



Protecting Your Association from Employment Discrimination Actions

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Firing an employee is typically a messy, uncomfortable ordeal for everyone involved. Occasionally, an employee will file suit against an association after termination. Associations are sometimes blindsided by discrimination claims they did not know existed or had thought were resolved long ago. Therefore, we strongly recommend that associations take all necessary steps to protect themselves from legal action prior to terminating someone's employment. These steps include:

1. Training Employees. Every association should have its staff undergo training regarding proper office behavior. Even today, many employees still do not understand what constitutes harassing or discriminating conduct. People still send offensive e-mails to fellow employees, employees still use pictures of barely clad women as screen savers, and employees still use improper language to describe colleagues. An association executive needs to be vigilant about such conduct, and aggressively respond to any improper behavior. Additionally, all associations should have an employee manual that clearly sets forth what constitutes improper behavior, and spells out that any such behavior will not be condoned by the association.
2. Educating the Board of Directors. In some associations, staff and Board members interact frequently. It is common for staff and Board members to see each other at trade shows, meetings, conventions and other events. Often times, liquor is served at such events. Because of the Board's supervisory position over association employees, it is important that Board members also receive regular training with regard to harassment and discrimination.
3. Properly Documenting Poor Performance and Conduct. Documenting employee issues is easy to do, but rarely done. Often, an association will inform us that it is going to fire someone for poor work performance and/or bad behavior, but the employee's employment file does not reflect such problems. Frequently, the file will contain glowing reviews about the employee's work performance. This puts the association in a difficult legal position if it is sued for discrimination. Accurate and timely reporting is critical.

If your employee harasses staff, is rude to clients, performs poorly or otherwise acts improperly, put it in writing. Better yet, meet with this employee and discuss this

problem. Then have the employee sign a statement acknowledging that a meeting regarding these issues took place. Additionally, any performance evaluation should be honest and accurate. Few employers like to give critical performance evaluations; this is a mistake. Not only does the employee believe he or she is meeting the employer's expectations, but such an evaluation fails to establish a record of poor performance should the employer need to terminate the employee in the future.

4. Be Consistent. Treat all employees the same. If you reprimand one employee for harassing conduct and fire another employee for similar conduct, you need to have a legitimate reason for the distinction. Additionally, make sure that all association procedures are followed when taking action against employees. Review the Employee Manual, and follow these procedures when disciplining an employee. Remember, Employee Manuals are binding contracts.

5. Have Termination Procedures. If you have to fire a person, make sure there are at least two association staff at the termination meeting. One person is there to actually fire the employee, the other is there to witness the meeting. You should be open to having the terminated employee sign a release in exchange for reasonable severance pay. Such a release should include waivers of all legal claims the employee may have against the association. The association's attorney can provide you with this document. Be careful with providing references after termination. It is often best to have a policy that the association will only provide basic information (dates of employment, positions held, etc.) to anyone that contacts it about former employees. This policy should be consistently applied. Finally, consult with your attorney before opposing an employee's application for unemployment compensation.

Association attorneys are often called after former employees have filed discrimination lawsuits or sued for wrongful termination. By then it may be too late. Leverage may be lost. Call an employment attorney before you fire an employee, and discuss the termination. It may save the association tens of thousands of dollars in compensation and attorneys fees.