

Off-Duty, On-Duty Consequences

Navigating Employer Responsibilities
for Employee Conduct Outside Work

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Session Goals

- Understand the legal framework applicable to employees' off-duty conduct
- Identify legal and practical issues when addressing off-duty conduct
- Learn practical strategies to help prevent and handle issues related to off-duty conduct

Off-Duty Conduct—Why Does it Matter?

- Impact on workplace dynamics
 - Morale of work environment
 - Employee productivity
- Reputational risks
 - Future employees
 - Public perception
- Legal risks
 - Harassment or discrimination allegations
 - ...and more

Legal Framework—Harassment & Discrimination

- Title VII of the Civil Rights Act (harassment, discrimination, retaliation)
- Maine Human Rights Act or state equivalent (harassment, discrimination, retaliation)
- *What is a hostile work environment?*

Legal Framework—NLRA

- National Labor Relations Act (protected concerted activity)
 - Employees' engagement in certain “concerted activities” for “mutual aid or protection” is protected by Section 7 of the NLRA
 - Examples:
 - Employees sharing compensation information
 - Expressing workplace safety concerns on social media
 - Circulating a petition related to working conditions offsite and after-hours

Legal Framework—Other Issues

- State privacy laws and off-duty conduct protections
 - Varies by state:
 - Smoking
 - Marijuana use
 - Participation in political activities
 - Participating in demonstrations
- First Amendment considerations (public employers)

Potential Actions

- Investigation of action/issue
 - Gather facts
 - Interview relevant persons
 - Draw conclusions
- Consider relation to company policies
- Administer disciplinary action as appropriate
- Follow-up with involved parties

Questions to Ask

- Is the employee's conduct protected?
- Is the off-duty conduct affecting the workplace or the employee's performance at work?
 - Coworkers
 - Employee's job duties
- Does the off-duty conduct put the employer at risk for harm?
 - Legal liability
 - Reputation
 - Customers, clients, vendors
- Does the conduct violate a company policy?

Scenario 1: Bad Romance

- Emma and Jack work at ABC Corp. Emma is Jack's manager, and Jack was recently promoted by Emma to a more senior position. The two have been developing a romantic relationship outside of work, unbeknownst to ABC Corp. or other employees. One day, rumors start to spread about Emma and Jack's relationship after pictures of them together at a bar during a work trip they took together surface on social media. This fuels workplace gossip, and some employees feel favoritism may be at play (particularly with Jack's promotion). The situation escalates when Kelly, another employee, discloses to another supervisor that Jack made suggestive comment to her when he saw her at a client's holiday party. Emma learns about the comment, and after work, Emma swiftly blocked Kelly on personal social media accounts and texted Kelly to "stay out of her relationship."

Scenario 2: The Viral Meme

- Jessica Thompson, a marketing specialist at Blue Sky, Inc., is active on social media. Over the weekend, she shares a meme on her personal Instagram account that features a racially insensitive joke about a minority group. The meme inadvertently perpetuates harmful stereotypes and quickly goes viral, attracting thousands of shares and comments. Within days, multiple coworkers are expressing discomfort and concern about Jessica's post, with one reporting to HR that it creates a hostile work environment. Additionally, a client who follows Jessica on social media reaches out to the company President expressing concerns about the company's values based on her post.

Scenario 3: Not-So-Dry January

- Last weekend, Tom, a sales manager for Zenith Corp., attended an annual industry conference, where colleagues from other Zenith offices and company clients were present. At a conference dinner, Tom drank heavily. Witnesses reported he was loud and slurring words; at one point, he put his arm around a prospective client and exclaimed “Your company is totally tanking, that’s why you need to do business with us!” Later in the evening, Tom is seen stumbling out of the event and getting into a company-provided rental car. A concerned Zenith colleague tries to intervene, but Tom insists he’s fine to drive. The following day, HR receives complaints from employees who felt embarrassed by Tom’s behavior, and the prospective client emails the CEO expressing disappointment with the unprofessional conduct displayed at the event.

Final Thoughts & Best Practices

- Ensure appropriate policies are in place:
 - Prohibitions on discrimination and harassment
 - Anti-retaliation
 - Workplace violence
 - Social media
 - Disciplinary procedures
- Educate employees and managers/supervisors on policies and protections
- Consider balance of employee rights and employer responsibilities

The background of the slide is a black and white photograph of a complex hedge maze. The maze is composed of tall, dense hedges that form a series of winding paths and dead ends. The perspective is from a low angle, looking down into the maze. In the background, beyond the maze, there are trees and a glimpse of a building.

QUESTIONS?

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