

Employment Policies: Communication and Consistency are Essential

By Scott Mirsky

Summary: In a recent case decided by the U.S. District Court for the District of Maryland, an employer was unsuccessful in its attempt to have an employment discrimination case dismissed where evidence existed that the employer failed to inform an employee of its policy on minimum work hours and also inconsistently punished employees who violated this policy.

In a recent blog, we discussed that it is the employer's burden to produce evidence of clear and reasonably specific explanations for its employment-related decisions. One such explanation typically given for terminating an employee is the assertion that the employee failed to comply with a company rule or policy.

A recent decision by the United States District Court of Maryland in *Caban v. MET Laboratories, Inc.*, underscores the importance of two guiding principles that should be followed by all employers. First, employers must be certain that their policies are communicated to employees and, second, employers must consistently enforce their policies.

In *Caban*, a female employee who had just recently given birth to child was terminated by her employer during her first week of employment. The employee filed a lawsuit alleging violations of Title VII of the Civil Rights Act of 1964 (Gender Discrimination) and the Pregnancy Discrimination Act. The employer rebutted the discrimination allegation by asserting that the termination was based on the employee's failure to follow its "Regular Working Hours" policy and "Working from a Remote Location" policy contained in the employee manual. In sum, these policies required that an employee's workday consist of at least 8 hours a day (not including 30 minutes for lunch) in the office. However, evidence existed that this policy was not adequately communicated to the terminated employee and that the employer did not treat both men and women the same when violations of the policy occurred. Therefore, the District Court refused to grant summary judgment in the employer's favor.

This case reinforces the importance of certain considerations that must be assessed by an employer when contemplating an employee termination for a policy violation:

- Is the employee a member of a protected class?
- Was the employee informed of the policy?
- Is the policy in writing? Did the employee receive a copy of the policy?
- Has the employee been warned of prior violations of the policy?
- Are the employee's policy violations well-documented?
- Have other employees violated the policy and, if so, have they been similarly disciplined?

While these are not the only questions that must be considered prior to termination, the answers will go a long way in analyzing the termination decision. If you have any questions regarding your employment policies and termination decisions, please contact the employment attorneys at Paley Rothman.