



When Misconduct at Home Turns Into Discipline at Work

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Domestic violence is wrong.

So are many other actions such as driving while intoxicated, check fraud, soliciting for sex, speeding, public drunkenness, abuse of prescription drugs, sex with a minor, vandalism, tax evasion, bigamy, etc.

Of course, we have laws against such actions in order to maintain the type of society that we deem to be acceptable and those criminal laws regulate the interactions among the members of society.

Enforcement of our laws requires that the applicable criminal justice system “prove” that wrongful conduct occurred before an individual is punished. The level of proof required is high as the punishment can result in jail or serious limitations on personal freedom.

How criminal laws fare in the workplace

But what about those criminal laws in the context of the workplace? When an employee is accused of criminal misconduct, does or should an employer have a say in the matter? Do criminal accusations have anything to do with the workplace at all?

As we see in the media, the answer can be yes. An employer often does get involved when it learns of criminal accusations against an employee.

First, of course, an employer must have knowledge of the accusations. Employers obtain knowledge in many ways – news coverage for a high-profile individual or particularly scandalous accusations, the local newspaper that prints arrest information, mug shot websites searched by co-workers, posts on social media sites, the employee calling in to report that he or she is in jail, etc.

Even this initial step may begin to raise “fairness” issues as an employer may have other employees who engaged in unlawful off-duty conduct too — only for whatever reason, those other employees were able to keep the accusation or arrest secret.

Then, an employer tends to react by evaluating how the accusations reflect on the employer and impact its other employees and customers. With current accusations of criminal activity pending against an employee, almost all accusations can be seen as impacting the employer, co-workers and/or customers.

A bigger issue for high-profile employers

Of course, the type of employer involved may intensify the situation. Employers who are high-profile or well-known tend to want to distance themselves from an employee accused of wrongdoing. Likewise, employers whose product or service is tied to a concept such as safety or family values also tend to distance themselves from an employee accused of wrongdoing.

Next, an employer typically will determine whether it can manage the impact of the accusations or whether it needs or wants to disassociate itself with the individual accused.

Unlike the criminal justice system, an employer does not need proof that the conduct occurred. Merely being accused can be enough of a basis for an employer to act.

Since most employees are employed at-will and state law does not protect an employee from punishment for unlawful off-duty conduct, an employer typically can decide that mere accusations of unlawful off-duty conduct can be a basis for termination or other disciplinary action such as suspension.

In the handful of states that do protect lawful off-duty conduct, an employer must be sure that the conduct of which it disapproves actually is unlawful.

How employer might handle a crime of violence

For example, an employee might be on TV for participating in a parade or rally for a particular cause that is at odds with his or her employers beliefs. In a state that protects lawful off-duty conduct, an employer could not terminate an employee for participating in the parade or rally.

In many cases, when an employer responds to accusation of unlawful off-duty conduct, the employer should suspend the employee pending a satisfactory resolution of the matter rather than immediately jumping to termination. Since no work is being provided to the employer, the suspension can – and should – be unpaid.

So what if anything is unique about an employee accused of domestic violence over any other type of crime — particularly a crime of violence?

Probably nothing. An employee who is arrested for any type of assault is likely to be met with disdain by his or her employer because of the natural reaction to assume that if the employee can hurt person X, the employee can hurt others.

In most states, in most circumstances, an employer is totally within its rights to make the determination that removing the employee from the workplace is the best option.

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