

# Employee Handbook Saves the Day!

The Third Circuit Court of Appeals recently dismissed an employee's claim for disability discrimination and retaliation where the employer was able to show a well documented progressive discipline process. *Simons v. Bos. Sci.*, 765 F. App'x 773 (3d. Cir. 2019)

In plain English, that means that a well written comprehensive employee handbook that your HR department actually follows will protect you when you are sued. If sued, the Company must be able to show that the employee was terminated for legitimate business reasons and a violation of company policy rather than the alleged discrimination.

In the case above, Mr. Simons was observed by his supervisor to be visibly drunk at work, company events and slurring his speech. He was issued a written corrective action. Soon thereafter, Simons again appeared visibly drunk at a business meeting and was issued a final corrective action directing that he not drink alcohol at any future company events. Following that corrective action, Simons attended a sales meeting where he was accused of acting inappropriately with a female co-worker. A company investigation revealed that Simons had been issued a DUI during company time.

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The court dismissed his case and took special note of the clearly defined process followed by the employer, finding that Simons' own actions demonstrated poor judgment, violation of company policy and ample evidence of misconduct.

The court found that even though the notices of corrective action were old, they demonstrated a pattern of misconduct that formed the basis of the termination decision. In light of the employee's documented deficiencies, the court dismissed the employee's case before trial.

## Takeaways:

1. **Make sure you have a comprehensive, clear and well written employee handbook.**
2. **Make sure that your employees receive periodic training on the handbook policies and your expectations of workplace behavior.**
3. **Make sure your HR staff actually follow the procedures and document performance deficiencies and policy violations.**
4. **Make sure that the company hires a neutral, independent third party to conduct an investigation of any complaints in the workplace.**

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