

10 Legal Things Managers Need to Know About Handling Difficult Employees

6.28.16

Good companies provide excellent opportunities for employment and advancement while maintaining the highest possible level of productivity and efficiency. However, supervisors often have to manage difficult employees, including handling discipline and termination. This can cost the business money, especially if litigation is involved. It also costs time, effort and money to train and replace an employee in addition to the loss in energy, creativity and morale.

You can prevent problems by thinking and acting ahead of time.

The best way to avoid spending time and money dealing with labor union disputes, defending EEO claims, lawsuits, and other claims by employees and former employees is preventing them from happening.

The following is a summary of policies and guidelines a company can follow to prevent some common problems. This list is compiled from an article written by our [Orlando labor and employment](#) partner, Robin Fawsett, in Volume 22 of *HR ADVISOR Legal & Practical Guidance*, called "Managing the Problem Employee, Legally."

1. Hire quality management. The most important thing in avoiding employee issues is hiring high quality and dedicated supervisors who respond to issues in a productive and efficient manner.

2. Do the right thing for your employees. You can avoid a lot of labor issues if your company is dedicated to paying the best wages and providing the best working conditions possible given business conditions and circumstances.

3. Get it right from the beginning. Seek the best possible applicant for the available position. In addition, require applicants to complete a thorough application. Check and cross-check references, reject incomplete applications and anyone who provides false statements.

4. Have clear discrimination, equal employment and harassment policies. Focus on rewarding employees due to earned merit, productivity, efficiency and loyalty. Have workplace harassment policies that state that any conduct that creates an improper work atmosphere is grounds for discipline or discharge.

5. Have a procedure and policy on discipline that is applied fairly and uniformly. In Florida, employers can discharge an employee and an employee can resign for any reason, unless there is an employment contract that says otherwise or if the discharge is against the law (e.g., discrimination). Here are some things to keep in mind:

10 Legal Things Managers Need to Know About Handling Difficult Employees

Even though it's not required under the law, have a legitimate and work-related reason for discharging. Also, avoid any unnecessary remarks to anyone about a termination. Restrict conversation to people and information that is relevant.

State your reason(s) in writing. Ask yourself: would I want this document to be seen by a judge, jury or the EEOC? Would I feel comfortable being asked about it by the employee's attorney? This information, although not required, is helpful in defending discrimination claims.

Remarks that a terminated employee was guilty of a crime, such as theft or drug abuse, can subject the company to liability for slander. Do not speculate or assume and discuss with anyone else. The only person to give a reason for the discharge is the company official who made the decision or someone authorized by that person."

6. Hire non-supervisory employees on a probationary basis. Probationary periods (up to 90 days) allow an employee to be discharged for insufficient performance without unemployment compensation (after that there must be work-related misconduct or the employee resigned). While companies should aim to keep the employees they hire unless there are enough performance or conduct issues, probation periods also allow you to make the decision to keep or dismiss someone.

7. Formally assess employees. You're not doing anyone a favor if you keep a probationary employee who will never be able to do the job. Document performance or attitude shortcomings with specific facts and logical conclusions. Simply saying they have a bad attitude will not hold up to an EEOC inquiry. By doing so, you may avoid a serious and expensive future claim.

8. Be clear and firm about problems. If you don't deal with the problem, then it doesn't get solved or it gets worse. Have a conversation, observe behavior over the next 30 days and act when necessary.

9. Carefully listen to and thoroughly investigate all claims about unlawful employment practices or illegal conduct. You don't want to be in a position where the claim is true, even if brought up by a challenging employee. You'll be at a disadvantage under an employment discrimination law or a state or federal whistleblower law.

10. Conduct comprehensive, factual and fair performance evaluations. Evaluations should cover all major aspects of work performance and work-related behavior. Discuss the evaluation with the employee. One of the most common mistakes is failing to identify and documenting failures and shortcomings in performance reviews. If the performance was mediocre or they are a marginal employee, say so and consider a factually-based probationary period.

Have you encountered difficult employees in the workplace? What policies were in place at your organization?



10 Legal Things Managers Need to Know About Handling Difficult Employees

Robin Fawsett is a Florida Bar Board Certified Labor & Employment partner in the Orlando office of Shutts & Bowen LLP. He represents employers in all areas of labor relations and employment law in state and federal courts and before agencies such as the National Labor Relations Board and the EEOC.

Practice Areas

Labor and Employment