

Duty to Serve

QUESTION: One of our employees, Phil, let me know a few weeks ago that he'd received a summons to appear for jury duty. Phil reminded me of the upcoming jury duty a couple of times as the date approached. He was to report for jury duty yesterday and the timing could not have been worse for us here at work. We are extremely busy trying to get a large order out, and we really need Phil's help right now. I am the company's owner so I encouraged him to ask the judge to be excused from serving on a jury since we are so swamped.

Yesterday morning, Phil called me from the courthouse and informed me that he had been selected to sit on a jury panel for a trial that would last at least one day. He said he would call back at the end of the day and let us know whether he would be out a second day due to the trial continuing. Just to make sure Phil was telling the truth and not just trying to get a couple of days off, I started to ask him a few questions about the case in which he'd be a juror. He told me that it was a burglary case but that he could not discuss any other specifics with me because the judge had instructed him and the other jurors not to talk about the case with anyone until the trial was over.

The fact that I would have to do without Phil for an entire work day, and maybe even longer - combined with his secretive, self-important attitude about his jury service - made me lose my temper, and I asked him whether he had asked to be excused from jury duty due to our overwhelming workload. After a long pause, he replied that he had not made any such request, and furthermore, that he was opposed to trying to get out of serving on jury duty because he believes it is each citizen's civic duty to serve when summoned.

We exchanged a few more unpleasantries, and he called me "unpatriotic" for not having a jury duty policy that allows employees some flexibility in work schedules or pay for employees to do their community duty. Well, that was it for me. I kind of lost it and told him that he needn't bother coming back to work because I'm replacing him with a more loyal employee who can keep priorities straight.

Phil said that the court clerk had told him that I can't fire him for doing jury duty. I shot back that I could fire him if I darn well pleased, and that I didn't need a reason at all seeing as how Oregon is an at-will employment state. We hung up on each other at about the same time, and I haven't heard from him since then.

Now that I've calmed down a bit, I'm beginning to realize that it would be almost impossible to get this order done without Phil's help. I can also sort of see things from his point of view. I'm thinking I should apologize to him and let him know he's not fired after all. But this whole incident has me wondering: am I supposed to have a jury duty policy? It also seems logical that I'm entitled to know more about the case he's working on. I know I'm right about this being an at-will employment state, but I'm starting to question whether I really could fire someone for going to jury duty. What's the verdict?

ANSWER: Although you are correct that Oregon is an at-will employment state, firing someone for jury duty violates public policy and is an exception to the at-will employment doctrine. Moreover, an Oregon statute regarding jury service expressly prohibits employers from discharging or threatening to discharge an employee because of jury duty service. ORS 10.090.

At-will employment is the common law concept that the employment relationship may be ended at any time, by either party, with or without reason and with or without notice. There are several types of situations, however, in which the broad freedoms of the at-will employment doctrine are much more restricted.

Employers and employees may intentionally agree to modify at-will employment status in the form of written or verbal contracts. For example, union contracts (collective bargaining agreements) often require employers to have “just cause” when disciplining union employees, and frequently provide employees with a formal grievance process and other greater rights than those that exist in a simple at-will employment relationship.

Individual employment contracts often alter the at-will nature of employment by providing for the relationship to continue for a particular timeframe or limit the employment for the purpose of a distinct task or project to be performed.

Changes to at-will status may also be the unintended result of conduct by an employer that violates civil rights laws (which generally prohibit employment decisions based on protected classes, including, for example, race, color, national origin, and sex), or conduct that constitutes a tort (examples of tortious conduct include invasion of privacy, assault, battery, defamation, and intentional infliction of emotional distress). An employer that engages in such conduct is prevented from using the at-will employment doctrine to shield its illegal actions.

Relevant to your questions regarding jury duty is the exception to the at-will employment doctrine that applies when an employer’s conduct violates public policy. Oregon courts have determined that employers may not discharge or retaliate against employees based on socially undesirable motives, such as terminating an employee because he or she refuses to perform an illegal act, or refuses to sign a potentially defamatory statement about a former employee. Disciplining employees for fulfilling jury duty obligations has been ruled to be one of these socially undesirable motives.

In short, disciplining or terminating Phil for serving on jury duty would violate public policy, despite the fact that his employment relationship with your company is typically at-will in nature.

Employers are not required to have a jury duty policy, and are not required to pay employees for work hours spent serving on a jury (unless the employee is exempt). However, employers may want to have a jury duty policy in order to inform and describe

for employees any procedures the employer wants employees to follow when they are called to jury duty.

For example, the policy may outline a procedure and timeline for employees to notify the employer of jury duty summons. Such a policy should also include information regarding whether employees will continue to be paid while on jury duty, and whether payment of wages is limited to a certain number of days spent on jury duty. If the employer chooses to pay employee wages during jury service, the policy should also inform employees whether they are obligated to turn over to the employer any reimbursement provided by the court for the jury service.

As for Phil's unwillingness to discuss the case, you should not take it personally. It is not unusual for a judge to instruct jurors not to discuss any details about the case with anyone while the trial is going on. If you have sincere concerns about whether Phil is spending his time at jury duty, simply request that he provide proof that he is serving on a jury, which he may easily obtain from the court clerk's office.

For more information about this and other important issues concerning Oregon employers, including the seminars conducted by our Technical Assistance Unit, please visit our website at www.Oregon.gov/boli/ta or call us at 971-673-0824.