



OUR STAFF EXPERTS CONDUCT “SPECIAL INVESTIGATIONS” INTO YOUR QUESTIONS.

Dear Maryland Nonprofits,

I have an employee who calls in sick every other Friday and always on the day after a holiday. Can I terminate her? I’m tired of asking her colleagues to do her work and they are tired of doing her work!

*Your Friend,
Working Overtime*

Dear Working Overtime,

Before you terminate your perpetually absent employee, you must ask yourself a number of questions. First, is the employee entitled to FMLA leave (your organization has 50 or more employees and your employee has worked at least 1200 hours this year)? If so, has the employee been told that she has used a certain number of FMLA leave days and is not entitled to any more FMLA leave? Second, is the employee disabled as defined by the Americans with Disabilities Act? If so, have you offered to make a reasonable accommodation for the employee’s disability? Third, have the employee’s absences been as a

result of a work-related injury for which the employee recently filed a worker’s compensation claim? If so, you have to be careful about terminating an employee for a worker’s comp-related absence.

The answers to these questions can depend on whether you have protected yourself from a wrongful termination claim, and, in particular, a claim for retaliation, a cause of action that is becoming increasingly popular with disgruntled former employees. Retaliation claims come in all shapes and sizes. Former employees have filed retaliation claims based on a termination following the filing of a worker’s compensation claim, for failure to rehire because

of the former employee’s absenteeism record, and for taking FMLA leave.

The key to a strong defense is always the employer’s documentation of the reasons for the termination and the consistent application of internal policies. Make sure that your employee handbook addresses these issues and that you are following your policies consistently. As always, don’t forget that human resource (and lawyer) mantra: **DOCUMENT, DOCUMENT, DOCUMENT.**

Your friend,
Susie Helpful