



V N E W S O F V A L U E

FIRING AN EMPLOYEE WITH A MEDICAL OR HEALTH-RELATED CONDITION

As difficult as it is to find the right person for a position, it is even harder to get rid of the wrong one. An employee with a medical or health-related condition, including pregnancy, is very likely in a protected statutory class. As a result, a community association must consider the rights of these employees and its obligations to them. In discharging an employee, an association should review five major points before it takes action. The information below was provided by Richard G. Vernon, esquire, chair of the Labor and Employment Law Department for Lerch, Early & Brewer, a 40 lawyer firm in Bethesda, Maryland.

Is the employee protected under the Americans with Disabilities Act, or any comparable state or local law?

The ADA applies to employers with 15 or more employees. Title I defines a disabled person as an individual with a “physical or mental impairment that substantially limits one or more major life activities” and requires the employer to accommodate the needs of disabled employees. The Equal Employment Opportunity Commission, the federal agency that enforces the ADA, also maintains stringent rules requiring the reinstatement of a disabled employee who has been absent from work—sometimes, even for a long period of time—because of his disability. As a result, a community association should not terminate an individual believed to have a disability, even for poor performance or a long absence from work, without first obtaining information about the employee and his condition from the employee’s health care provider.

Is the employee protected under the Family and Medical Leave Act, or any comparable state or local law?

This law applies to employers with 50 or more employees. The FMLA requires an employer to give an employee up to 12 weeks of leave annually, either in connection with the birth, adoption, or placement in foster care of a child or because of the serious health condition either of the employee or of a close family member (the spouse, child, or parent of the employee). During the leave period, the community association must keep the individual’s health insurance (including dental and vision coverage) in place, and he must be reinstated at the end of the leave to an “equivalent” position as before.

Did the employee become ill or injured on the job and thus have rights under state workers compensation law?

While such laws generally do not address issues such as maintaining an employee’s benefits while the person is out on leave, they usually do prohibit an employer from retaliating against an individual who filed a compensation claim by firing him. This means that a community association may be significantly limited in its ability to fill the vacancy left by an injured employee, because it may find itself facing a lawsuit if it does not promptly reinstate an employee who is ready to return from a workers compensation leave.

Is the employee covered under the Pregnancy Discrimination Act?

Apart from any rights a pregnant employee may have under FMLA, and in some cases, the ADA, the EEOC generally requires an employer to give a pregnant employee at least as much time off as it gives to any of its other employees who take leave either for medical or non-medical reasons.

Is the employee covered under the association’s employee handbook?

A community association must provide the rights to an ill, injured, or pregnant employee that are set forth in its own employee handbook or personnel manual. Here, too, limitations may exist on the community association’s rights to terminate its employees.

Questions or concerns?

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