

INVOLUNTARY TERMINATION GUIDELINES

The most difficult aspect of human resources, will be involuntary terminations. Most employment litigation is the direct result of some common termination mistakes that could be prevented. To counter these mistakes, we have identified tips that will assist in protecting the company against lawsuits. While these suggestions may not prevent all legal problems, they can create an orderly termination process. Following the steps will reduce liability, will ensure that the policy is implemented correctly and consistently each time.

- Follow the company's written termination policies. Employees can claim the policy implied an obligation that terminations would be handled in a specific way and that they were wrongfully discharged in violation of the policy. Make sure that managers who handle terminations work with the human resources department and are trained on how to apply the policies. In addition, explain the policies to every employee and make sure each employee acknowledges receipt of them.
- Make sure you objectively investigate the claims against the employee before you terminate them.. When you have a good reason to believe that an employee violated a rule, policy, or procedure you should investigate. If the violation is extremely serious, suspend the employee pending the outcome of the investigation and then take appropriate disciplinary action.
- Timeliness in an investigation is important. In some cases, such as situations involving harassment, failing to investigate thoroughly and promptly could expose the organization to liability. In addition, you may appear to condone the employee's actions by allowing too much time between infractions and corrective actions. Further, if you do not act promptly, it will be more difficult to initiate or defend discipline in other cases.
- It is a good idea to follow a progressive discipline policy. It helps ensure that a termination is warranted. The theory behind progressive discipline is that you have not only explored other alternatives other than termination , but you also gave the employee the opportunity to correct his or her actions. Termination is not always the appropriate disciplinary action. Oral and written warnings

and suspensions can be viable alternatives. However, make sure you are consistent in your disciplinary actions with other employees for the same offense.

Carefully consider each step of the termination.

- Consult legal counsel before, not after, the termination.
- Consider fully the impact of laws prohibiting discrimination, including those based on race, color, religion, sex, national origin, age, or disability. Employers sometimes minimize the possible legal consequences. Other employers may believe that their employment liability insurance will cover the costs, when it doesn't. Be especially conscious of FMLA, the Americans with Disabilities Act, and the various state workers' compensation laws.
- Document the causes for the termination. I cannot overstate this point. Even if you don't think you will ever need to use it, always hang on to documentation of an employee's wrongdoing. The more physical evidence (emails, counseling's, etc) you have the better. When informally counseling your employee, always follow up with an email recapping your discussion. Your employee files should include recent performance reviews, documentation of conferences with the employee to discuss the problem, and any corrective measures taken. Avoid a situation where the only document in the personnel file of an employee terminated for "performance problems" is a performance review that indicated the employee was doing a good job. These types of inconsistencies make defending legal claims very difficult.

Prepare for the termination meeting. Take the following steps:

- Timing - Don't wait until Friday afternoon if an employee really should be terminated immediately. Waiting will only prolong the problem.
- Never conduct a termination meeting alone, ensure you have someone that would make a credible witness later.
- Treat the person being terminated with dignity. Creating a hostile situation will only serve to prove detrimental to the company and make it more likely that the employee will sue

- Ensure you have all paperwork (separation agreement, COBRA forms, Unemployment paperwork etc) ready for the employee. In California, when terminating an employee it is the company's obligation to have the final wage payment available at the time of termination . This should include wages for all time worked as well as any unused vacation time.
- Be Honest. State the real reason for the termination. Some employers provide fake reasons for termination because they do not want to hurt the employee's feelings. A false or misleading reason may support future litigation against the employer. Supervisors should be trained to explain tactfully the reason for discharge and to discuss only verifiable facts that influenced the decision. The employee's personnel file also should reflect the reasons given to the employee since it may be used in subsequent litigation.
- While in the termination meeting, be brief and to the point. The less said the better. Do not engage in an argument or go too far into a justification.
- Limit your discussions of the termination. To ensure confidentiality and limit defamation claims, discuss termination decisions only with those people who need to know. This list may include the employee's immediate supervisor, your own supervisor, and legal counsel.