

Joseph A. Starr, Esq., Starr, Butler, Alexopoulos & Stoner, PLLC



- Founding partner of Starr, Butler, Alexopoulos, & Stoner, PLLC
- Mr. Starr has earned a top-notch reputation with his extensive experience in the area of labor and employment law.
- His litigation experience includes the defense of race, religious, national origin, age, sex, and disability discrimination claims; harassment claims; retaliation claims; Family and Medical Leave Act claims; and wrongful discharge claims. He also regularly counsels businesses with regard to workplace violence, unemployment claims, OSHA investigations, EEOC/Michigan Department of Civil Rights Charges, National Labor Relations Board Unfair Labor Practices Charges and Department of Labor wage and hour disputes
- Mr. Starr is an “A-V” directory rated lawyer by Martindale-Hubbell and is listed in Best’s Directory of Recommended Insurance Attorneys
- From 2013 to the present, The Best Lawyers in America, selected Mr. Starr for inclusion in the category of Litigation - Labor & Employment
- Mr. Starr has been recognized as a Michigan Super Lawyer from 2007 to the present

Laurian C. Rutterbush, Esq.

ePlace Solutions, Inc.



- EPL Practice Manager for ePlace Solutions, Inc., a risk management company currently providing HR services to over 30,000 companies throughout the USA
- As an attorney since 2005, Ms. Rutterbush has focused on labor and employment law
- Prior to joining ePlace in Solutions, Ms. Rutterbush was engaged in the practice of law with a large law firm with offices throughout California
- Ms. Rutterbush has litigated all types of employment claims and regularly provided counseling and advice regarding a wide array of employment issues including wage/hour problems, harassment and discrimination claims, and handling employee leaves of absence
- Active member of the bar in California

Agenda

- At Will Employment
- Exceptions – Statutory and Other
 - Discrimination
 - Retaliation
 - Social Media
 - Others
- Termination Basics
 - Documentation
 - Making the decision
 - Delivering the news
 - Final pay, etc.

At Will Employment

- At will doctrine—
terminate for any
reason or no reason at
all
- Every state except
Montana



Exceptions – Swallow the Rule

Statutory –

Can't terminate for an “unlawful reason”

- Discrimination (Race & Pregnancy increasing)
- Retaliation
- Whistleblower
- Many more...

Public Policy Exceptions



Statutory Exceptions

Federal Laws : *Many* Protected Classes

- Title VII
- ADA
- ADEA

State Laws:

- Several states have anti-discrimination laws similar to the Federal laws.
- State laws may have additional protected groups
 - (e.g., pregnancy, sexual orientation, gender identity, religious dress, obesity)

Protections from Discrimination

The protections afforded to employees from discrimination have expanded beyond what is expressly stated in statute...

- **Pregnancy:** Pregnant employees must be accommodated in the same way employers accommodate disabled employees (Young v. UPS)
- **Religion:** Religious dress must be accommodated – even if a specific request is not made (EEOC v. Abercrombie & Fitch Stores, Inc.)
- **Obesity:** Severe obesity can qualify as a “disability,” which is a protected class ADEA (recent EEOC determination)
- **Sexual Orientation:** Title VII prohibits employment bias based on sexual orientation and gender identity (Hively v. Ivy Tech Community College of Indiana)

Risks When Employees Manage Social Media



Risks When Employees Manage Social Media



The NLRB and Social Media

- Section 7 protects employee rights to self-organize, join unions, assist unions, or to bargain collectively
- NLRB protecting social media postings (e.g. Facebook)
 - **Let's Vote On this Can you terminate?**

Bob is such a NASTY MOTHER F_____R don't know how to talk to people!!!!!!!

F__k his mother and his entire f___ing family!!!!

What a LOSER!!!! Vote YES for the UNION!!!!!!!

The NLRB and Social Media

- **Overbroad social media policies can violate employee's NLRA rights**
- **Policies cannot prohibit employees from engaging in protected activity like posting pictures of protestors in shirts with employer's logo**
- **Policies cannot prohibit disparaging comments without language limiting prohibition to not apply to protected activity**

Retaliation Basics

What is retaliation? What's the standard?

- Conduct that dissuades reasonable worker from making or supporting charge of discrimination

Why do so many plaintiffs bring retaliation claims?

How do retaliation claims arise?

- Adverse actions when people have requested or taken a leave of absence
- Whistleblower examples
- Disability-related claims – after a performance issue is addressed

Relevance of “At-Will”?

- Should not rely on “at-will” as the only justification for termination ...
- Be prepared to articulate facts that demonstrate a lawful (“good”) reason for the termination.

The Good Reason

Only as good as your documentation!

- **Documentation** for your “good reason”
- Critical in every case
- Write for the jury **and/or attorney** (your audience is not your employee)

Termination Basics: Making the Decision

- Review the documentation (i.e. go through the pre-termination checklist)
- Look for “red flags” (i.e., leave of absence, workplace complaint, protected class, etc.)
- Prepare to tell the employee

Termination Basics: Pre-Termination Checklist

- Identify the non-discriminatory cause or specific reasonable rule/policy violation and have the facts.
- Make sure all of the proof is collected and corroborates facts and reasons for the decision and confirm that the investigation was done fairly.
- Has the rule or policy that was violated been applied consistently?
- Review the personnel file for prior documented disciplinary action.

Termination Basics: Preparing for the Meeting

- Prepare your “talking points”
- Ask another manager or HR professional to attend (take notes)
- Pick a time and place for the meeting (private area)
- Review your state’s laws regarding final pay
- Call HR professional / employment lawyer for objective viewpoint

Termination Basics: What To Say

Do ...

- Give brief explanation and facts.
- Be direct and give reason.
- Let the employee respond, but keep control
- Make it clear the decision is final

Also explain how...

- The change affects benefits and final paycheck
- You will verify employment for the employee in the future

Termination Basics: What NOT To Say

Do not ...

- Engage in small talk
- Apologize
- Get personal or emotional
- Sympathize or say you know how the employee must feel
- Lie
- Try to justify or defend your decision, the decision is final

Termination Basics: After the Meeting

Do ...

- Collect company property
- Reiterate that the decision is final.
- Give the employee a contact person to call for future questions
- Give the employee an opportunity to collect their things and escort them out of the building

Do not ...

- End the meeting on a “bad note”
- Allow the employee to continue to work

Questions & Answers

Call us at 800-387-4468



Question not answered?

Send an email to:

HRDirectors@ePlaceInc.com

Thank You for Attending!

The Inevitable - Termination

