

Human Resources

By Stephanie Ramsey



HR Reality Check

✓ *Yep, the Stories are True!*

HR CASE STUDY #17

Scenario: Delmond Funeral & Cremation Services is a multi-location business owned by Ken and Stacy Delmond. The business employs more than 20 employees between its various locations. The funeral directors move freely between the various locations as needed, and are licensed to sell preneed on behalf of the business. Recently, while preparing for a family that was coming in to arrange for an imminent death, Stacy pulled the preneed contract that was written a few years ago by one of their funeral directors, Darrin Rodgers. Stacy realized that she did not recognize the insurance company named on the contract as the policy provider. She then began researching their records and discovered that there was no indication that the business had ever had a relationship with the insurance company.

Further, the funeral business had never received commissions for selling preneed insurance contracts on behalf of the insurance company in question. Stacy and Ken then audited all their preneed contracts and discovered that Darrin had written numerous preneed contracts on behalf of this specific insurance company for all their locations without their knowledge or approval.

Upon contacting the insurance company, they learned that commission earned from the sale of the preneed contracts had been sent directly to Darrin. The insurance company also informed them that Darrin had signed a contract with the insurance company as an authorized representative of the funeral home. Ken and Stacy were very distraught. They knew they needed to address the issue but how? Should they just write him up? Could they fire him? What if he filed a wrongful termination lawsuit? They reached out for some professional guidance.

What are the rules?

Wrongful termination is a specific legal term indicating that an employee was discharged from employment for an illegal reason such as violation of federal anti-discrimination laws or a breach of an employment agreement. For example, an employee cannot be fired based on race, gender, ethnicity, religion, nation of origin or disability. It is also illegal to fire an employee based on “retaliation” because they filed a complaint against the employer, or because the employee brought the employer’s wrongdoing to the attention of the proper authorities.

Protection from discrimination is provided under Title VII of the Civil Rights Act of 1964, which is enforced by the Equal Employment Opportunity Commission. This law makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

If there is a contractual agreement between the employer and the employee, then the employer is obligated to follow the terms of that agreement. Typically, such agreements have termination clauses that identify situations under which termination is

allowable. Circumstances such as fraud, theft, violation of state or federal law, or harming the owner’s reputation in the community, may be identified as causes for termination of the employment agreement.

Another law that may be of interest is “at-will.” Most states in the U.S. have “at-will” employment. In general terms, “at-will” employment means that the employer can terminate the employee without cause at any time and the employee has the right to terminate their employment from the business without notice at any time. It is important to verify the laws of “at-will” employment in your state.

Did the employer make any mistakes?

It appears that the employer did not have a good system of checks and balances. This opened the door for the employee to create a mechanism to receive commissions on preneed sales directly. Additionally, the employee was able to represent himself as an authorized representative of the business and enter a contract on behalf of the company. There may be some ongoing obligations that will need to be addressed as a result of these actions.

In terms of responding to the employee’s actions, Ken and Stacy moved cautiously by seeking professional advice before responding. They also investigated the full situation rather than making accusations based on a single incident. This becomes very relevant in the eventual outcome for both the business and the employee.

Resolution of the issue:

There are a couple of key factors to this situation that should be considered:

1. Trust
2. Fraud

Ken and Stacy need to know that they can trust the staff that represents them and their business in the various communities they serve. More importantly they must have absolute confidence that their staff is trustworthy with their families. Darrin’s actions have called into question whether he can be trusted. Once trust has been lost, it is difficult to regain. A common analogy is putting the tooth-

paste back into the tube. It is virtually impossible!

The bottom line is that Darrin committed fraud. Delmond Funeral & Cremation Services was obligated to a contract without the full approval and knowledge of the owners of the business. Darrin executed these contracts with the third-party insurer for his own personal gain.

Based on these two facts, Darrin should be terminated. Ken and Stacy can elect to terminate him “at-will” as they reside in an “at-will” state. Should they elect to terminate “at-will,” Darrin would simply be told that they no longer need his services and he would be let go immediately. He would be able to collect unemployment and be paid any unused vacation time per their employee handbook.

There is also the option for Ken and Stacy to terminate Darrin for “cause” based on the fraud. They would terminate him immediately, pay him as required by state law and deny his unemployment claim. The denial of his unemployment claim may or may not be successful as that is determined on a case-by-case basis at the local office level of the Department of Labor.

Preventive measures:

Create checks and balances to audit the preneed contacts and how those authorized to write preneed are properly handling the paperwork.

This situation is a good example of when well-written job descriptions and employee handbooks can be critical. The job description should include a few key statements under job functions such as:

- Sign all necessary documents in your capacity as you are authorized to do so if signing the requested documents would not be a breach of your fiduciary responsibilities to the shareholders of the company.
- Notify your superior if you are offered or receive any form of compensation from a vendor or proposed vendor of the company.

In the employee handbook have a statement such as the following:

- Only the owner has purchase authority and only he/she can enter into contracts and/or agreements with vendors.

These very simple tactics can save a company big problems down the road. •