

HR STORIES FROM THE FRONT LINES



Help! I Hired a Registered Sex Offender!

Two months ago, 5-Son Accounting Firm hired Michael to be the company's night maintenance person. Since his hire, Michael has been doing an outstanding job, performing all duties without issue.

Yesterday, one of the firm's managing partners learned that Michael is a registered sex offender. He brought this information to the attention of the other partners in the firm. They conferred and agreed that they did not want someone "like that" working for the firm. The partners then informed Janet, the HR manager, of the situation and instructed her to terminate Michael.

Janet's gut instinct told her that this newly discovered information about Michael did not support grounds for termination. However, Janet was not comfortable sharing her concerns with the partners without researching the situation more thoroughly. Janet called an HR Professional for guidance.

The HR Professional confirmed that Janet's instincts were correct. Michael should not be terminated since his criminal background does not impact his ability to perform his job, nor does it put any other employees or customers at risk (since he is the only afterhours employee and works in isolation). Terminating Michael based solely on his status as a registered sex offender could expose the firm to a discrimination claim.

Armed with the HR Professional's advice, Janet met with the partners and detailed her recommendation not to terminate Michael. While the situation still made the partners uneasy, they understood Janet's recommendation and chose not to terminate Michael.

In this situation, Michael's criminal background does not automatically exclude him from the job. The relevant consideration is whether the exclusion is job related for the position in question and consistent with business necessity. For example, if this were a preschool, then the fact that Michael is a registered sex offender could be permissible grounds for exclusion from employment because he may pose a threat to the children at the preschool. In addition, the terms of Michael's sex offender registry may restrict him from working with or near children.

However, in this current case, such an exclusion is likely not permissible because Michael does not pose a threat to anyone since he works afterhours when no clients or other employees are present.

(*This incident really happened; but names and other details have been changed.)