

Newsletter 7 (9), September 2008, Agricultural Labor Issues in Michigan

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Employee Dismissal

Dismissal is the involuntary termination of an employee's employment (Dessler, 2008). Because of the involuntary character of the situation, emotions often are high on both sides and require dismissals to be handled with great care—or to be avoided. How can managers avoid dismissals? Careful selection, training, and management decisions will serve to reduce the number of dismissals. In any case, a dismissal should only be considered after other options have been tried and did not lead to the desired results.

Except in cases of gross misconduct, the dismissal should not come unexpected to the employee. Managers need to make sure that sufficient opportunities for behavioral changes were provided and a fair disciplinary process was followed (coaching and discipline procedures will be addressed in future newsletters). In addition, regular evaluation of an employee's performance and a paper trail regarding performance appraisals and disciplinary actions is a must should a terminated employee challenge the dismissal in court.

Wrongful Discharge

Michigan is an at-will employment state. What this means is that in the absence of a contract stating otherwise, the employee can resign at any time and for any reason and the employer can terminate for any reason or with no reason. However, in the past 50 years, the common law based at-will doctrine has eroded in several ways. Therefore, a terminated employee may file a wrongful discharge suit against his or her former employer, causing substantial costs for dealing with this situation, even if the employee does not prevail in court.

Nationwide there are three major exceptions to at-will termination (Muhl, 2001); two apply in Michigan: the public-policy exception and the implied-contract exception. The public-policy exception prevents employees from being terminated for an action that supports a State's public policy, based in the State's constitution and statutes. For example, civil rights and equal employment opportunity legislation prohibit discharge based on an employee's protected characteristics, including race, color, religion, sex, national origin, age, and disability status. Other examples are the reporting of dangerous workplace conditions, union activities, and the refusal to break the law on the employer's request.

The implied-contract exception is brought on by an employer's oral or written assurances with respect to job security or disciplinary procedures, which can create a contract even though no express written contract relationship exists. For example, an employee

handbook describing procedures to be followed if disciplinary action becomes necessary or statements to the effect that no employee will be fired without just cause create an implied contract, under which the employer cannot terminate an employee without following the described procedures. Also, if a manager in charge of hiring or the employee's supervisor tell an employee that his or her employment will continue for as long as the work performed is adequate, an implied contract is created. Although disclaimers are not, per se, a defense in Michigan, clear and unambiguous disclaimers characterizing those assurances as company policies that do not create contractual obligations can prevent an implied contract from taking effect (Muhl, 2001).

If an employee's dismissal does not comply with the law or does not comply with contractual agreements stated or implied in handbooks, application forms, or other company documents, it is considered a wrongful discharge. A wrongful discharge may be actionable in court. Even if a plaintiff does not prevail, management time and attorney costs are reasons to carefully review company policies before dismissal decisions, in particular when the dismissal is without cause. As a preventive measure employers need to review and regularly update their employment documents, if they want to ensure an at-will employment relationship with their employees. However, less job security may also result in less loyalty from the employees.

What are Grounds for Dismissal?

There are basically four generally accepted causes for dismissal: unsatisfactory performance, lack of qualifications for the job, changed requirements (or elimination) of the job, and misconduct (Dessler, 2008). The failure to perform the assigned duties or to meet job standards can have a variety of causes, such as tardiness, absenteeism, or a negative attitude toward the company, other employees, or tasks assigned. In the case of lack of qualifications, the employee tries hard to do a good job but cannot. The employee should not have been hired in the first place, but considering the effort, this person may be retrained or reassigned. Similarly, if changes in a job make it difficult for the currently assigned person to perform, alternatives to dismissal should be explored.

Deliberate and willful violations of company rules are called misconduct. A common form of misconduct is insubordination. Insubordination includes refusal to obey direct orders by one's supervisor, disregard of reasonable instructions, and deliberately ignoring company policies and procedures. Gross misconduct, which may lead to immediate termination, includes violence, especially when somebody is hurt, theft, and drug-related offenses. However, even when gross misconduct has occurred, it is typically better to suspend the offender and review what has happened than to terminate on the spot. Even in seemingly obvious cases, the employee has a right to a fair process and should have an opportunity to tell his or her side of the events.

How to Go about Terminating an Employee?

Once the termination decision is final, the termination interview must be planned carefully, ahead of time. It is best to terminate in person, not by delivering a "pink slip"

or over the phone. The location should be private, but non-threatening, e.g., a meeting room. If possible, security should be on stand-by. Because of the emotions involved in dismissals, unexpected incidents can happen. If the manager has any concerns, a second person present is a must.

The termination interview is not the time to have a friendly small talk or to discuss the prior good work of the employee. Briefly describe why the employee is let go; terminated employees who have been given the rationale for the decision are more likely to accept it. Emphasize the situation rather than the employee's personality or shortcomings. Be explicit about the termination decision and make clear that it is final. Listen to what the employee has to say and give him or her time to calm down and be reasonable. Identify the next steps, such as clearing out the locker and how to receive the last pay check. Preferably, the pay check should be ready before the termination interview. Finally, in most cases, it will make sense to escort the terminated employee off the premises.

Severance Pay

Severance pay is a one-time payment or a salary continuation for a defined time after terminating an employee. Companies opt for severance pay for different reasons: as a reward for employees staying as long as they are needed, as a balance to expecting advance notice if an employee wants to quit, as a gesture of goodwill during layoffs signaling to the employees staying that they will be taken care of, and to deter disgruntled employees from filing a lawsuit against the company. Typically, employees are asked to sign a release form or a waiver before they receive any severance pay.

If an employer chooses to provide severance pay, a written policy should govern the process. It should be equitable and not a source of unfair differential treatment. When severance pay will be awarded, and when not, must be clearly defined. For example, if an employee is dismissed for cause or gross misconduct, will he or she still receive severance pay? Will payments continue if the employee starts working elsewhere? The employer should also reserve the right to change the severance pay policy.

Additional Information

Dessler, G. 2008. Human Resource Management, 11th ed. Prentice Hall: Upper Saddle River/NJ.

Muhl, C.J. 2001. The employment-at-will doctrine: three major exceptions. Monthly Labor Review 124 (1, January): 3-11.

This newsletter is based on human resource management books, articles, and other reliable sources. However, please remember that the newsletter serves educational purposes only; it does not constitute legal advice.