

Document employee's misconduct before firing her

by **Jacob M. Monty**
Monty & Ramirez, LLP

Q *One of our employees yelled and swore at a coworker within earshot of customers. Several supervisors reported that she was drunk. We suspended her and have decided to fire her. She says she doesn't know why she is being fired and denies the incident ever happened. Is it still OK to fire her?*

A Yes. An employer may generally terminate an employee for any reason, as long as the reason does not violate federal or state law. Misconduct is a sufficient justification for terminating an employee. However, you should make sure to properly investigate and document the termination. Make sure your termination paperwork refers to the incident as the cause of the employee's termination. By documenting her misconduct, you are preparing to contest a claim for unemployment benefits or defend any other post-termination actions she might file.

Q *We have installed several surveillance cameras in our plant. Before we installed them, we issued a written notice to all employees. All of the cameras are mounted on the ceiling and are easily recognized as cameras. One of our managers has asked us to install a hidden camera over a work area in which an employee is reportedly sleeping on the night shift. Would we be on solid legal grounds to do this?*

A Employers generally have a right to install surveillance cameras to monitor their employees. However, privacy issues can arise when you choose to use a hidden camera, especially if it's in an area where an employee might normally believe he has an expectation of privacy, like a break room or a restroom.

In most cases, it would be safer not to rely on hidden cameras but instead to install cameras in areas where you've notified employees they will be, thus alleviating any expectation of privacy. Also, if you have a unionized workforce, you should be cognizant that the National Labor Relations Board (NLRB) prohibits

employer surveillance of employees' union activities, including union meetings that may be conducted on your premises. Additionally, some states have specific laws governing surveillance of employees.

Q *One of our employees is currently covered under her husband's health insurance plan. She recently had a baby, and she now wants to put her child and herself on our plan. Can she do that, or does she have to wait until the open enrollment period?*

A Childbirth is a qualifying life event that typically permits an employee to enroll in health insurance outside the open enrollment period. For more information, contact your health insurance provider about special enrollment periods.

Q *What are the requirements for displaying compliance posters? There are several floors in our building. Do we need to have posters on each floor?*

A If there's a single location in the building that all employees regularly visit, you may be able to get by with posting the workers' rights posters on a single floor. However, that often isn't the case, and larger businesses may have several break rooms throughout the workplace. To be safe, it's usually advisable to display posters in conspicuous locations in the building that everyone has access to, including employees, applicants for employment, and representatives of labor organizations.

Jacob M. Monty is the managing partner of [Monty & Ramirez, LLP](#) and an editor of [Texas Employment Law Letter](#). He can be reached at jmonty@montyramirezlaw.com.