

Labor Law Corner

Warnings to Employee with Bad Attitude Should Focus on Specifics

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Although California is at “at-will” state, meaning employment may be terminated by either the employer or employee on notice to the other, that doesn’t make an employer bulletproof when relying on its at-will status.

At-Will Limits

First, at-will can be negated in a number of ways, including, but not limited to, contracts to terminate only for cause, promises of progressive discipline, and promises that “you will always have a job if you do good work.” But even absent the circumstances noted above, an employer can’t terminate an employee based on his/her status in a protected category, such as age, physical disability, race, etc.

Therefore, when considering termination for someone who has a “bad attitude,” be sure to keep in mind all these protected categories. For example, if the employee with the bad attitude is in one or more protected categories and no warnings have been issued, that employee may easily claim discrimination upon termination. Therefore, an employer should follow progressive discipline, but never promise it. Most employees expect there to be some kind of reason for getting fired, and if they haven’t received any warnings at all and the employer simply states that the employee isn’t working out, the vague language doesn’t bode well for the employer.

Focus on Specifics

Therefore, even when it’s difficult, the employer should give warnings with specifics to the employee. The bad attitude can affect the workplace in a number of ways, and that impact should be the focus of the warnings. Issues such as stress/unhappiness of co-workers, disruption of work flow—the employer should address these so that if a termination for a “bad attitude” is challenged, the employer has ample defenses doesn’t make an employer bulletproof when relying on its at-will status.

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