



# Now, Just Why Are We Firing Bob?

Insights

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When dealing with the separation of an employee, there is often more than one thing the employee did that warranted termination. But when categorizing the reasons, it's important for employers to avoid taking a throw-everything-against-the-wall-and-see-what-sticks approach.

In a recent case a court found that a medical sales company did not retaliate against a former employee, when it terminated her employment based on two distinct reasons. Importantly, the reasons were independent and made by different decision-makers. Before we see how this case could apply to your company, let's take a quick look at the facts. *Jones v. St. Jude Health S.C., Inc.*

### Performance As A Basis For Termination

Cherianne Jones was hired as a sales representative and initially worked in the Florida division of St. Jude Health. During the first few years of her employment, Jones, by all accounts, was an excellent employee. In 2007, she transferred to a newly acquired division in Ohio. In early 2008, Jones lost 80% of her accounts. Almost immediately, Jones started to oppose what she believed to be illegal discrimination.

After the loss of her accounts, Jones was unable to meet her 2008 performance objectives, which resulted in her being placed on a Performance Improvement Plan in August 2009. Jones did not meet the sales metrics established in the Performance Improvement Plan and, in December 2009, her supervisor recommended termination, based solely on her performance – or lack thereof.

### Policy Violation As A Separate Reason For Termination

After the loss of her biggest accounts in January 2008, Jones began recording conversations with doctors, coworkers and others in an effort to capture evidence to support her belief that she was being discriminated against. Admittedly, Jones recorded these conversations without the other participant's knowledge or consent. At some point, Jones discovered that her recordings violated company policy, but she continued to record conversations anyway.

Although Jones told the company about the recorded conversations in May of 2009, she did not provide the recordings until October 2009. The recordings were not given to Jones' supervisor, but were, instead, given to and reviewed by a Senior Vice President over the course of two months. His

review of the recordings revealed that Jones disregarded specific directives and clearly violated the company's policies. For this reason, the Senior Vice President recommended termination.

### **Okay. So What?**

The case went all the way to the U.S. Court of Appeals for the 6th Circuit. Although the court thought that St. Jude's decision to terminate Jones based on her performance was suspect, even Jones agreed that termination based on her violation of Company policy for recording conversations was justified. This second reason for Jones' termination was not related in any way to her performance. Rather, it constituted an independent basis for her termination; the company's termination decision was upheld -- despite questions regarding its decision to terminate Jones based on her performance.

This story is a cautionary tale reminding supervisors to cross your T's, dot your I's and to avoid rushing to judgment when making a termination decision. Although firing an employee because she was late six times, falsified time records, slacked off at work, and accosted a patient are all valid reasons to let her go, some times it is best to just go with one or two strong reasons, particularly if the other bases for termination have not been fully investigated or cannot be confirmed.

If it's a close call or you're not sure what to do, give us a call to get a second opinion. When it comes to terminating an employee, it is always better to be safe than sorry.