



DELAWARE

EMPLOYMENT LAW LETTER

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William W. Bowser, Editor; Scott A. Holt and Adria B. Martinelli,
Associate Editor
Young, Conaway, Stargatt & Taylor, LLP

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PROBLEM EMPLOYEES

Of malcontents and managers

by Lauren Moak Russell

Most managers have had the unfortunate experience of dealing with a malcontent—an employee who is never happy and always the victim of a coworker's machinations. A recent decision by Delaware's federal district court reminds us that the solution to managing this type of employee, as with so many employment problems, is to document, document, document.

Troublesome employee

After "enduring" six months of employment with Sears Holding Corp., Collette Jacques-Scott was terminated when the company discovered she had falsified documents related to her performance of—or, more accurately, failure to perform—mandatory safety training. She then sued her former employer, alleging a litany of claims. Her allegations included sex discrimination, race discrimination, harassment, and retaliation in violation of Title VII of the Civil Rights Act of 1964.

In support of her claims, Jacques-Scott advanced a never-ending list of wrongdoing by her coworkers and managers. The court's enumeration of the facts makes clear that she was the type of employee who could recite the employer's policy manual chapter and verse, and she used that knowledge as an excuse to avoid performing as many job-related tasks as possible. Of course, she couched all of her problems in the guise of her employer's failure to follow its own policies and procedures.

After completion of the discovery process (in which both parties investigate the allegations of the opposing side), Sears asked the court to grant summary judgment and dismiss the case. The court complied.

Document, document, document

Cases with extensive allegations of misconduct can be some of the most difficult to defend. Frequently, the employee's complaints relate to insignificant daily interactions that have built up over time to become an issue. As a result, the incidents are never reported to the employer, or they're only reported months or years after they occurred, when small issues become very difficult to investigate. Nonetheless, it remains extremely important to have a reporting structure in place and to document the investigation carefully.

In Jacques-Scott's case, when her allegations of misconduct finally came to its attention—before she was terminated—Sears conducted an investigation into the alleged issues and interviewed several employees. Taking prompt action helps make clear to third parties, such as courts, the Equal Employment Opportunity Commission (EEOC), or the Delaware Department of Labor, that you view all allegations of misconduct seriously. It also preserves evidence, which is important when a case comes before the court years after the alleged misconduct occurred.

Sears was able to document its investigation and provide clear reasons why it determined that Jacques-Scott's allegations were unfounded. That, in turn, helped the court get to the bottom of the situation and dismiss the case before trial. *Jacques-Scott v. Sears Holding Corporation*.

Bottom line

Documentation remains as important as ever when you're defending a decision to terminate an employee. It's the first thing your attorney will request when he reviews a new lawsuit, and it's the first thing a court will focus on when it reviews your request to dismiss the case.

Difficult employees can be time-consuming and burdensome for managers—they're precisely the type of problem supervisors want to sweep under the rug and ignore. But investing the time to evaluate and address a difficult employee's complaints will save you significant stress and money when a problematic employee decides to file a lawsuit.

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