



WHAT IF... you are considering an employee termination?

Terminating an employee always comes with risk, even when employment is “at-will.” Employers still must have a legitimate nondiscriminatory reason for termination. Our HR Services professionals partner with you to mitigate that risk. Documentation is key to promptly address poor performance and unacceptable employee conduct. Unfortunately, time travel does not exist to allow employers to go back and document issues once the decision to terminate is made. Therefore, documentation, positive or negative, must start on day one of employment.

To mitigate your risk of claims related to terminations:

1. Consistently apply appropriate policies and procedures.
 - a. Have clear, reasonable performance expectations and standards of conduct.
 - b. Provide policies in writing and document employee acknowledgement (i.e. handbook).
 - c. Buy-in from supervisors and management is a must. Reluctant supervisors and managers make a carefully crafted disciplinary program useless.
2. Violations of policies and performance issues must be addressed. Consistency is critical!
 - a. Document performance and disciplinary issues fully and objectively. For your convenience, HR Services can share a Corrective Action template.
 - b. Properly communicate expected standards of conduct.
 - c. Discuss the issue with the employee and offer the employee an opportunity to improve and be heard.
3. When documenting disciplinary issues, choose your language carefully.
 - a. Do not use labels without observed behavioral examples.
 - b. Avoid terms that suggest you have an underlying discriminatory motive.
 - c. Focus on what happened and stay away from what your employee may have intended.
 - d. Do not use absolutes as they are not credible.
 - e. Use specific language that shows you are documenting known deficiencies.
 - f. Ensure you make the consequences of lack of improvement clear.
 - g. Do not make evaluations you are not qualified to make. (For example, do not diagnose an employee’s medical condition.)
 - h. Do not write statements in legal terms.
4. Maintain records/documentation of disciplinary actions.
 - a. Resourcing Edge will partner with you to house documents. This allows for a quick and smooth collection of data in the event an EEOC or unemployment claim is filed.



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Critical mistakes often made by employers:

1. Inconsistency – treating some employees different from others.
2. Taking it personally – Employers, managers, and supervisors should not scream or rage at problem employees, particularly in front of other employees.
3. Putting it off – Employers should not vacillate in confronting a problem.
4. Wanting to be liked – It's normal to want to be liked as a leader. Do not avoid addressing issues even if it results in resentment from the employee.
5. Lack of documentation – addressing performance issues or employee conduct cannot happen in reverse, even if you feel the employee's issue is a one and done. Consistent and thorough documentation is a must if an employee's poor performance or conduct can be used to justify a termination.
6. Not consulting with HR Services before making adverse employment action decisions when an employee is on leave or just returning from leave.

Items required if you are facing a reduction in force (RIF):

1. Must have well-documented basis for the job elimination or reduction in force based on legitimate business-related reasons.
2. Use objective criteria to select the employees for job elimination.
3. Conduct a disparate impact analysis to make sure no protected class is disproportionately affected.
4. Consult with HR Services to ensure that any state and federal requirements are met prior to the RIF. (WARN Notices etc.)

Please understand employees have the right to FILE for unemployment regardless of the circumstance of their separation. It is up to state unemployment agencies to deny or grant unemployment and NOT the employer or the PEO. Also note, just because a claim is filed does not imply eligibility.

As a best practice, we encourage our clients to utilize HR Services when making these difficult decisions. The most important tool we provide is a checklist of items that may reveal red flags. Please contact us at HRServices@resourcingedge.com to discuss your termination issues or for a copy of the checklist.