-employee-and-stay-within-law>, <http://smallbusiness.chron.com/ethical-issues-terminating-employees-11765.html>].

Next, have the class split up into groups of 3-5 and discuss their previous work experience in terms of termination. Prompt them to evaluate the behavior of their supervisors where they have witnessed employees who have been terminated.

4.3. Discussion Questions for Small Groups before the Case is Presented with Typical Responses

1. **Think of your work experience. Have you seen a person be reprimanded or written up at work? Have you seen a person lose their job? What was the situation?**

Responses will vary, depending on the life/work experience of the student. Almost always, there will be a person in each group that has seen a person terminated or reprimanded. Focus in on examples and ask follow up questions about specific situations. [1]

2. **In that situation, did the person being terminated, reprimanded or written up cause a disturbance?**

It is common for a person being reprimanded or terminated to be upset and lash out. If a student has seen a situation like this, they can lead a lively discussion. [1]

3. **In the same situation did the employee feel like they were discriminated against? If so, was there something about that person’s background or lifestyle that would justify that belief?**

The discussion here could focus on ethnic background, disability and possibly sexual orientation. The responses will vary wildly depending on the demographics and diversity or lack thereof in the group. http://www.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm, www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm

4. **Did the other employees think the reprimand or termination was justified? Give some examples.**

This prompt may not be necessary for every group. If the discussion is lively, the group will have already gone over this point. If the group is younger

or lacks sufficient work experience, they may need the prompt.

4.4. Discussion Questions after the Case is Presented with Typical Responses

1. **Should Trish have provided the rehabilitation service that she did?**

This prompt is intentionally narrow and easy to answer in order to get the post case discussion moving. Some group members may be very surprised at the way the situation ended. [[2], <http://www.eeoc.gov/eeoc/newsroom/release/1-16-15.cfm>]

2. **Discuss actions of Chad Gates.**

The discussion here will be very broad. Some group members will focus on the compassion he showed Trish. Others may comment on his substance abuse issues or his sexual orientation. Yet others, will key in on his performance at work. Encourage an extended discussion on all of these points.

3. **After examining the Equal Opportunity Employment Commission guidelines for termination, do you feel like Chad should have been terminated?**

In a very broad sense, let the group talk about the whole situation from beginning to end. The following prompts will address specifics. [<http://www.eeoc.gov/eeoc/newsroom/release/1-16-15.cfm>]

4. **Does the substance abuse issues that Chad exhibits make a difference in his termination?**

The discussion here should be around the alcohol and whether or not the alcoholism should be considered a disability and afforded protection from termination. Make sure to include a discussion of example 46 from the EEOC guidelines. This item deals with an Federal Police Officer who is an alcoholic in treatment and is terminated after a “DUI” arrest. The lawsuit described involves the premise that he is not responsible for his alcoholism but the choice he made to drive while under the influence was separate and he was terminated. [[4], <http://www.eeoc.gov/facts/performance-conduct.html>].

5. **Does Chad’s lifestyle make a difference in the decision to terminate him?**

The EEOC guidelines do discuss termination because of sexual orientation, but this situation does not present any information about his lifestyle making any difference in the decision to fire Chad. In fact, early in the case, Chad’s lifestyle is a benefit to him as he provides comfort to Trish during the sudden passing of her husband. [[1,5], http://www.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm, www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm].

6. **If you were in Trish’s position would you have made the same decision?**

Opinions will vary on Trish’s actions. Some groups will argue that Chad should still have his job.

Others will argue that he should have recouped monetary damages for wrongful termination. Even others will argue that he should have been fired much earlier. In reality, Chad was terminated for his performance at work and with no other mitigating factors. He did consider legal recourse but chose not to file suit. [1,2,3]

5. Conclusion

If every workplace were a perfect workplace, there would be no need for guidelines to protect workers. Employees are discriminated against in many ways. The EEOC has the dominant role in providing guidance on what is fair practice and what is improper. Be aware that these guidelines are present not only to protect employees, but also to provide guidance to the employers as to what is best practice in terminating employees. The case presented here shows how fine the line really is when an employee with a recognized disability is terminated. His ability to perform his duties at an acceptable level was the deciding factor in his termination. A judge would ask the question: "If another employee had failed to lock out a piece of

equipment that could have led to serious injury to themselves or another worker, would they have been terminated?" In this case the answer is a clear yes. There are many examples in the literature where an employee is held to a higher standard than their co-workers and have won court cases on that basis.

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