

TERMINATING AN INJURED WORKER COULD BE A RECIPE FOR DISASTER

QUESTION: We own a small restaurant and recently we have been struggling with how to handle a situation regarding an employee who claimed an injury on the job.

One of our sous chefs, Alfred, claimed he burned himself at work while leaning over a hot stove. I say "he claimed" because there have been rumors that he didn't burn himself here at the restaurant, but did it while having a dinner party at his home late on Friday night after work. We stay open late on the weekends, and Al often invites other employees to come over for wine, cocktails and snacks after working the late shift.

Al's hosting those late night soirees, combined with his charming and easygoing demeanor, make him extremely popular with the other employees. In fact, the employees often refer to the restaurant at "Chez Alfred." He exudes a very positive attitude while he's prepping food in the kitchen, and it tends to rub off on the wait staff and other employees. There's no doubt in my mind that Al's charm and enthusiasm are the main ingredients to the (usually) relaxed and harmonious atmosphere here at the restaurant.

Anyway, although Al's eyebrows are definitely singed and he has blisters on the end of his chin, nose and the palms of his hands, I don't believe he burned himself at work. Other employees whom I've asked have provided only vague descriptions of Al's "burn" incident. None of the others who were working that night seem to remember when or how it may have happened or any other details surrounding the alleged incident. And the day Al filled out his claim form, I overheard a few of the employees giggling and mimicking taking something out of the oven. It seemed to me that they might have been re-enacting Al's burn incident, but when I approached them they quickly dispersed and had sheepish looks on their faces.

The burns were not too serious and fortunately Al is supposed to make a full recovery in just a few weeks. However, he just informed me that he will need at least a month off for his injuries to heal before he is able to resume his sous chef duties.

I was torn. I had a strong feeling that Alfred was working the system to get his time off and medical expenses paid for by workers' compensation insurance even though his injuries did not occur on the job. However, I was reluctant to pursue my hunch or to share my suspicions with the workers' compensation adjuster because of Al's popularity with the other employees and the possibility that they may choose sides if his claim was denied. Naturally I'd also prefer not to upset the restaurant's positive vibe and relaxed ambiance by raising charges of scandal connected to our most well-liked chef.

As I pondered this dilemma, and while Al had been out on workers' compensation leave for several nights, I discovered that he had been hiding an even more shocking secret. It took a few days of him being absent for me to realize that Al had been swiping several bottles of wine and liquor from our inventory to take with him, probably to entertain other employees with at his notorious late night parties.

I know I'm not supposed to fire someone who is off work because of an on-the-job injury, but can I fire him for stealing the wine? Do I have to wait until he is back at work and recovered from the burns before I take action? And what should I do about my suspicions regarding where and how he got his "on-the-job" injury?

ANSWER: Oregon civil rights statutes protect injured workers by prohibiting employers from discriminating against injured workers in making hiring decisions, or treating them differently in terms or conditions of employment when a worker invokes the workers' compensation system.

This does not prevent employers from disciplining -- including discharging -- employees for reasons not connected with an on-the-job injury, as long as the employer would take the same action toward other employees in the same circumstances.

However, although disciplining or discharging an injured worker for reasons unrelated to the workers' compensation claim/on-the-job injury is legal, it is risky in the sense that the employer is saddled with suspicions around the timing of the dismissal. The employer must be prepared to articulate the reasons for the action in order to prove that the timing is merely coincidental, and that the disciplinary action is in fact unrelated to the employee's invoking the workers' compensation system.

So although Al is off on workers' compensation leave due to his injury, you may terminate him and even do so before he returns to work as long as you would fire any other employee (without an alleged on-the-job injury) for the same misconduct. But it is essential that you have clear evidence and very good documentation of Al's actions.

The incident also provides you an opportunity to evaluate your workplace for hazards as well as to review the restaurant's procedures for reporting an injury and filing a workers' compensation claim form. Perhaps some safety training for all employees would also be helpful.

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