BRSi®

Benefit Review Services inc.

Employee Benefit Solutions

Recognize the risks of employees' off-work misbehavior

When employees clock out, whether literally or figuratively, how they choose to spend their time is up to them. But that doesn't mean a staffer's off-work misbehavior poses no risk to his or her employer. Your organization can be severely harmed by an employee's actions — even when he or she isn't on the job.

Now, whether you should take an adverse employment action (such as suspension or termination) against an employee for an outside-of-work incident is a delicate matter. A variety of laws can affect what action you can take, so you should consult an attorney before acting. But it's still important to recognize the risks to your organization of employees' off-work misbehavior so you're not caught off guard if a situation arises.

3 sources of concern

What your employees are doing when not at work generally can be a matter of legitimate concern and possibly warrant action when:

1. There's a relationship between that behavior and the employee's job performance (or the job performance of other employees). In fact, in this type of situation you could put yourself at liability risk if you *don't* act, because of the potential negative impact on the rest of your staff and others. One clear-cut example is when an employee who drives other employees or customers in the normal course of his or her job is convicted of driving while intoxicated. But there are many other, more complicated causes for concern — such as sexual harassment or involvement in a hate crime.

2. The behavior or action can damage your organization's reputation. The extent of the damage will likely vary according to the stature of the individual. A newly hired, entry-level employee's notorious (but not necessarily criminal) after-hours actions would probably cause less reputational harm than those of a high-level executive. If you do decide to discipline or terminate an employee for unbecoming behavior, you'll need to be able to show the harm caused — perhaps you've lost customers or have had other key employees quit.

3. The action can hurt your business concretely in some other way. The most common examples here are an employee moonlighting for a competitor or freelancing for members of your organization's customer base. In general, you're within your rights to establish and enforce a policy barring employees from working *for* or *as* competitors on the side.

Another common issue in this day and age is employees running blogs or social media accounts criticizing their employers. Freedom of expression laws come into play here, so you've got to step carefully.

Clear communication

No employer can monitor or control its employees' every waking move — nor should it. But recognizing your risks in this area is important. Also important is clearly communicating employment policies regarding behavior outside of work. Contact our firm for more information.

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