

Sex, drugs, and other drama in the workplace

When people ask me what I do, my typical response is, "I handle sex, drugs, and drama for employers in the workplace." I usually get red faces, chuckles, or curious looks in response to this description of my job—employment law attorney.

My typical day is filled with calls from business owners, CEOs, human-resource professionals, and other members of management. All the calls have one thing in common: employee drama. For your reading pleasure, I compiled a few questions that I frequently field from my desk. The answers may surprise you.

We have a pregnant woman and we assume she can't do her job safely. We can require her to take a leave of absence, right? Wrong. There are several laws that protect pregnant woman and disabled individuals from employment discrimination.

Employers who "assume" an employee is unable to work safely due to a medical condition can quickly run afoul of these laws. Even if an employee does have restrictions, you still have the burden of assessing whether you can offer an accommodation that will allow that employee to safely perform his or her job duties in the workplace.

Such accommodations may include modification of duties or schedule, work from home, or a transfer to another position.



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LEGAL

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Doesn't the concept of "at-will employment" mean we can fire anyone for any reason at any time? No. "At-will employment" simply means you can terminate an employee for any reason, so long as it is not for a reason that violates the law.

I can terminate my secretary for wearing yellow shirts, but I can't terminate her because

she is gay, Catholic, Hispanic, a veteran, or for countless other unlawful reasons.

Because of this, it is good practice to have written documentation that supports your reason for invoking the "at-will" standard. That way, you will have evidence that your "at-will" reason is lawful, and you will be able to defend a terminated employee's claims to the contrary.

A background check revealed one of our job applicants is a convicted felon for child sexual assault. Do I have to hire him?

Probably. In Wisconsin, it is generally unlawful to discriminate against job applicants and employees who are convicted felons, unless their conviction is substantially related to the job.

Determining whether a job is "substantially related" rests upon whether it is likely that the individual will reoffend the crime while working in the job.

In a case involving child sexual assault, unless the job requires working unsupervised among minors, you will have a tough time proving it is "substantially related."

An employee complained that her manager sexually harassed her at a bar after work. Because this occurred outside the workplace, we don't need to do anything, do we? Oh, yes you do! When it comes to employment law, a manager is always a manager and everywhere a manager.

While you do not have an obligation to

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monitor your management team during non-work hours, once you receive a complaint from an employee, it is your obligation to investigate.

Harassment that occurs outside the workplace that affects an employee inside the workplace is unlawful and the law requires that you eradicate it immediately.

Bottom line: Employment laws are complex and ever-changing on the federal, state and local level. Don't get tripped up. If you have sex, drugs, or other employee drama going on in your workplace, contact an employment law attorney for help.

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