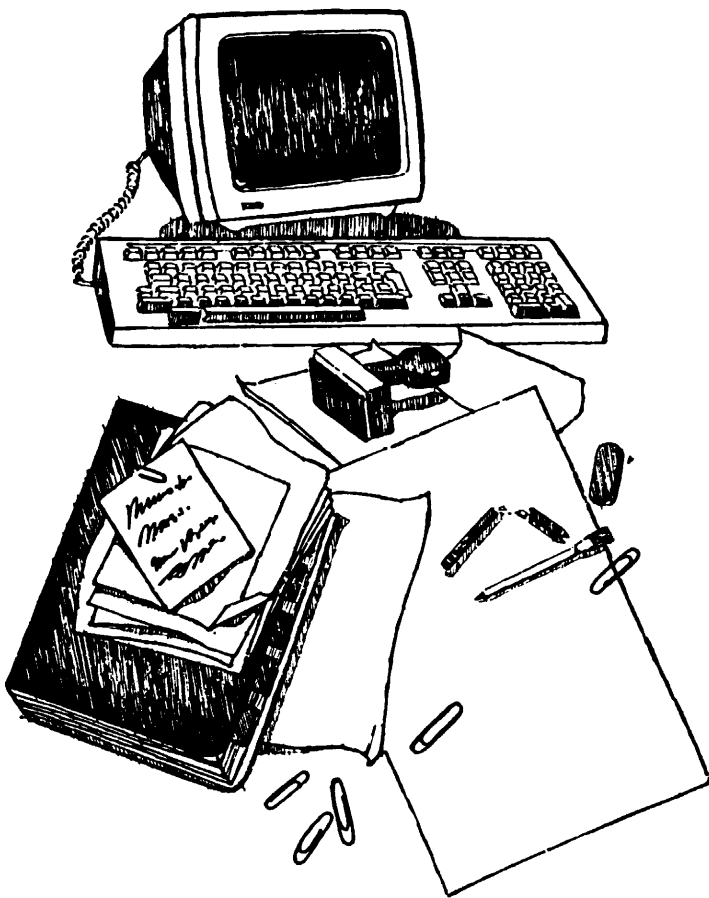


On The Firing Line

Cancer-causing computers, lost teeth, vows of silence . . . all end up in wrongful discharge suits.



One secretary feared her word processor emitted cancer-causing rays, and refused to use the machine. When she was fired, she in turn sued the company for failing to provide a safe workplace.

Since the days of the Hammurabi Code (C. 500 B.C.), employers could fire employees at will, for no cause or any cause, if there was no contract.

This kingly power has been greatly diluted by today's judiciary. And it is the lowly employee handbook that has become the Magna Carta for previously unprotected employees.

The inevitable pilot case involved a manager who after 12 years was let out without as much as a "reason why." In 1982 he sued—at least for an explanation.

The company's lawyers based their defense on the "employment at will" doctrine. But the employee's counselor introduced the company handbook which required "just cause" for dismissal.

"Not binding," declared the company, "it's only innocent rhetoric." But the New York Appellate Court ruled otherwise and awarded five-figure damages to the ex-executive who was fired out of hand.

In a similar case, an employee handbook was equated to a contract where a college professor was denied tenure.

Even though the college's employment application specifically stated the institution had a "right to terminate an employee at its discretion and for ANY reason." The handbook contained these encouraging words: "The college administration wishes the faculty member to feel that he has permanent tenure as long as his teaching services are satisfactory, he displays a cooperative attitude toward his co-workers and supervisors and he is happy in his work."

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The professor convinced the court he was fulfilling the terms of the employee handbook, and so was awarded his tenure.

The employment-at-will creed is being buffeted on other grounds, besides what is written in the handbook. One loyal worker reported to the police a colleague was selling stolen merchandise. But he was discharged by his firm for failing to inform his employer first and permit management to investigate and discipline the dishonest worker. Furthermore, said management, no "internal personnel problem" should be unilaterally referred to a public agency, with the attendant negative publicity.

The court ruled, "The law is feeble indeed if it permits the employer to take matters into its own hands by retaliating against employees who cooperate in enforcing the law."

Consider some of the oddball issues which bring companies to court:

- At a non-union company, one employee punched a supervisor and knocked out four of his teeth. When the employee was fired, a group of other employees walked out in protest. After a week they asked to return to work, but were told they had been fired for walking off the job. But a court ordered them reinstated with back pay, since they had a "right" to strike over what they considered an employer's allegedly harsh treatment towards another worker.

- A secretary refused to work on her word processor, fearing it emitted cancer-causing rays. When she was fired for refusing to do her job, she sued charging the company was obligated to provide a safe work place.

- Rather than fire an erring worker outright, his supervisor believed the man eventually "would hang himself." And he did, when one of his projects turned out to be filled with inaccuracies. When the employee was let go, he told a judge his employee handbook said no employee would be discharged without being told of his shortcomings and given a chance at "rehabilitation." The court awarded him damages for unlawful discharge.

- A supervisor confronted a non-union employee he suspected of stealing company property and offered him a chance to explain. The employee refused to talk unless a fellow employee was permitted to represent him during the meeting. The request was denied and the employee fired for refusing to cooperate in the investigation. He sued for reinstatement and won reinstatement with back pay. He's entitled to have a representative present, the court ruled.

- A male employee who claimed he was subjected to sexual harassment by a supervisor was awarded \$196,000 on the grounds that management did not take strong enough steps to stop the

harassment.

- Approximately 100 former employees of a major corporation recovered \$7 million in damages, including back pay, because the company's reduction in force was found to have discriminated against them on the basis of their age.

- A woman on vacation in San Francisco joined a cult where members can not speak to anyone for one week every three months. Upon her return, her silence on the job caused her dismissal. Though the court ruled the company "did right," the legal fees were \$40,000.

- An employee loudly preached religion in the company's cafeteria. Other employees complained at the lunch-hour disturbances, and he was let out. He went to court on the grounds of "freedom of speech," and though his claim was thrown out the company incurred \$100,000 in lost time.

. . . The employee refused to talk with out a fellow employee to represent him. The request was denied and the employee fired. He sued and was reinstated with back pay.

• A group of employees asked their supervisor why a member of their team was fired. He told them the truth—the employee had his hand in the till. The accused one sued, and won \$50,000 because the supervisor had no business revealing the cause of the dismissal to others.

• A company set up a television camera to monitor work progress; there was no intention to “spy.” The employees disagreed and went on a slowdown costing the company \$200,000. The case came to arbitration, and the referee ultimately ruled management had every right to install TV cameras to record the work patterns of employees.

• An employee who was an alcoholic went on a rampage one day and damaged a considerable amount of company property. He was discharged. He went to court arguing that, as an alcoholic, he was a sick person and could not be fired for what he did. He insisted the company pick up the tabs for a course in rehabilitation in which he promised to enroll. The issue is still pending in the courts.


An employee had “little white lies” on his application form. After six months he was given notice, but after a court battle was reinstated because the company “had waited too long”

• An employee filled out an application with “some little white lies.” After six months he was given his notice and subsequently, went to court and demanded his job back. He argued the company waited too long and therefore dismissal was invalid, especially in view of his good work and good behavior. Yes, said the court, the company waited too long.

• A man and his wife had a drunken argument. At one point the man ran upstairs, took his gun out of a drawer, fired at his wife and grazed her ear. She was treated at the local hospital and did not press charges against her mate. But the shooting made the morning papers.

That afternoon the husband came to work at his regular night shift. He was stopped by the supervisor and told that he was no longer an employee: “We can’t have anyone here with a temper like yours. Who knows you might get sore and shoot one of our employees.”

He filed a grievance and his discharge came up before an arbitrator. He argued that in the company rulebook there were 152 “don’ts” that could get you fired. “Where,” asked the employee, “does it say shooting your wife is a cause for discharge?”

The arbitrator agreed and the man was put back to work. 

While vacationing in San Francisco, one woman joined a cult and took vows of silence. Her employer fired the woman for refusing to speak at work, and spent \$40,000 to successfully defend itself against a lawsuit.



About the Author . . . Dr. Larry Stessin is professor emeritus of management at Hofstra University in New York, and for ten years was associate editor of Forbes magazine. He presently writes a management column for newspapers.