Three Top Tips For Terminating Employees



The termination process is often unpleasant for an employer and likely devastating for an employee. Indeed, being terminated ranks among the top worst life experiences for an individual along with the loss of a loved one and divorce. When an employee feels wrongly terminated, such sentiments can lead to anger, vengefulness, and in some cases a lawsuit. No matter what an employer says or does when terminating an employee, there may always be certain employees who believe their termination is unjustified. However, there are certain tips and practices that can make the termination process less painful and more dignified for everyone involved.

TIP #1: REVIEW EMPLOYER POLICIES AND PRACTICES PRIOR TO THE TERMINATION

An at-will employer is generally within its rights to terminate an employee whose performance or conduct fails to meet the employer's reasonable expectations. However, to avoid potential discrimination claims, termination decisions need to be consistent with employer policy and past practice in similar situations. Discrimination concerns arise when an employer tolerates other employees who have demonstrated similar unsatisfactory performance, but terminates another employee for same performance deficiencies without prior disciplinary action. If an employer's actions are not consistent with its policy and past practice and/or there is not a legitimate explanation for the different treatment, then if the discharge is challenged, the employer may face difficulty marshaling a defense.

TIP #2: DOCUMENT, DOCUMENT, DOCUMENT!

Unless the employer has a progressive discipline policy or a contract that governs documentation of prior performance or conduct issues, prior documented disciplinary action is generally not required by law. In at-will employment, an employer can terminate employment without any prior verbal or written documentation. However, formal write-ups or even documented verbal warnings are often a good idea because they serve as evidence that supports the employer's discharge decision, and such documentation can show that the decision is not inconsistent with how others in the past have been treated in similar situations (if any). Prior documentation of disciplinary action can also avoid the employee from feeling "caught off guard" or "shocked" by a termination decision. Ideally, an employee is not learning for the first time about the employer's

dissatisfaction with his or her performance or behavior at a discharge meeting. Generally-speaking, the lack of prior documentation does not preclude an employer from moving forward with a termination, however, when it comes to the actual discharge decision the employer should document the final decision internally. As a best practice, the final discharge document should include reference to any other prior verbal or other counseling so that the discharge documentation creates evidence of the prior communication. All such documentation should be placed in the employee's personnel file.

TIP #3: BE CANDID AND TRUTHFUL IN COMMUNICATING THE REASON FOR TERMINATION

It is not a good idea for an employer to tell an employee she is being terminated because she is "not a good fit" or that her "services are no longer needed." When employees are not given a specific reason for why they are being terminated, some employees may conclude that the employer is not being open and honest because the real reason for the termination is an illegal one. Accordingly, when conveying a discharge decision to any employee, it is a best practice for the employer to be candid with the employee about the reason for separation. If the employer provides a vague or false explanation for terminating the employment relationship, and the employee challenges the decision, the employer's credibility may be seriously impaired if it is unable to prove that the explanation it provided was actually the case. In this regard, for example, employers should not tell an employee that he or she is being let go because the employer is eliminating the position if that is not, in fact, the real reason for the employee's separation. If the employee's performance does not meet the employer's expectations then, generally, an at-will employer is within its rights to terminate an employee on that basis. When the employer has a legitimate reason for seeking to terminate employment, there is no reason not to tell the affected worker honestly what that justification is.