

OK to suspend employee who has been arrested if alleged violation would compromise safety

Being arrested for a crime is not the same as being convicted. After all, citizens are innocent until proven guilty, and many arrests never result in convictions.

But the presumption of innocence doesn't mean employers can't suspend employees who have been charged with crimes—if those alleged crimes may affect their ability to do their jobs. That's especially true for employees who work in sensitive areas or around vulnerable people such as children or the elderly.

In one recent case, a federal court held that suspending someone who had been arrested did not violate the public-policy exception to Pennsylvania's at-will employment doctrine.

Recent case: Samuel Mallette worked as an at-will security guard for USSA, assigned to St. Christopher Children's Hospital in Philadelphia. His duties included transporting sick children, talking with parents and patients, and generally being helpful.

Mallette was suspended when his supervisors learned he had been arrested for being involved in an assault. The charges were serious. If he had been convicted, he would have been fired because state law prohibits security guards from having such convictions. However, authorities eventually dropped the charges, and USSA reinstated Mallette.

Mallette sued, alleging that suspending him amounted to a wrongful discharge in violation of public policy.

The court disagreed. It said employers could act reasonably, pending resolution of criminal charges affecting the workplace. In this case especially, the court praised the employer for reinstating the guard. (*Mallette v. USSA*, No. 07-3642, ED PA, 2008)

Final note: Pennsylvania courts several times have cited public-policy reasons when ruling against employers that fired at-will employees. In one case, an employer illegally fired an employee for serving on a jury. In another, an employer illegally fired an employee for reporting his employer's violation of nuclear safety rules. In the final case, an employer illegally fired an employee for having a criminal record, even though he had received a complete and unconditional pardon for the crime.