

Zero-tolerance policy OK if evenly enforced

If, like many employers, you expect employees to refrain from engaging in threats or violence at work, you probably have a zero-tolerance policy. The practice in some organizations is to simply fire anyone and everyone implicated in a violent incident. That's usually fine.

However, you must be prepared for a lawsuit if one of the people has previously complained about some form of discrimination. She may allege she was fired in retaliation for that prior activity. You can increase the odds of winning if you apply your zero-tolerance policy consistently.

Recent case: Tamara was known as a frequent complainer, having filed a series of internal discrimination complaints over the years, as well as at least one EEOC complaint. Nothing ever came of her accusations.

Then, almost a year after she complained to the EEOC, Tamara and a co-worker got into an altercation. According to Tamara, the co-worker came up to her, waved a finger in her face and yelled that she was going to "kick your ass." Tamara pushed the woman's finger away.

The employer had a zero-tolerance policy against fighting. After a brief investigation, it concluded both parties were partially at fault. Both were fired.

Tamara sued, alleging that she had been discharged in retaliation for filing the EEOC complaint.

However, the court concluded that even if the employer had been wrong about Tamara's role in the argument, it could still fire both individuals.

To win a retaliation case, Tamara would have had to show more than her employer's unfairness in having a zero-tolerance policy. She needed to show that the employer had used the incident as an excuse to punish her. She didn't do that. (*Ciulla-Noto v. Xerox*, No. 16-CV-6362, WD NY, 2017)

Final note: Had only Tamara been discharged, her case would have been more solid.