

Reason For Separation? We Don't Need No Stinkin' Reason! (Or, Do We?)

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Client : "I want to fire my employee."

Attorney : "Why?"

Client : "Because I've had it. I can't deal with this employee anymore."

Attorney : "I understand, but why?"

Client : "Why? *Why?! Because I've had it. I've just had it. Besides, this is an at-will state and I can fire someone at my will...*" (Client's voice rises) "*I don't need a reason!*"

The lessons embedded in this dialogue amount to a full-day seminar, but for purposes of this blog, let's focus on the "reasons" for firing employees. First, in general, we all know that it's good practice to have a documented, well-supported reason when making a decision to terminate an employee's job. Even if it's not technically required in an employment-at-will state.

Second, the reason—whatever it is—should be clear. This particular lesson is underscored by a recent Seventh Circuit decision, *Hitchcock v. Angel Corps, Inc.*, a case in which the Court overturned a summary judgment decision in favor of the employer, because as far as the Seventh Circuit was concerned, there were too many inconsistent reasons for her firing.

In the *Hitchcock* case, the plaintiff sued her former employer for pregnancy discrimination. Officially, she was fired for signing up an elderly woman for home care services after the woman had passed away. During discovery, she located several documents which highlighted the employer's internal inconsistencies about her firing. Although the trial court described it as a "mere quibble over language, and not evidence of a lie," the Seventh Circuit panel counted "at least four potentially different explanations given for Hitchcock's firing."

You already know what happened next. The Seventh Circuit said it found "these shifting explanations to be sufficiently inconsistent or otherwise suspect to create a reasonable inference that they do not reflect the real reason for Hitchcock's firing." That, coupled with "suspicious timing" linking her pregnancy and alleged change in treatment, the Seventh Circuit reversed the trial court: "We leave it to a jury to decide whom to believe."

So, Client, you're right. You don't need a reason. But, it's a good idea to have one anyway. And whatever the reason, make sure it's clear.

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