What Should I Do If an Employee Gets Arrested?



Hopefully, you won't have to deal with a worker who is arrested and jailed. Employers who find themselves in this situation must balance the rights of the worker with the impact on the workplace and other employees.

The last thing most small business owners are worried about is what to do if one of their employees is arrested and charged with a crime and then possibly convicted and incarcerated. However, even if you think this is a scenario you're unlikely to face, it's a could idea to have at least general rules regarding this issue in place. You don't want to be caught off-guard if the unthinkable does occur.

Generally, how you deal with the situation when a worker is incarcerated will probably have a lot to do with how long the employee will be away from work, with what offense the employee has been charged, and with what relationship that offense has to the employee's work.

In situations where an employee is arrested for (*but has not been convicted of*) a serious crime that could affect the employee's ability to do the job, there are other issues to consider. If there is a clear and justifiable conflict between job function and the nature of the offense, you may want to adopt this strategy:

- Place the arrested employee on inactive or suspended status without pay.
- Provide for reinstatement upon acquittal.
- If the employee is convicted (which includes violation of parole), you should terminate the employee.

In considering the relationship between the charge and the job, be sure to take into account whether the employee will have contact with customers or if there are any on-going risks to other employees.

If an employee is arrested for – but not yet convicted or acquitted of – assault and that employee's job requires contact with the public or other employees in isolated areas, such as parking lots, suspend the employee.

This is appropriate because the offense that the employee is charged with is directly related to the kind of work that the employee does. If the employee's job did not entail public contact in isolated areas, perhaps suspension would not be necessary.

Be certain that the course of action that you take cannot be interpreted as discriminatory. With any luck, you will never face this situation. If you're unlucky enough to have this situation happen more than once, handle each employee in this situation the same way.

You may decide to treat an arrest or incarceration as an absence or treat problems with the law as personal leaves.

Treating Arrests and Incarcerations as Absences

When an employee loses time from work because he or she is incarcerated or arrested, you may choose to handle it as an absence issue. This may be your best bet if you don't have a large number of employees and arrests are not common among your workforce. You could treat such an absence due to incarceration as unexcused and apply an existing rule stating that any employee with more than the mandated number of unexcused absences may be subject to suspension or termination.

If you decide to treat this situation as an absence issue:

- Decide if the employee will be able to draw on any vacation time, if applicable.
- Permit the employee to apply for a leave without pay, subject to approval, depending on the length of the term of imprisonment (this implies that the employee will be allowed to return to work after release).

Treating Arrests and Incarcerations as Personal Leaves

In dealing with arrests or incarcerations of employees, one option is to have a general policy that allows employees to take personal leave without pay for a justified cause. This is probably a more useful way to address the situation, especially if you have few employees and do not expect this type of problem to occur with regularity.

Here is an example of a generic personal leave policy (note that this is **not the same** as sick time, vacation time, or other kinds of time away from work).

XYZ Corporation may grant you an unpaid personal leave of absence of up to three months for a justified reason. Justification will be determined by XYZ Corporation.

Written Policies Addressing Arrests and Incarceration

If your experience or the makeup of your workforce suggests that arrests may be something you might expect, you may decide to develop a specific policy for this particular situation. Here are some basic elements to consider:

- Require that an employee:
    - report the arrest to you
    - submit a police report or other documentation concerning the arrest and charges
    - comply with the requirements within a certain time frame
- Specify that:
    - noncompliance with the above-stated requirements constitutes grounds for termination
    - misrepresentation of the circumstances of the arrest can serve as grounds for dismissal

Burt, the husband of one of your workers, calls in to say that his wife has a bad

cold and can’t come into work. You later find out that she was arrested for check fraud. Under your policy, the worker can be fired for having had her husband lie about her absence and for her failure to report her arrest.

If an employee reports an arrest for nonpayment of child support, but documentation reveals that the employee was actually arrested for assault, you may dismiss the employee for lying, so long as other employees have been terminated in similar circumstances. A misrepresentation in and of itself may not be just cause for a termination unless it is specifically stated in the policy.

- State that an employee who is unavailable for work due to incarceration will be suspended or fired.
- Address the option of offering the employee work upon release, if such work is available.

Again, always remember to apply the policy **consistently and fairly** to avoid problems with the law and among your workers.

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