Examples of Illegal Reasons For Terminating an Employee



Both state and federal law forbid you from using certain reasons to fire an employee. These prohibitions apply regardless of whether the employee has a contract for employment with you or not.

DISCRIMINATION

Federal law makes it illegal for most employers to fire an employee because of the employee's race, gender, national origin, disability, religion or age (if the person is older than 40). Federal law also prohibits most employers from firing someone because that person is pregnant or because that person has recently given birth or because of any related medical conditions.

Most states also have anti-discrimination laws that include all of the characteristics protected under federal law. Many state laws, however, are broader than federal law. They include additional prohibitions (for example, prohibiting discrimination on the basis of sexual orientation or marital/civil union status) and they include a wider range of covered employers. To learn more about your state anti-discrimination laws, contact your state labor department or your state fair employment office.

RETALIATION

It is illegal for employers to fire employees for asserting their rights under the state and federal antidiscrimination laws described above.

REFUSAL TO SUBMIT TO A LIE DETECTOR TEST

The federal Employee Polygraph Protection Act prohibits most employers from terminating employees for refusing to take a lie detector test. Many state laws also set out strong prohibitions against using lie detector tests.

CITIZENSHIP AND IMMIGRATION STATUS

The federal Immigration Reform and Control Act (IRCA) prohibits most employers from using an employee's citizenship and immigration status as a reason for terminating that employee so long as that employee is otherwise legally authorized to work in the United States.

COMPLAINING ABOUT OSHA VIOLATIONS

The federal Occupational Safety and Health Act (OSHA) makes it illegal for employers to fire employees for complaining that work conditions fall short of complying with state or federal health and safety rules.

SOCIAL MEDIA POSTINGS

Section 7 of the National Labor Relations Act (NLRA) protects employees who engage in “concerted activities for the purpose of collective bargaining or other mutual aid or protection.” The National Labor Relations Board (NLRB) and courts have interpreted this provision to mean that employees have the right to act together to improve wages and other terms and conditions of their employment, which would include pay, safety concerns, and working conditions. This right applies to both union and non-union employees. The NLRB has taken a strong stand against overly broad social media policies and against disciplining or terminating employees for exercising their rights under the NLRA to protest their working conditions through social media.

DISCUSSING WAGE INFORMATION

The NLRA also protects employees’ right to discuss their wages and hours with co-workers and others. This means that an employer mandate or rule prohibiting or even discouraging employees from discussing the terms and conditions of employment with co-workers likely violates Section 8(a) (1) of the NLRA, and as such is ill-advised.