



3RD QUARTER *Brief*

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Can You Regulate Off-duty Conduct?

Suppose you discover that one of your employees is "secretly dating" an executive from the competition. Can you discipline or fire the employee?

Federal law is not entirely clear in this area. Such an action could trigger a lawsuit based on discrimination or invasion of privacy. As a rule of thumb, employers have more leeway to regulate off-duty conduct of workers when the activities are illegal, especially if they specifically relate to the job. Otherwise, it is a slippery slope to navigate.

In addition, many states have enacted laws that prevent employers from discriminating against employees who participate in legal activities outside work. Also, it is generally illegal for an employer to unreasonably intrude into an employee's "seclusion." This refers to the physical areas where an employee has

a reasonable expectation of privacy.

The following are several key instances involving off-duty conduct.

Drug-testing: As a general rule, drug testing is permitted in the course of a job application, if the employee performs work that is security sensitive or if the employee has given the employer cause to believe that he or she is impaired by drugs at work.

Religious beliefs: An employee's religious beliefs (and activities relating to those beliefs) are generally protected by federal and state laws. However, if an employee exhibits unreasonable behavior at work-such as attempting to convert other employees-he or she may be subject to discipline.

Outside employment: There is no strict legal
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Eldercare Issues of a Family Member

The death of an elderly parent or spouse can throw an entire family into emotional turmoil. Normally, you can turn to family, friends and perhaps support groups for comfort. But this will not answer any financial and/or legal questions concerning the family member's estate. The following are several important considerations when a spouse or a parent passes away.

Property dispositions: The executor is charged with the job of wrapping up the estate. This may entail everything from sorting through the decedent's belongings to searching for a will to collecting insurance and retirement plan benefits.

Care of a parent: A surviving spouse is likely to need care after losing his or her mate. It may be as simple as having someone help out with odds and ends around the house. On the other hand, the need may be greater, depending on the parent's health and circumstances. For example, an elderly parent may not be able to live on his or her own any longer, so other accommodations must be made.

Health and financial issues: It may be a sensitive

subject to broach, but the death of a parent may lead to discussions about quality of life for the surviving parent. This generally requires a long, hard look at the person's finances. If health care decisions have not been resolved yet, they may be determined through the use of a living will. Other legal documents, such as a power of attorney, may be created to ease decision-making late in life. (Note: If a power of attorney has not been created for a person mentally or physically impaired, it may be necessary to have a court appoint a guardian or conservator.)

Estate planning: Proper steps should be taken to maximize estate-tax benefits available under the law. Furthermore, a new will or codicil should be drafted to accommodate changes in the surviving parent's circumstances. Other end-of-life issues, such as funeral arrangements, may be addressed as part of an overall estate plan.

Records: Finally, find out where your parent keeps important documents, including estate-planning documents, bank account numbers, retirement plan

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prohibition against moonlighting. However, an employer is able to restrict after-hours work that is in conflict with its business. As a result, if an employee begins working for a direct competitor, it may be just cause for discipline or discharge.

Marital status: Generally, employers cannot discriminate on the basis of marital status or monitor such status, except for its need to regulate employee benefits such as health insurance. But the legal boundaries can become blurry when one spouse applies for a job where his or her spouse is a supervisor or, even more tenuous, if the spouse works for the competition.

Illegal activities: It is questionable whether an employer may discipline or discharge employees who have been arrested for driving intoxicated or for the commission of a crime. State law often offers legal protection to the employee. Generally, employers may investigate further *only if the conduct will have a direct impact on the business.*

Do not take any action until you consult with an WAW attorney who is experienced in employment law.

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plan information, passwords to accounts, etc. Make sure the records are accessible.

Fortunately, you don't have to go it alone. Consult with a WAW attorney experienced in eldercare planning for guidance.

Questions and Answers on Immigration

Immigration into the United States continues to be a controversial subject. Yet, most people, including U.S. citizens, know surprisingly little about the current procedures for immigration. With that in mind, here are the answers to some basic questions about the immigration process.

Q. How does a foreign person enter the country legally?

A. An individual who wants to come to the U.S. must apply for either permanent residence or a temporary stay. This generally requires the person to submit an application to one or more of the U.S. agencies authorized to carry out the country's immigration laws. This includes the U.S. Citizenship and Immigration Services (USCIS) and the U.S. Department of State.

Q. How does someone apply for permanent residence?

A. If the person intends to stay in the U.S. permanently, he or she must obtain a "green card." Green card holders are able to live and work in the U.S. and usually travel internationally with very few restrictions. Green cards are often granted to workers for whom domestic employers have petitioned for

entrance to the U.S. or those who possess special skills. In addition, individuals in other classifications, such as individuals seeking political asylum status, may receive green cards.

Q. How does someone apply for a temporary stay?

A. If a foreigner wants to visit the U.S. temporarily, he or she should obtain a nonimmigrant visa. This enables the person to participate in specified activities (e.g., attending a college or conducting business) until the visa runs out. Besides students and business people, nonimmigrant visas may be issued for tourists, exchange visitors and workers with special skills.

Q. Are there any visa exemptions?

A. Yes. For instance, a visa is not required for short-term visitors from a country participating in the Visa Waiver Program. The person can stay for up to 90 days for either business or pleasure reasons. To enter the country, he or she must present a valid passport and airline ticket. (Those entering by land through Canada or Mexico must show proof of sufficient funds for the stay.)

Q. How does someone obtain a visa?

A. For citizens of most foreign countries (other than Mexico or Canada), the visa may be obtained at a U.S. consulate before departing for this country. If the person is already in the U.S. legally, he or she may be able to apply for an adjustment to permanent resident status, or change status to another type of visa.

Q. Can someone be barred from entering the country?

A. Yes. No matter what a person's status for eligibility (for example, a person who is married to a U.S. citizen or a student accepted by a U.S. college), entrance may be denied for a variety of reasons. This includes prohibitions relating to application errors, the commission of crimes or certain diseases.

At this writing, Congress is considering changes to the immigration laws. Obtain expert legal assistance from an experienced WAW attorney for actual cases.

Questions?

■■■■ For more information about articles and information contained in the WAW Brief, contact Wharton Aldhizer & Weaver at (540) 434-0316 or send e-mail to info@wawlaw.com.

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