

THE BEHAVIORAL PSYCHOLOGY OF AN EPL CLAIM

WHY BEING "TECHNICALLY RIGHT" CAN STILL BE THE LOSING OUTCOME

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"My attorney told me WIRE training isn't required by law."

There are merits to those arguments, but that taking that stance ignores the fundamental assumptions where you are uncovered.

In most states, no statute explicitly says every employer must provide Workplace Impairment Recognition & Evaluation (WIRE) training to supervisors.

Likewise, many employers operate in "at-will" employment states. They often have broad discretion to hire, discipline, and terminate employees. So why would an employer invest in supervisor training that isn't explicitly required? Because the conversation usually stops one sentence too early.

Your attorney likely told you: "You have the legal right to terminate the employee." ...provided you do so appropriately.

That second half of the sentence is where most employment disputes begin.

The Goal Is Not to Win in Court

Most employers think the objective is winning a lawsuit. It isn't.

The objective is preventing the lawsuit from being filed in the first place. Those are two very different strategies.

One focuses on legal defenses. The other focuses on making the case so well documented that plaintiff's counsel questions whether the case is worth pursuing at all.

The Assumptions Hidden Inside Broad Legal Advice

Business owners often hear advice like:
"You're an at-will employer."
"You can terminate employees."
"The law doesn't require WIRE training."

None of these statements are necessarily incorrect—but without context, they can create a false sense of security.

But every one of those statements quietly assumes something else already exists:

- Competent supervisors
- Consistent policies
- Appropriate documentation
- Objective observations
- Employee acknowledgments
- Fair investigations
- A reasonable basis for action

Those assumptions are not automatic. They have to be built.

What Does "Appropriately" Actually Mean?

Employment laws rarely provide a simple checklist. Instead, courts repeatedly evaluate whether an employer's decision was supported by evidence and implemented fairly.

Questions often include:

- Was there an objectively reasonable basis for the decision?
- Was the decision documented?
- Were company policies consistently applied?
- Had supervisors been trained on those policies?
- Did the employee receive and acknowledge those policies?
- Was the decision based on observable facts rather than assumptions?
- Was the employer able to explain its decision consistently from the first complaint through litigation?

While none of these questions specifically ask whether your supervisors completed state-required training, that is a cornerstone of your risk and control environment: was your organization prepared and did you act consistently and reasonably? Can you prove it?

A well-documented employment decision begins with a trained supervisor objectively documenting concerning workplace behavior and ensuring company policies have been consistently communicated and acknowledged.

When a termination is later challenged, the employer can support its decision with contemporaneous documentation, policy acknowledgments, objective evidence, and records demonstrating consistent policy enforcement and legal compliance.

While strong documentation cannot eliminate every claim, it often makes weak cases far less attractive to pursue, increasing the likelihood they are resolved before litigation.

THE WELL-DOCUMENTED EMPLOYER

Good Documentation Today. Stronger Defense Tomorrow.



THE EMPLOYER WHO IS "TECHNICALLY RIGHT"

Good Documentation Today. Stronger Defense Tomorrow.



An employer may have legitimate reasons for terminating an employee, but without documentation, consistent policy enforcement, and properly trained supervisors, proving those reasons becomes much more difficult.

As a result, a claim is more likely to proceed to litigation, leading to discovery, depositions, legal fees, lost productivity, and potential reputational harm.

Even if the employer ultimately prevails, the organization may still pay a significant financial and operational price.



The Cost of Being "Technically Right"

As a business owner it's easy to ChatGPT your way into thinking through legal outcomes. Experienced risk managers think in terms of business outcomes.

Consider the potential costs:

- Legal fees
- Management distraction
- Discovery costs
- Depositions
- Employee morale
- Insurance impacts
- Recruiting challenges
- Public allegations of discrimination
- Reputational risk

Winning years later does not erase those costs. The best employment claim is the one that never becomes a lawsuit.

Why Supervisor Training Matters

Whether your state expressly requires supervisor impairment training or not, training helps create the foundation that courts repeatedly examine.

Training helps supervisors:

- recognize objective workplace behaviors,
- document observations consistently,
- understand company policy,
- avoid subjective assumptions,
- respond appropriately,
- create records that withstand scrutiny.

Training is not simply about compliance. It is about credibility.

The Behavioral Psychology of Employment Litigation

Plaintiff attorneys are not evaluating whether you believe you were right. They are evaluating whether they can prove you were wrong.

If your documentation is inconsistent...

If your supervisors disagree...

If your policies were unevenly enforced...

If no one can explain why the decision was made...

The claim becomes more attractive.

Conversely, when an employer can immediately produce objective documentation, trained supervisor observations, consistent policy enforcement, and a clear explanation for the employment decision, the economics of pursuing the case often become less favorable.

The strongest defense is frequently the one that discourages litigation before it begins.

The Real Question

The question isn't: "Is supervisor training legally required?"

The better question is: "What investments make it more likely that a difficult employment decision will withstand scrutiny and less likely that a dispute will become costly litigation?"

For many employers, that answer includes trained supervisors, consistent documentation, clear policies, and objective decision-making.

Because in employment law, being technically right is sometimes the most expensive way to win.



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