

Key to Avoiding Wrongful Termination Suits

“I couldn’t believe it! I walked in and my boss fired me on the spot!”

“After all these years, I got fired because of a few mistakes.”

“My new boss told me I was fired. My old boss always said I was doing fine.”

This, my friends, is why employers get sued.

Want to avoid employee lawsuits for “wrongful termination?” Then, listen up, because the answer is easier than you may think: No surprises.

If I had \$100 for every person, who has written or emailed in the last nineteen years, to tell me how they were completely shocked when they were fired, I’d buy myself a face lift.

How do managers get themselves in trouble?

- They don’t tell the employee the truth about his or her long-standing performance gaffs. Then, when the manager can’t stand it anymore, he or she fires the person for some minor infraction.
- A “wanna-be-liked” manager doesn’t have the gumption to tell an employee he or she isn’t up to snuff and a new manager comes in and has to play the bad guy.
- A manager doesn’t want to hurt his employee’s feelings so he pulls his punches and sugar coats his words. The manager can’t understand why the employee isn’t changing his behavior and fires him.

So, are you ready for a quick lesson in how to avoid a lawsuit? (Or at least win one.)

When you are having a problem with an employee, and want to begin disciplinary action, consider the following questions:

1. Does the person know the problem exists? (If so, it may resolve itself when brought to the employee’s attention.)
2. Have I clearly communicated my expectations concerning the employee’s performance? (Have I painted a clear picture of what “good” work should look like?)
3. Did the employee clearly understand my expectations? (To answer this question, ask the person to put your expectations in his/her own words.)
4. Have discussions with the employee been documented? (Has the documentation been shared with the employee?) If you haven’t been writing summary memos, to clarify your expectations and review agreements, how will you be sure he or she “gets it”?

5. Is there consistency between how this person's problems are being addressed and how similar performance problems have been addressed?
6. Do I have evidence that this person has the necessary abilities, knowledge and skills to do the job?
7. Has the employee performed this task adequately in the past? (If so, there may be obstacles in his or her way such as lack of authority or conflicting directives.)
8. Does the employee have the knowledge or aptitude required to improve performance? (If so, is training available for employees who have the aptitude but not the required skills?)
9. Do existing policies reward poor performance or punish good performance? (For instance, is the attendance policy so rigid that it causes people to lie? Another example is a sales associate who satisfies an angry customer's request but then is punished because she overstepped a policy.)
10. Have I done what is necessary to change or interpret policies that produce inappropriate consequences?
11. Does the person know that continued poor performance could result in losing his or her job?

Even if you follow these guidelines perfectly, there is no guarantee that you won't be sued. But if you are, you can take comfort in the fact that you did everything you could to be fair to the employee. Chances are, you will win.

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