

Key Takeaways - Terminating the Problem Employee

Labor & Employment Law Update

By Jeffrey Risch on July 23, 2025

In our recent webcast, "Terminating the Problem Employee," the Labor & Employment team shared key considerations for employers looking to terminate a "problem employee" while avoiding controversy and litigation. Below are our key takeaways from the event.

Identify Problems Before Hiring

- Utilize written applications that require a promise of honesty. Compare information to the applicant's resume and challenge any inconsistencies.
- Perform drug tests. No law will protect applicants who use illegal drugs.
- Perform background checks in accordance with the Fair Credit Reporting Act and local or state mandates.
- Make sure your offer letter includes contract disclaimers, employment at-will notices, and avoids guarantees or promises.
- Require post-offer medical examinations in safety sensitive positions.
- Establish clear workplace rules and policies and require acknowledgement of their receipt.

Stay Legally Compliant in Termination and Disciplinary Action

- Ensure the reason for employee termination does not discriminate against a protected class or infringe on the employee's rights under applicable law or retaliation.
- While progressive discipline is usually ideal, avoid being tied to rigid progressive discipline. Unique circumstances should dictate action to be taken.
- Be consistent in treating similarly situated employees similarly in similar circumstances.
- Always be able to articulate (and be prepared to demonstrate) a legitimate reason for taking adverse action.

Documentation Is Key

- Documentation is key to successfully defend against legal challenges. Any event that may affect the terms and conditions of an employee's job or could

reasonably impact the employee's job should be documented.

- When you make the decision to take adverse action against an employee (including termination), send a written confirmation of your decision to yourself, other management personnel, or HR via email. Time stamping the actual decision is important.

Avoid Common Termination Pitfalls

- Terminating without first conducting a proper investigation.
- Terminating without a witness to or any tangible evidence of the reason for discharge.
- Having numerous or shifting reasons for termination.

For the full presentation on best practices for terminating a problem employee, **watch the webcast recording on demand.**

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