

Five Mistakes to Avoid When Terminating Employees

Many employers become embroiled in convoluted and expensive litigation because they make simple but avoidable errors when terminating an employee. Even if you do terminate an employee correctly there is no guarantee you will avoid a lawsuit. However, if you've done everything properly during the termination process, your chances of winning the lawsuit are much greater.

Five Common Termination Mistakes

The most common errors made by employers are:

1. Not Applying Human Resource Policies and Procedures

Proper termination policies and procedures should provide good directions for terminating an employee in accordance with applicable state and federal laws. Similarly, a well-written employee handbook, which spells out issues of misconduct and poor job performance, adds to an employer's credibility while negating claims to the contrary from a terminated employee.

2. Lack of Documentation

Poor performance should be documented in detail along with a substantiating basis. Misconduct issues require a thorough, unbiased investigation in alleged incidents. Chronologically order the documentation to provide a solid foundation for the termination. Keep in mind that without adequate documentation, your basis for terminating an employee may appear to be groundless and lack substance.

If disciplinary actions have been taken, the manager, and always with a witness present, should ask the employee to sign a description of the incident and the employer's response. If the employee refuses to sign, this should also be documented.

3. Failing to Give Employee Notice of a Termination

Although many states do not require you to give notice to an employee, many legal experts say doing so can prevent a negative decision. One very important reason is to prevent the employee from using an unrelated tactic such as discrimination to cloud the real issue behind the termination.

Should an employer terminate an employee without a prior warning, the onus is on the employer to prove that the employee should have known they would be terminated based on their actions. Avoid this situation by giving the employee notice that if they commit the same or related infraction again, they will be terminated.

4. Failing to Provide a Just Cause for Termination

In many states, workers are employed 'at-will,' which means that employers can terminate an employee at any time. Consequently, many employers feel they can terminate an employee for practically any reason and are immune from negative consequences. This is simply not true.

Most employees fall in some protected class such as age, gender, race, religion or disability. Many lawsuits can be avoided or won by employers who base their termination decision on a 'just cause' or who provide a legitimate reason for the employee's termination. A 'just cause' reason must have its foundations based on facts or proof.

5. Not Providing Accurate Performance Evaluations

The lack of documented performance evaluations is commonly used as the basis behind many wrongful dismissal actions. Often, managers seek to avoid confrontations with employees at appraisal time by giving the employee a positive evaluation and indicating the employee met performance expectations. Supervisors must be taught to be honest when completing appraisals. An employee may entertain thoughts of litigation when their performance appraisal states their performance met expectations, but the employer terminates them for alleged poor performance.