

# How to handle off-duty misconduct

## HOW TO HANDLE OFF-DUTY



Consider this scenario: One of your employees was arrested and charged with assault in a nightclub ruckus over the weekend. This is the same person who started a fight in your company's parking lot two years ago.

He shows up for work Monday morning, business as usual, and you're now concerned his temper might cause problems.

What now?

The seriousness of the charges, combined with the employee's previous incident in the parking lot might justify a suspension. But a manager could be on thin ice if the charge is less severe than it was reported to be, or if the parking lot offense has not been documented. There is a fine line that separates an employee's business life from his or her life as a private citizen.

Every case based on off-the-job behavior must be examined individually.

Take these extra precautions:

**Be patient.** First, keep in mind that an arrest is not a conviction. Anyone accused of a crime is entitled to his or her day in court to determine guilt or innocence. While the workplace is not a court of law and does not require the same standard of proof for establishing guilt, and you probably have employment at-will on your side, don't jump the gun. Taking disciplinary action before guilt or innocence is established could be a mistake.

**Give the employee a chance to tell his side of the story.** Conduct a complete investigation. Keep these expert tips in mind:

- Over-interviewing can make an inquiry seem unfocused and confused if useless information is presented from parties on the periphery of the case.
- Confidentiality is a promise you need to avoid making. "I'll tell you this only if it's kept between us" or "This is totally off the record" are statements you cannot accept. How can you keep something a total secret and investigate it thoroughly afterward?
- Written statements are poor cousins to live testimony. They tend to be incomplete, and often raise new

questions. A face to face interview is always preferable, and an interviewer who shows up with a pre-printed form to conduct one falls into the trap of feeling overly satisfied just because all the checkboxes get ticked off.

- An absent complainant seems like a wronged one. Juries often automatically think of suspensions and even paid administrative leave as punitive measures. You'll have to convince them why they weren't.

**If you suspect that an employee's off-the-job shenanigans** are hurting his or her performance, start collecting evidence. Put it in writing, issue written warnings, and follow your disciplinary procedure to the letter. Your notes should be all about the job performance, not your speculations of what the employee is doing after hours.

**Make sure your proposed discipline is consistent** with past practice and company policies. An employee who has been arrested may wind up missing a lot of work. You could theoretically fire the individual for attendance policy violations. However, if you gave another employee who got into trouble with the law for a similar deed an unpaid leave of absence to sort out the situation, it could be discriminatory to hold the absences against the other.

What about an employee's non-criminal off-duty activities? They fall into an even grayer area. Before taking action, you should consider whether:

the activity occurred on company premises;

the employee used company equipment or other property;

the activity created a material conflict of interest;

the activity negatively impacted worker morale or productivity; and

the activity harmed the company's reputation or image.

The more of these factors that apply, the better you will be able to defend your employment decision.