

Documentation, Documentation, Documentation!

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Documentation is the most important tool in an employer's toolbox to defend against employment law claims by employees, at least according to one recently decided case. In [Simons v. Boston Scientific](#), the Court ruled that documented evidence produced by the employer was so strong that no reasonable jury could disbelieve the reasons given for termination by the employer.

You see, the employee in [Simons](#) had a pattern of excessive drinking that interfered with his work performance, which the employer documented. The employee was given two written warnings for alcohol-related conduct at work, including slurred speech and visible intoxication, and other inappropriate behavior, at a business dinner and during a meeting. Subsequent to these warnings, the employee again slurred his words and was incoherent during a conference call. Additionally, he incurred a DUI while driving during work hours. The day after the DUI, the employee requested leave pursuant to the Family and Medical Leave Act ("FMLA") to address his alcoholism.

During his leave, the employer investigated a claim of sexual harassment against the employee which another employee alleged occurred at a sales meeting. In the course of the investigation, the employer discovered that the employee had received the DUI charge (the employee never reported the charge to his employer), and confirmed that the employee appeared to be intoxicated on the conference call which took place after he had been given two written warnings against repeating this behavior on the job. The employer fired the employee. The employee claimed he was wrongfully terminated by the employer, among other reasons, because of his disability of alcoholism, and because he took leave under the FMLA.

The Court held that there was "ample evidence of misconduct, poor business judgment, and violations of the company's policies" and the employee could not show that the employer had fired him for any other reason than the legitimate reasons stated by the company. This ample evidence, according to the Court, included the written warnings, the DUI arrest during work hours, and the testimony of other employees affirming the employee's improper behavior, that the sexual harassment investigation revealed. The Court also held that, even though the employee was terminated soon after he requested leave under the FMLA, he could not establish a causal connection between his request and his termination in light of the evidence of his misconduct prior to his request for leave.

Takeaway: Documentation of employee misconduct is strong evidence to defend against employee claims of wrongful termination. Make sure you keep detailed records. Document, document, document!

If you are an employer with questions about what you can do to minimize employment law claims against your business in New Jersey, contact [Stephanie Gironda](#) or any member of the Wilentz Employment Law Team at 732-352-9858.

Attorney

- Stephanie D. Gironda

Practice

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