

# Was that a lack of training or common sense?

Employees discharged for unprofessional conduct sometimes try to blame their problems on a lack of training. They argue that they had no way of knowing that their transgressions were inappropriate. That won't work if common sense would have told a reasonable person that their conduct was wrong.

**Recent case:** Erik was a California game warden. One of his duties was to respond when land owners called to complain about alleged trespassing during hunting season. Wardens mediate those disputes.

Erik's trouble began when a hunter filed a complaint, essentially alleging that Erik and a land owner were trying to extort hunters who mistakenly wandered from state game lands onto private property.

An investigation revealed three incidents involving one land owner who had called Erik to report trespassers. In each case, the owner detained the alleged trespassers until Erik arrived. The hunters reported that while Erik threatened to take them to jail for trespassing, the land owner negotiated a payment for the trespass—usually handing over a hunting rifle in exchange for the land owner's promise not to press charges. Erik was terminated for his role in the incidents.

He sued, arguing that he had never received training in how to handle trespassing. He said he thought he was authorized to supervise these kinds of on-the-spot negotiations to resolve disputes.

The court shot down Erik's defense. It said lack of training wasn't the problem here. Erik should have known his conduct wasn't acceptable even without being told. (*Fleet v. State Personnel Board*, Court of Appeals of California, 2018)