

After hours: 5 rules for regulating employee moonlighting

With the rise of the gig economy, some of your employees may have started a side hustle to bring in extra income. It's easy for workers to tap into the flexible hours driving for Uber or Lyft, for example, to pocket some cash.

Most of the time, working the gig economy or otherwise moonlighting poses no conflict with your organization's work.

But if an employee's second job leads to working long hours, exhaustion could lower his or her productivity, and in some cases it could create liability for you.

Case in point: A court decided it was legitimate for the U.S. Postal Service to demote Denise after her Mary Kay cosmetics business began taking up too much of her workday. Denise, who is black, sued for race discrimination.

She argued that the Post Office ignored it when a white male employee delivered Avon orders on duty. But Denise had solicited fellow employees and even customers to buy her products and become sales reps. The court said the punishments could differ without being race discrimination. (*Roland v. U.S. Postal Service*, 11th Cir.)

How hard is it to crack down?

You are free to regulate off-duty employee behavior—within narrow limits. You have a right to prohibit employees from taking other jobs that conflict with their work duties.

But when should you discipline employees for moonlighting?

Advice: Set a clear policy that outlines what you consider acceptable outside employment. Address moonlighting in your employee handbook. Specify what off-duty activity is prohibited in terms of behavior that is unbecoming, immoral or illegal. Feel free to restrict outside employment that conflicts with your legitimate business interests. Spell out restrictions on outside business or employment.

Follow these five rules when setting moonlighting rules:

- 1. Avoid blanket anti-moonlighting policies**—or rules against interacting with competitors. If you need to protect trade secrets, have employees sign noncompete agreements.
- 2. Check state laws** and get legal advice on anti-moonlighting policies.
- 3. Uniformly apply your moonlighting policies.** Otherwise, you risk a discrimination lawsuit.
- 4. Thoroughly investigate** all violations of the policy. You shouldn't fire or discipline an employee merely

because you suspect him or her of behavior that's unbecoming, illegal or in conflict with your interests. Find out exactly what's happening before you act.

5. Be absolutely equitable about how you punish employees who break your rules. Deviating from standard policy can look like discrimination.

Before you crack down on moonlighting ...

Considering discipline for moonlighting? Answer these questions before acting:

- ✓ What specific acts constitute questionable off-duty behavior?
- ✓ How does the behavior affect your business?
- ✓ Would you be able to prove in court that there's a clear link between off-duty behavior and the employee's performance?
- ✓ Will your planned discipline be consistent with how you handled other similar cases?

Any "No" answer may be an invitation to a lawsuit.