

## **HOLIDAY EYE EDITION**

This time of year brings external pressure and stress to employees and managers. With that stress comes workplace problems, some of which require disciplinary action. In this issue, we'll focus on the following issues within workplace discipline:

- **TAPE RECORDING BY EMPLOYEES IN CONNECTICUT – LEGAL?;**
- **STEPS TOWARDS A LEGALLY SOUND DISCIPLINE EVENT; and**
- **THE USE OF ARTIFICIAL INTELLIGENCE (AI) BY EMPLOYERS**

### **WORKPLACE RECORDING BY EMPLOYEES**

In Connecticut, there is a difference between in person recording and telephonic conversation recording. ***Recording of telephonic conversations requires consent by all parties to the telephone call. See Conn. Gen. Stat. § 52-570d(a).*** Because of this statutory requirement, there are fewer workplace issues and cases involving telephonic taping.

In-person tape recordings in the workplace are another matter. By law, consent of both parties to a taped, in-person conversation ***is NOT required.*** Over the years, many of our employer clients have had to deal with this issue, which can take the form of rumors – “Hey did you know that Sue has been taping meetings?” – or actual knowledge that employees are tape recording meetings. This issue causes stress and decreases overall employee productivity.

What are some ***solutions?*** Consider:

- Instituting a written, published work rule that prohibits recordings without consent by all parties;

- Be aware that if an employee sets up a taping and later leaves a meeting or conversation with the recording running, that employee has committed a Class D Felony under our unlawful eavesdropping statute. *See Conn. Gen. Stat. § 53a-189*;
- If the taping has occurred or is occurring, review whether the recordings may constitute “an unreasonable intrusion upon the seclusion of another.” *See WVIT, Inc. v. Gray, 1996 Conn. Super. LEXIS 2841*.

## **RULES FOR EFFECTIVE DISCIPLINE**

- Have fair work rules that are published/communicated;
- Apply these rules fairly and consistently (in discipline);
- Conduct fair and thorough investigations before discipline;
- *Be clear, precise, and honest in the disciplinary writeup;*
- Conduct the discipline meeting respectfully – think about timing and location;
- Centralize decision making on discipline decisions – provides for consistency;
- Before concluding the investigation, **interview the alleged guilty party**;
  - They may lie. However, ***dishonesty in an investigation*** is a terminable offense.
  - You can tell (testify to) any factfinder/jury that you gave the alleged guilty party **due process-like rights**; and
  - Before issuing discipline, ***think about progressive discipline; using progressive discipline***, while not required, is fact finder/jury friendly.

## **AI IN DISCIPLINARY WRITE-UPS**

Many employers are using AI software to help with recruiting and the hiring process. Some of these employers are also using AI software to help with disciplinary events (e.g., counseling and warnings). While the use of AI software for lower-level discipline is helpful for HR teams, we have noticed that some clients have managers and executives who are using Chat GPT to write their letters of suspension and/or termination. We recommend caution here. Think of the questions you or your managers may face about Chat GPT on cross-examination in any legal proceeding:

- ***“Mr. Smith, is that your signature on the bottom of the termination letter to my client, Sue?”***
- ***“You would agree that Sue’s termination letter is important?”***
- ***“You would agree that you didn’t take Sue’s termination lightly?”***
- ***“You certainly would agree that if you took it seriously you didn’t rush the process, correct?”***
- ***“No shortcuts?”***
- ***“Given all these answers – you authored this letter – Exhibit 10?”***

At this point, the trap is set. We do not believe at this time that juries or judges are ready to accept Chat GPT-authored termination letters. Don't forget, once you admit to using Chat GPT to write the termination letter, you might be asked:

- **“DID YOU ASK CHAT GPT WHETHER MY CLIENT SHOULD BE FIRED?”**

In our next issue, we will continue the discussion of how AI is being received in our Courts. On the Federal Court side, a new rule of evidence regarding AI was proposed in August 2025 and is open for comment until February 16, 2026. Proposed Rule of Evidence 707 would subject “machine-generated evidence” to the same admissibility standard as expert testimony.

#### **FIRM UPDATES**

- We thank **THOMAS LEPORE** who contributed to this edition of Eye On the Law
- **SEBASTIAN FOX – VICTORIOUS AGAIN – THIS TIME ON THE NATIONAL LEVEL**
  - ***WE ARE PLEASED TO REPORT THAT SEBASTIAN RECENTLY RECEIVED THE “BEST ADVOCATE” AWARD AT THE NATIONAL TRIAL ADVOCACY COMPETITION IN SYRACUSE. SEBASTIAN IS STILL IN HIS SECOND YEAR OF LAW SCHOOL.***

*If you have concerns about these or any other workplace or litigation issues, please contact*

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