



Off-Duty Conduct Issues

People can, and do, get disciplined or fired for things they do off the job, even if it is something like dating or politics that may have nothing to do with their performance at work. If they are covered by a union contract, there are ways a union steward can respond, but defending a member against discipline for off-duty conduct has become much more complicated than it was ten or twenty years ago, so it's worth a fresh look.

The specific accusation an employer will make is likely to be that the worker's actions were dangerous to workplace safety, showed a "moral turpitude," or "brought the employer into disrepute." In practice, these accusations fall into three categories: lifestyle/health issues, criminal or other legal issues and free speech issues. In all three, the burden of proof is on the employer as moving party. If you can prove the employer's accusation false, you have a direct defense, which is the best defense. A broader defense that applies to all three categories is to counter the claim that the worker has done something that materially affects the legitimate business interests of the enterprise. "Business interests" includes the employer's reputation.

Look at Past Practice

In fighting a charge against someone for off-duty conduct, start with a good investigation. What has past practice been? Do an information request. Be sure to look at how management has treated similar circumstances. There could be good arbitral precedent on disparate treatment related to this issue. In addition, since discipline for something a worker does off-

duty, unless it affects health and safety, will strike most workers as unfair, what other workers in the workplace say can influence how the problem is handled. Petitions and statements can undermine the argument that productivity was affected, morale was lowered, or that the reputation of the business was harmed.

What's the Impact on Business

The standard that the employer must show impact on business interests is especially important in lifestyle issues. Today, if a union member is arrested, spends the night in jail and misses a day at work, he or she may be disciplined for missing the day at work or not calling in but generally cannot be disciplined for being arrested. Where the employee spent the night may have no impact on the employer's business interests.

Lifestyle issues can include health and safety. The employer's accusation may not point to the real problem here. A worker who is getting divorced or who has a battering partner could be accused of "moral turpitude" but the real problem is safety: an irate partner could be a problem because he or she could invade the workplace and harm people. There have been situations where a worker goes to court against a battering partner and the worker gets fired. If this is what is happening, the union can take the initiative to reframe the problem to keep the worker from being twice the victim and to protect other workers as well.

Criminal issues are the classic cases about off-duty conduct that result in attempted employer discipline.

Free speech issues, meaning things that people say or political activity that they engage in off-duty, have a long history. The Ford Service Department, the spy agency of the Ford Motor Company that kept Ford nonunion for five years longer than General Motors, investigated workers in their off-duty lives with regard to social and political activity. This was their union avoidance strategy that worked quite well between 1910 and 1940.

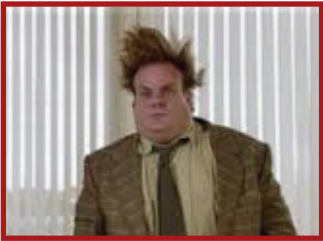
Later many people lost their jobs during the McCarthy period, accused of being Communists or subversives. Surveillance now is increasingly tied to developments in technology and social media.

Local Laws May Vary

Additionally, some states, like New York have laws preventing employers from disciplining workers for recreational activities such as legal drinking, smoking, or activities that might be risky. This is something that you should research for your particular state. These days, even the issue of what is "off-duty," especially for professional workers like teachers or professors, is a matter of dispute.

The main thing to keep in mind when representing workers in this area is that the union's goal is to protect and expand the rights of workers off the job from the ever-increasing attempts by employers to control all aspects of our lives in exchange for the "privilege" of cashing our paychecks.

by Helena Aorthu and Joe Berry



Stressed Out? Chill Out!

When people talk about “all the stress” they’re feeling at work, they usually mean “distress” - a condition that a lot of stewards feel all too much of the time. After all, not only do you have your own work to do, but you’re tugged in different directions by the needs of family and friends, the problems of co-workers and the demands of your employer.

Stress can lead to some heavy-duty physical and emotional health problems. It shouldn’t go ignored. To better understand the problem, to help to know about the body’s “fight or flight” response. In fact, it’s something we’re born with.

When the earth was very young, our ancient ancestors needed this emergency body reaction, this shot of adrenalin, in order to escape the daily onslaught of wild animals, exploding volcanoes and equally unfriendly neighbors. The threat of death was their constant companion. The good news is that this effective emergency response helped the human race survive. The bad news, though, is that our bodies still kick into this kind of response today, but with much less provocation (for example, a verbally abusive boss, a member of the union who you catch working off-the-clock, or a child who’s out past curfew.) In fact, unless we use counter measures to reduce stress we can pump as much adrenalin into our systems while trying to meet a work deadline as our ancestors did while fleeing from a hungry lion!

This is an inefficient, evolutionary out-dated way to react: worse yet, over time this constant wear and on our bodies can be deadly. Odds are, you know some of the symptoms of stress all too well: your mouth goes dry, your heart pumps faster, your neck and shoulder muscles tense up, your breathing speeds up, maybe you begin to sweat, and so on. These symptoms can add to some real health disorders ranging from headaches, dizziness and insomnia to blurred vision, aching neck muscles, high blood pressure, sexual difficulties and more.

Happily, there are a variety of ways to reduce these side effects of stress. In fact, many people handle dis-stress much as ducks handle water - it just seems to roll right off their backs. If you are not one of these “lucky ducks,” though, you might want to learn some easy stress-reduction techniques.

Understand that a key to good physical and mental health is keeping a balance between positive stress and dis-stress. Imagine for a moment that you are a musician who plays a stringed instrument - let’s say a six-stringed guitar. The strings must have some tension in them if they’re to make any sound at all. If they’re even a little too loose, they will sound dull, flat. However if they’re wound too tightly they will sound sharp and could even snap in two.

To help you maintain this kind of delicate balance, one easy-to-use stress technique is described here. This is deceptively simple- unless you actually try it, you’ll never guess what a powerful impact it can have.

THE 4 COUNT BREATH

Here’s how it works: by slowing down and regulating your breath, you can signal the brain that you were “only kidding” when you first sounded the alarm for the “fight or flight” response. The deliberately-slowed breath will in turn cause the heart to slow down, the blood pressure to stabilize, the muscles to relax, etc. A particular beauty of this technique is that you can do it anywhere, anytime - walking to the rhythm of your footsteps, talking with a difficult person at work, calming down a screaming child - and no one will even know!

Here is a good way to learn the 4-Count Breath:

If possible, sit in a comfortable position with your back straight, your hands relaxed and resting in your lap. Begin by simply noticing how fast you’re breathing, how deeply. Just notice - don’t change it. Next let all the air out of your lungs, exhaling slowly, deeply. As you inhale, silently count a slow, but comfortably paced “one-two-three-four.” Then exhale, again counting to yourself “one-two-three-four.” (As you exhale, you can also “exhale” all the muscle tension in your face, jaw, neck, shoulders, etc.) Repeat this process over and over until you feel quiet and calm. That’s all there is to it.

As thoughts come into your mind, simply notice them and return your attention to the breath and the count. One great benefit of doing this simple breath count is that it can slow down your racing, repetitive and/or negative thoughts.

Adapted from article by Sharon Seivert

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Congratulations for 45 Years of Practicing Law

Please join Morici & Morici, LLP in congratulating Managing Partner Michael D. Morici, for recently celebrating forty-five years for practicing law. Mr. Morici had dedicated nearly half a century counseling, advising and advocating for clients. His dedication to the legal profession is truly a testament to how Morici & Morici, LLP places its clients first.

Marijuana and Driving Under the Influence

Laws permitting recreational and medicinal marijuana use are sweeping the nation. As these laws are making use of marijuana more accessible, it is only natural that law enforcement will increase policing of driving under the influence. Similar to alcohol, it is illegal to operate a motor vehicle under the influence of marijuana. Now although every jurisdiction is entitled to police this issue its own way, all jurisdictions permitting recreational or medicinal use will still enforce driving under the influence laws. Therefore, whether you have a prescription for medicinal use, or you are in one of the number of states that have legalized recreational use, please be mindful that it is still illegal to operate a motor vehicle under the influence of marijuana as well as any other prescription medication that impairs your functioning.



Is Vaping Really a “Healthy” Alternative?

Lawsuits are arising against e-cigarette companies alleging misrepresentations regarding the levels of nicotine contained within some e-cigarettes and the claim that e-cigarettes are “healthier than smoking.” It has been claimed that individuals, especially teens and young adults with no prior history of smoking, have taken up “vaping” and subsequently find themselves addicted and suffering serious health consequences including an array of severe lung illnesses. Some companies are additionally under fire for allegedly targeting high school students as customers of the e-cigarette products.

Another Reason NOT to Lie

It’s a core value that is taught to us all from the earliest years of our life” be honest, tell the truth, and don’t lie. However, sometimes people lie. Now when it comes to being a party to a lawsuit, getting caught in a lie often irreparably damages that party’s position, and ultimately the outcome of the case. Whether it be lying at a deposition, lying on a form, lying to his or her own attorney, or lying to any number of people that can be involved in a lawsuit, when that lie reveals its ugly face (even trivial “white lies”), things always get worse. The most common lie is that people try to conceal a prior accident or prior injury. It is of the utmost importance to always be honest with your attorney regarding any prior accident or injury; we are here to help our clients and can only be helpful when we have accurate information.

Morici & Morici, LLP is here to help! Should you or a loved one need help with an injury, criminal charge, or any other number of legal services, call Morici & Morici, LLP to protect your rights.

Conquering Dreaded Tasks with Sandwich Tactics

Sometimes what's on your plate seems so big that you can't sink your teeth into any of it. In these cases, taking things apart may be the best way to make progress, stay on track, and put away that project. Here's the breakdown.

- **The Eat-the-Crust-First approach:** One extremely successful technique to move beyond procrastination is to tackle the toughest job first. Or if you're working on a single, big task, take on the most difficult aspect of it before the rest.
- **The Swiss-Cheese approach:** When biting into a major or complicated task seems overwhelming, start with the easier pieces - the aspects that you know you can complete quickly and with little effort. In this way, you poke holes in the project, making lighter work of the steps that remain after you polish off the manageable aspects.
- **The Salami approach:** The salami approach is a great tactic for those long-term projects in which the deadline seems so far away that you convince yourself you don't need to start yet. So that you don't resort to last minute cramming at the eleventh hour, take the time to cut up the project into bite-sized pieces. These slices should be small enough that you can schedule them day-by-day or at least week-by-week.
- **The Disgard-the-Garnish approach:** Just as with a restaurant meal, you probably have a few commitments on your plate that aren't really a key part of your responsibilities. Take a look at your schedule and see whether some of these tasks are mere garnishes. You then have choices:
 - 1) Remove them from your plate.
 - 2) Give them to someone else.
 - 3) Save them until you finish everything else.

from "Time Management for Dummies" by Dirk Zeller

Please be advised that our Albany office has moved.
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All contact information (phone, fax, email) HAS NOT CHANGED.



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