



Image Bank/Richard Schneider

**Minimize
Claims by
Following
Certain
Precautions**
Bettye Springer

Protection from Termination Lawsuits

Even when an employer has a legitimate reason for terminating an employee, legal trouble can follow because of conduct *surrounding* the termination process. For example, defamation claims often are brought as a result of reference checks. Telling an inquirer that a former employee was unreliable can lead to a lawsuit. Emotional stress claims are another source of litigation resulting from the manner of termination. Even the relatively common practice of having security personnel escort the terminated employee past coworkers has generated emotional distress lawsuits.

Minimizing Defamation Claims

Employers can minimize defamation claims by following certain precautions. If there is any negative implication about the discharged employee's ability, character, morals, or reliability, the facts surrounding an employee's termination should not be communicated to curious coworkers or unaffected parties. Keep information concerning the discharge, including investigation results, confined to those management-level employees with a legitimate business "need to know." Other employees should merely be told, "This employee is no longer with us." There is no reason to share additional information.

Inform the terminated employee of the reason why he or she is being terminated in a direct and honest way. If applicable, explain the policy that the employee violated. Do not soften the reasons for termination, but do not ex-aggerate them either. Incorporate notes taken during the exit interview into a written memorandum immediately after the interview. Explain what the employee was told and who was present, and include any significant comments or reactions by the employee. This document can be particularly helpful if the employee admits a violation of the employer's policies.

Instruct supervisors to refer inquiries about former employees to the human resources director or another, specified representative. There should be no exceptions. Ensure that all supervisors understand that they are not to discuss former or current employees with subordinates or outsiders.

Monitor all statements relating to the termination, including all reference checks and unemployment insurance compensation claims. The safest response to a reference check from a terminated employee's prospective employer is to verify only dates of employment and last position held. Neutral references are a very unfortunate but important consequence of this country's application of tort law to relationships between employer and employee.

Minimizing Emotional Distress Claims

An at-will employer may terminate an employee for any reason, good or bad. Some courts have held that the act of termination alone is insufficient as a cause of action for intentional infliction of emotional distress. The anxiety and distress that an employee suffers when terminated does not rise to the level necessary to recover in such a suit. Inappropriate or "outrageous" conduct before, during,

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or after the termination can, however, lead to a viable cause of action.

For example, a supervisor placed a company check in an employee's purse with the intention of making the employee appear to be a thief. The court held that such conduct was sufficient to sustain an action for intentional infliction of emotional distress. In another case, a 59-year-old executive was subjected to a long campaign of harassment and demotion and finally assigned to a janitor's position, sweeping out a warehouse. A \$3.4-million jury verdict of intentional infliction of emotional distress and age discrimination was upheld on appeal.

The most effective way to minimize claims of intentional infliction of emotional distress is to avoid any conduct that could be construed as outrageous. If an employer is dissatisfied with an employee, the employer should terminate the employee for legitimate reasons and not create working conditions that force the employee to quit. Treat every employee with dignity and respect during employment and during the termination process, and always be professional, courteous, and fair.

Due Process

Fair treatment for employees includes adequate notice of rules and regulations and a reasonable opportunity to satisfy those rules and objectives before discipline or discharge. When an employee is genuinely surprised about discipline or discharge, the action is more likely to be contested and more likely to be viewed as unfair by a jury. Fairness in managing employees can be accomplished through: (1) clear communication of behavior and job performance standards, (2) the opportunity to correct problems through counseling and progressive discipline, (3) a full and fair investigation before determining appropriate discipline, and (4) an opportunity for an employee to tell his or her side of the story before disciplinary action is imposed.

Consistency

Job requirements, work rules, and disciplinary decisions should be applied on an even-handed and consistent basis. This means that actions should not only be consistent from supervisor to supervisor but also consistent over time. Before firing an employee or taking other disciplinary action, the employer should find out if there have been similar situations with other employees and how they were handled. If the exact situation has not arisen before, the employer should look for the most analogous one.

The human resources department or another city official should then evaluate whether the action the employer is considering is consistent with its prior handling of similar incidents. **PM**

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