Are you obligated to investigate before firing? For at-will employees, you have discretion

What kind of investigation, if any, is required before an employer can fire a worker for what it believes is some kind of misconduct?

Some employees have argued that both California's Fair Employment and Housing Act and common law require a careful investigation before an employer can take action against a worker. But that turns out to be quite a limited right.

Recent case: Orlando worked for many years at Friendship House, a San Francisco drug treatment center. Several members of his family worked there, too. His wife was a counselor. His mother-in-law had started as a volunteer at age 19 and eventually became CEO of Friendship House. Orlando was the second-most senior manager and a high-performing employee.

Then Orlando and his wife started having marital problems. His wife called her mother, the CEO, and reported that Orlando had a weapon and was angry at fellow employees. Plus, she claimed Orlando had relapsed on drugs and was, therefore, dangerous.

His mother-in-law placed Orlando on administrative leave while her daughter sought a protective order. Then she terminated Orlando.

He sued, claiming that even an at-will employee was entitled to some sort of a hearing or investigation before losing his private-sector job. This, he said, was a "breach of the covenant of good faith and fair dealing." He argued that this created a duty for the employer to conduct "a reasonable investigation before terminating him."

The court disagreed. Because Orlando was an at-will employee, he could be fired for any reason or no reason (except, of course, an illegal reason like sex or race discrimination). At-will employees have no inherent right to be fired only for good cause, or to have a full investigation into whether the employee did something that warranted termination.

Orlando also argued that Friendship House should have conducted an investigation because his situation involved a threat of violence. He reasoned that since his wife said he was dangerous, the treatment center was obligated to investigate the alleged danger for the benefit of other employees and clients. That investigation, he reasoned, would have found him innocent and, therefore, he would not have been fired.

The court rejected that claim, too, noting that by immediately removing Orlando from the workplace, any danger to others was eliminated. The court refused to turn logic on its head and give an alleged potential perpetrator of future violence a right to a hearing. (*Nakai v. Friendship House Association of American Indians*, Court of Appeal of California, 2017)

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Final note: Orlando also claimed that he had been fired because of his marital status—because he was married to the CEO's daughter. FEHA makes it illegal for employers to discriminate on the basis of marital status. Thus, employers cannot refuse to hire single applicants or favor married applicants over divorced ones.

But FEHA's anti-discriminatory provisions do not extend to the identity of individuals in a family unit.

The court dismissed his claim. It reasoned that while FEHA bans discrimination on the basis of marital status in employment, it is the status that creates liability, not the particular individual the employee claiming discrimination happens to be married to.

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