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Employment Law

Professor Fink

Foundational Workplace Law Skills: The Canine Trainer

1. Some potential legal issues are wrongful termination, disability (specifically if he is entitled to it from his job), the employer saying he would be able to work and then later firing him are some of the legal issues. I would factually want to see the employment contract, I would want to see what Smith was classified as in this contract. I would want to know if Smith got injured on the job and a description of his job duties to see if his working ability was actually limited by his injury.

Questions I would ask:

* Do you have your employment contract, can I see it?
* Did they say you were an independent contractor or an employee?
  + What aspects of your work did your employer control?
  + The Right of Control Test?
    - Do you supply your own tools?
    - Did your employer control small aspects (manner and means) of your job?
* When did your injury occur? How does it restrict you?
* What are your job duties, what is your job description?
* What was Bellow’s authority, do you have it in writing that he said you could “do on-site for as long as I needed”.
* Was there a noncompete form?

Relevant law/Application:

From *Alexander v. FedEx*, you get the Right of Control test. This test is to determine if a worker is an employee or an independent contractor. The principle aspect of this test is if the people to whom the service is rendered has the right to control the manner and means of accomplishing the result desired. There are other factors considered such as the type of occupation, if the service is a distinct occupation or business, required skill, who supplies the tools and length of time that the services are performed.

Here, Smith said that he was a contractor. It is hard to tell about the right to control. We would need to look at more about his daily work and how his employer managed his daily activities. We would need to know a lot more about the work environment and the relationship he had with his employer. These would include the questions above, but mostly focusing on if his employer controlled him in a manner that would make him an employee instead of an independent contractor.

2. First I would disclose to the client that this is a confidential meeting, then I would ask if it is alright for me to take notes while we were talking. I would likely console him about the loss of his job and try to offer some friendship/comradery. It is probably uncomfortable since he does not know if he did something wrong, and it generally is scary or intimidating doing things involving lawyers. I would make sure to explain fully my duties of professional responsibility such as the duty of confidentiality.

Second I would ask for their perspective of what happened, and probably try to get them to recount the events that occurred (Probably through the questions I wrote above).

3. I would explain my duties of confidentiality and how we have an attorney-client relationship.