

OVERVIEW OF WRONGFUL TERMINATION LAWS



Wrongful Termination Defined:



A “wrongful termination” is one in which an employer has discharged or laid off an employee in violation of a legal right of the employee. It is not enough for the employee to simply show that he/she was treated unfairly but the person must show that the firing was “wrongful” meaning one or more legal rights, as listed below, were violated.

“At Will Employment”



- Utah charter schools operate under the legal principle of “employment at will” which developed in England centuries ago and means that it is presumed that the employer has the right to terminate someone with or without a reason and likewise the employee has the right to quit at any time with or without a reason.
- HOWEVER, There are a number of exceptions to the employee at will doctrine, and those exceptions generally fall into the broad categories listed below:

Exceptions to At Will Employment Doctrine



Public policy

Breach of contract

Breach of implied contract

Breach of covenant of good faith and fair dealings

Discrimination (based on age, race, sex, disability, religion and/or national origin)

Violations of public policy



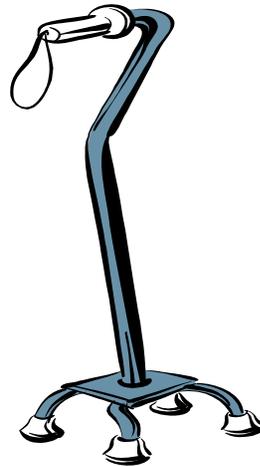
- ❑ Does the termination of an employee violate the interests of the general public?
- ❑ For example: if employers were allowed to fire employees for filing a worker's compensation claim, the employer's actions would undermine the public policy behind the workmen's compensation laws.
- ❑ Also, retaliation against whistle blowers is often regarded a violation of public policy.

What are the federal laws prohibiting job discrimination?

- **Title VII of the Civil Rights Act of 1964 (Title VII)**
- **Equal Pay Act of 1963 (EPA)**
- **Age Discrimination in Employment Act of 1967 (ADEA)**
- **Pregnancy Discrimination Act of 1978**
- **Americans with Disabilities Act of 1990**
- **Civil Rights Act of 1991**

Discrimination Laws

Civil Rights Act of 1964, Title VII: prohibits discrimination against employees based on race, skin color, religion, age, sex (gender), disability or national origin.



Title VII Specifics



National Origin Discrimination

- It is illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group.
- A rule requiring that employees speak only English on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting business.

Sex Discrimination

- Title VII's broad prohibitions against sex discrimination specifically cover:
 - ▣ Sexual Harassment - This includes practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same sex harassment.

Discrimination Laws, cont.

- ❑ **Equal Pay Act of 1963:** prohibits wage discrimination based on gender if the job is under the same employer and general work conditions, and requires equal proficiency and responsibility.
- ❑ **Pregnancy Discrimination Act of 1978:** prohibits employment discrimination because of pregnancy, childbirth, or any associated health conditions.



Discrimination Laws, cont.



- **Age Discrimination in Employment Act of 1967:**
prohibits discrimination against individuals over the age of 40 because of their age
- Specifically prohibits:
 - ▣ statements or specifications in job notices or advertisements of age preference and limitations.
 - ▣ discrimination on the basis of age by apprenticeship programs, including joint labor-management apprenticeship programs; and
 - ▣ denial of benefits to older employees.

Discrimination Laws, cont.

Americans with Disabilities Act of 1990: prohibits discrimination against equally qualified people because of disability. It includes a requirement that accommodations be made (to a reasonable extent) for employees with disabilities.



Basic ADA Definitions:



- **Individual with a Disability:** a person who has a physical or mental impairment that substantially limits one or more major life activities
- **Major Life Activities:** walking, breathing, seeing, hearing, speaking, learning, thinking, and eating
- **Qualified:** a person with a disability who satisfies skills, education, and other job-related requirements of the position held or desired, and who—with or without reasonable accommodations—can perform the essential functions of that job

More ADA Definitions:



- **Reasonable Accommodations** may include, but is not limited to:
 - making existing facilities used by employees readily accessible to and usable by persons with disabilities;
 - job restructuring;
 - modification of work schedules;
 - providing additional unpaid leave;
 - reassignment to a vacant position;
 - acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies;
 - and providing qualified readers or interpreters.

More ADA Definitions:



Undue Hardship:

An employer is required to make a reasonable accommodation to a qualified individual with a disability unless doing so would impose an undue hardship on the operation of the employer's business.

Undue hardship means an action that requires significant difficulty or expense when considered in relation to factors such as a business' size, financial resources, and the nature and structure of its operation.

Monetary Rewards

- **Civil Rights Act of 1991**, among other things, provides monetary damages in cases of intentional employment discrimination.
- **THIS MEANS IF YOU DISCRIMINATE INTENTIONALLY, YOU COULD END UP PAYING A LOT OF MONEY!**



What Discriminatory Practices are Prohibited Under these Laws?

- hiring and firing;
- compensation, assignment, or classification of employees;
- transfer, promotion, layoff, or recall;
- job advertisements;
- recruitment;
- testing;
- use of company facilities;
- training and apprenticeship programs;
- fringe benefits;
- pay, retirement plans, and disability leave; or
- other terms and conditions of employment.

So how do discrimination claims work?

- **Employee's prima facie case.**

- First the employee has the burden of showing through circumstantial evidence that he/she has been discriminated against. (ie, "I have the whooping cough and was fired the day after my principal told me he's sick and tired of hearing me cough all the time.")

- **Employer's non-discriminatory reason.**

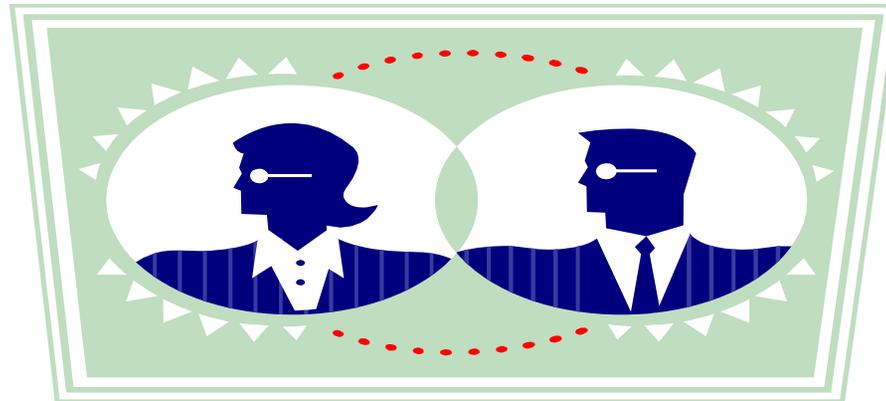
- Once the employee puts forth his/her circumstantial evidence, the employer will usually reply by saying that she was fired for a "legitimate and non-discriminatory reason." (ie, "The whooping cough secretary continually hung up on parents and had zero people person skills, so we fired her.")

- **Pretext.**

- Then the employee can respond to that by proving that the reason offered by the employer was just a "pretext" or cover-up for an improper reason. (ie, "Every secretary that has worked for this school with the whooping cough or any other slightly noisy habit is fired, and I was just recently nominated for and won the "Nicest Secretary" Award" from all the parents in the community.)

Examples:

Both Jane and Paul call in sick one day when they're not actually sick. The employer fires Jane but does not fire Paul. If the **reason** is because Jane is female, then this is discrimination because of sex which would violate Title VII. If the **real reason** is because Jane had a worse attendance record, then it would be ok.





In this case, Jane would simply have to present evidence that she and Paul committed the same offense, and that she, a female, was fired, while he, a male, was not. The burden then shifts to the school to prove that the reason Jane was fired and not Paul is because Jane is always calling in sick. The burden then shifts back to Jane to prove that the school's proffered reason is a cover-up for the real reason, that she is female.

IF the school has kept documentation of Jane's constant absenteeism, repeated warnings and write-ups in the file, Jane will have a difficult time proving discrimination.

Take Away...

1. Know the federal laws and who are protected individuals
2. Keep good records and documentation. Even though your employees are “at-will” and no cause is needed to terminate, you will want to be able to show a reason for the termination if a member of the protected class brings a discrimination lawsuit against you.

