

# Labor Law Firing Employees

## Avoiding Legal Pitfalls When Firing

Managers and business owners must take care that they do not violate employees' rights when terminating their employment. New laws and court decisions have expanded the rights of a former employee in wrongful discharge lawsuits against their former employers.

Such lawsuits continue to grow both in number and the amount of damages awarded to discharged employees. Jury awards average \$100,000 in such suits and verdicts in excess of \$1,000,000 have been granted.

Your lawyer can help you protect your company against disgruntled employees. This pamphlet reviews some of the steps to take.

## Don't Discriminate When Firing

For many years, federal, state and local laws have protected individuals against discrimination on the basis of religion, race, national origin, sex, age and citizenship. Such protecting laws have expanded to include veteran status, marital status, pregnancy, medical condition, physical handicap and sexual preference. The courts enforce these protections against discriminatory firing. Your company must be able to show that employees in a protected group were fired for a just cause unrelated to inclusion in that group.

## Don't Fire Employees For Legally Protected Conduct

Be aware of the laws that protect employees in certain special circumstances. Such laws prohibit discharge of employees because their wages have been garnished, because they must take time off for military service or federal jury service, because they exercise their rights under workers' compensation laws, because they file for bankruptcy, or because they refuse to take a polygraph examination.

## Don't Fire Employees for Refusing to Break the Law

Courts have awarded damages to employees who were discharged for refusing to break the law. In one case, a salesman would not participate in an illegal price fixing scheme; in another an x-ray technician refused to perform an illegal catheterization; in yet another an accountant refused to improperly record bookkeeping transactions.

The courts have also awarded damages to employees who were fired for reporting violations to government agencies. Under so-called "whistle-blowing laws," companies have been required to pay damages to ex-employees who reported to the authorities the criminal activities of a co-worker, reported a workplace safety violation, or filed a complaint concerning an overtime wage law violation.

## Be Fair When Firing

Courts have awarded damages for "unfair" firings. For example, it is illegal under federal pension laws to terminate employment to prevent an employee from getting vested pension rights. Contract rights can prohibit firing someone to avoid paying a large sales bonus. Under the "employment-at-will" cases, courts have found firings to be unfair and illegal when an employee was led to believe that the employer provided lifetime employment and was discharged after a long history of promotions and raises with no mention of negative job performance in the personnel file.

Your company can adopt termination procedures to avoid illegal firing claims. For example,

it may be advisable for two company representatives to be present when an employee is discharged. Also, a termination benefit with severance pay based on longevity may lessen the hostility of terminated employees. Your lawyer can help prepare procedures and forms to make discharges less painful and more legally defensible.

### **Wording Your Job Applications and Employee Handbooks**

Some companies add "employment-at-will" wording to their job applications and employee handbooks to avoid claims of unfair firings. Employees agree at the beginning of their employment that they are employed "at will" and may be terminated with or without cause. Such wording may help protect against claims of unfair firings, but it is no defense to a discriminatory firing claim or for terminating an employee for legally protected conduct. A company can distribute handbooks with "employment-at-will" wording to all employees and ask them to sign an acknowledgment that they have received and understood the handbook. Your lawyer can help write job applications and employee handbooks that will keep your company out of court.

### **Wording Your Employment Offers and Contracts**

Employment contracts and letters offering employment must be carefully worded to preserve your company's right to fire. For example, your employment contracts and letters, like your applications and handbooks, can state that employment is "at will" and that either the employee or the company may terminate the employment at any time, for any reason. Your lawyer can help draft a form contract or offer letter for hiring new employees.

### **Warning Employees About Poor Performance**

Many companies require that supervisors warn employees for substandard performance or improper conduct and to keep documentation of the warnings on file. Before firing, the company can try other forms of discipline such as suspensions or demotions. Your lawyer can help your company establish simple discipline and discharge procedures to help avoid employee claims.

### **Training Managers and Supervisors**

Managers and supervisors can be trained to protect the company's rights. They can be warned against making statements guaranteeing lifetime employment, promising promotions, or giving "inflated" employee evaluations. Careless statements made by managers and supervisors during hiring interviews and performance evaluations can be used against the company when a discharged employee claims that termination was unfair and illegal. Your lawyer can advise you on training managers and supervisors to conduct effective performance evaluations and properly handle employee grievances.

### **Conduct a Legal Audit**

New statutes and court decisions constantly change our labor laws. Out-of-date and improperly implemented policy manuals and employment documents are trouble. Management practices that do not take into account new laws and recent court decisions can hurt your company. Your lawyer can help by conducting a legal audit of the company's employment practices and enable you to correct deficiencies and avoid lawsuits.

### **Conclusion**

Your lawyer can provide advice and counsel to help assure that your company has legal grounds for firings. Lawsuits from disgruntled ex-employees are time-consuming and expensive. Your company can avoid these lawsuits (and win them if they are unavoidable) with proper documentation of its records and training of its managers.

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- 8 Invention agreements
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- 14 Affirmative action and anti-discrimination compliance
- 15 Child labor requirements
- 16 Worker compensation requirements
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- 18 Use of arbitration to handle disputes
- 19 Defense of pending lawsuits
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This pamphlet provides general information. Laws develop over time and differ from state to state. This pamphlet does not provide legal advice about specific legal problems. Let us advise you about your particular situation.

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