

Weigh all the risks of bringing criminal charges against terminated employee

Sometimes employee misbehavior is so egregious that you're tempted to call the police. But you should think twice before filing criminal charges against a former employee. Consider all the possible consequences.

Among them: You might find your organization on the receiving end of a malicious-prosecution lawsuit.

Recent case: Vilma worked for a dental practice with several locations. She started as a part-time receptionist but quickly assumed greater responsibilities, went full-time and earned significant salary increases.

The practice included several dentists, on whom it relied for specific information relating to treatments, patient billing and authorizations for account adjustments or discounts.

Vilma claimed later that several of the dentists routinely gave oral approval for employees and family members to receive discounts. Her job included entering those approved discounts into the payment and collections system.

She made a number of changes to charges for her own family members, including her husband. The dental practice didn't have any specific discount rules in its handbook.

The practice did have a sexual harassment policy that required all managers and supervisors to report harassment they observed and forward all employee harassment claims to HR for investigation.

As part of a promotion, Vilma transferred to a new office, where she worked with an office manager and a regional manager. That's when she alleged she began experiencing sexual harassment. Vilma says she told the office manager she was uncomfortable with the actions of the regional manager.

On two occasions, he engaged in conduct she saw as offensive while the office manager looked on and ignored him. First, he allegedly told them both that he had recently had sex with an employee and then gone home to have sex with his wife the same day. He also allegedly put his genitals, while still clothed, on Vilma's desk and stated, "They just want to sit and relax on your desk." The office manager never reported the incidents to HR.

Soon after, the practice moved Vilma to another position. It then allegedly discovered the various discounts Vilma had applied to her family's dental bills. She was issued a written warning.

That's when she told HR that the alleged harasser had "touched her."

Vilma was fired soon after.

After receiving a "nasty letter from her lawyer," the practice CEO wrote in an email, "Go after Vilma ASAP." What followed were criminal charges against her for allegedly falsifying bills to reflect discounts the clinic now claimed were unauthorized. Eventually, the prosecuting attorney concluded that the timing was suspect and that there wasn't enough evidence to prosecute Vilma.

Vilma then filed both sexual harassment charges and a malicious-prosecution claim. The court said both claims could proceed.

Specifically named in the lawsuit was the office manager who didn't report the alleged sexual harassment to HR when she saw it and heard Vilma complain about other incidents. (*Nokaj v. North East Dental Management, et al.*, SD NY, 2019)

Final note: Unless you are willing to make criminal accusations against an employee *at the time you terminate her*, don't do it at all. Waiting until it's clear the employee may sue looks suspiciously like piling on, which courts don't like. There's no cap on malicious-prosecution awards.