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Week of **November 10, 2009**

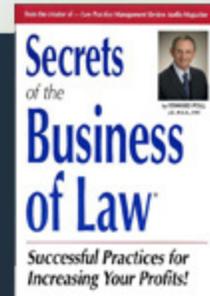
Of Layoffs and Lawsuits

In a previous [Tips column](#) we wrote about how difficult it is for an older lawyer who has been terminated by a law firm to prove that age discrimination was the reason. The Supreme Court's decision in *Gross v. FBL Financial Services, Inc.* raised the bar for plaintiffs to prove a discrimination claim, and law firms have great latitude in evaluating when an older lawyer's performance has diminished to the point where termination is justified.

Nevertheless, law firms are not exempt from the legal requirements to operate a workplace free from discrimination. That means ensuring that characteristics other than an individual's skills, experience and knowledge do not become factors in making employment decisions - including downgrades, layoffs and terminations. However, firms that are subjective and personalized in employment decisions more arbitrary than the law allows can face legal snares.

One decided suit involved an older partner at a major firm who refused to accept a downgraded status. The law firm argued that the lawyer breached his employment agreement by failing to produce sufficient billable hours. The lawyer argued that he merely had to be available to do work, that he did not have rainmaking responsibilities. An arbitrator found that the lawyer did seek billable work and was available, and that his contract did not otherwise require that he reach the firm's billables benchmark.

Associates are employed at will. Fulfilling their responsibilities to do their assigned work in the most effective and efficient way possible is the standard to keeping an associate's job. If a law firm feels it is necessary to terminate an associate who has not attained the level of desired quality, written standards that define a lack of or deterioration in performance are essential. If the firm has not explained clearly what kind of performance is expected as a financial



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and service baseline, associates may claim their treatment was unfair or biased. Similarly clear standards are vital for staff persons also. A comprehensive description of job tasks and performance standards for every law office staff position can disprove allegations of unfairness in the event of layoff.

It's not surprising that there is little evidence of increased lawsuits against law firms regarding termination issues. Having advised corporate clients for years on these issues, firms that act in what is perceived as a fair fashion, that have appropriate and non-discriminatory criteria for job actions, and that provide some assistance to the persons let go, are likely to escape scrutiny and litigation. Also, since another lawyer is likely to be needed to file suit, such proactive steps by the law firm will significantly reduce potential damages and discourage contingency lawyers—and the fired person usually can't afford a lawyer paid by the hour. There is one caveat: watch out for the law firm that fails to address these issues when laying off its lawyers or staff.

Personal Commentary

R & R; that's been the order for the day. We've been Airstreaming the last few days along the Central Coast of California. Gorgeous weather and a lot of fun, to boot. And cycling along highway 101 was a joy. So, though unusual for me, it was a glorious few days...

Remember, join us at LawBizForum.com.

Best wishes,

Ed Poll

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If you have a colleague who could benefit from having a coach on their side or know of a law firm that could benefit from elevating their profits and effectiveness in these challenging times, [please let us know](#).

What Readers Are Saying...

Secrets of The Business of Law® is the most insightful book I've read on this topic. It is written in an engaging, easy-to-digest style, and there was never a dull moment. I recommend it to anyone who runs a law firm and needs to turn a profit.

-CM, Massachusetts

are displayed below.