

JUST ASK JACOB

We need your stinkin' badge: recouping the cost of unreturned equipment

by Jacob M. Monty
Monty & Ramirez, LLP

Q *If an employee quits and fails to return his badge and uniform, can we deduct the cost of the items from his final paycheck? If not, what can we do?*

A That depends on the state where the employee worked. Some states allow employers to make deductions from employees' pay with written authorization. You may ask an employee to sign such an authorization upon hire when you issue him the work-related equipment. An alternative is to send the employee an invoice and consider pursuing the invoice in collections if he doesn't pay it.

Q *We recently placed a manager on a performance improvement plan, and she responded by resigning (with a two-week notice). Because she is having a negative impact on team morale, can we make her resignation effective now and forgo the two-week notice period? If so, do we need to pay her for the two weeks?*

A If the supervisor's employment is at will, you can probably terminate her even though she gave notice of her resignation. At-will employees can be terminated at any time for any legal reason. You wouldn't need to pay her for the two-week notice period, and you would owe her wages only for the time she worked. However, if she is covered by a collective bargaining agreement, you may not be able to terminate her after she has given notice.

Q *One of our employees has run into economic hard times. Unfortunately, he has started having body odor problems. I understand this is a delicate issue—e.g., his body odor may be due to an illness. To me, however, it's obviously body odor from sweat. How can we encourage him to recognize the problem and clean up his act?*

A As you've acknowledged, you must be careful in this situation because the employee's body odor could be caused by a medical condition that may be protected under federal law. You should address the issue in private and with sensitivity. Bring it to the employee's attention, and discuss possible solutions with him, in case his body odor is attributable to a medical condition that may require accommodation.

Q *If an employee comes to work sick (e.g., with the flu, a fever, or vomiting), do we have the right to send her home and make her use paid time off (PTO)? Or are we obligated to pay her if we decide to send her home?*

A Yes, you may send a sick employee home. In fact, employers are required under federal law to ensure a safe and healthy work environment for employees. In most circumstances, you may also require an employee to use PTO when she is off work. As with all HR issues, be consistent about whom you require to use PTO for illnesses and when. To protect your company from liability, you should have a written policy that is applied equally to all employees.

Jacob M. Monty, the managing partner of Monty & Ramirez, LLP, practices at the intersection of immigration and labor law. He can be reached at jmonty@montyramirezlaw.com or 281-493-5529. ♣