

What to Consider When Firing an Employee

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The reasons for firing an employee are endless. Whether it is for economic reasons or because the employee simply doesn't feel they need to follow company procedure, firing an employee is a difficult task that must be handled with care. Every situation is different, so unfortunately there is no one size fits all instructions for the proper way to fire an employee and some employees, no matter what you do, will still bring a lawsuit. That being said, there are some basic things that you can do to help minimize the legal risks when firing an employee. Just remember the acronym F.I.R.E., which stands for "Fairly Investigate Records and Evaluations."

Fairly - Supervisors should address all situations fairly, consistently, and quickly. When disciplining or promoting employees, the quickest way to a lawsuit is to treat one employee differently than another when the surrounding circumstances are the same. If similar allegations or circumstances arise against different employees, or against one employee today and another employee six months from now, make sure your investigation and treatment of the employee are similar so that you are being consistent and fair. In addition, unless you have a policy of providing training for employees with poor performance or a probationary period for new employees, if you know an employee is not going to work out, fire them as soon as possible.

Investigate - Investigate all allegations of employee misconduct unless you witnessed the misconduct first hand. Start with the surveillance tape first. If you don't have one, ask the employee who complained and the employee who is being investigated. Talking with these two employees should point you to other employees or witnesses. When talking to any employees about the allegations, assure them that they will not be retaliated against for information they provide. Conduct the investigation as soon as possible after learning of the incident, and try to be as thorough as possible. Simply put, make sure your investigation is fair and your conclusion is reasonable.

Records - There should be a physical file for every employee. This file should include a document signed by the employee

which acknowledges his/her receipt of the company procedure/policy manual, a detailed record of all disciplinary action and/or investigations taken in regards to the employee, and documentation of the regular evaluations of the employee. When creating the detailed record of disciplinary action, including even verbal reprimands, and/or investigations include details regarding specifically what happened, who was involved, what was done about it, and why.

Evaluations - Supervisors should give honest and accurate evaluations of each employee on a regular basis. Many supervisors assume the starting point for the evaluation is the highest rating. This means employees who perform poorly or fail to follow procedures still receive average ratings because they started at the highest rating. Training supervisors to assume all employees start at an average rating ensures those who are underperforming receive the low ratings and only those who outperform expectations or go the extra mile actually receive the highest rating. In addition, it is very important to train supervisors on how to give evaluations and what questions to ask and performance areas to rate so evaluations of employees at all store locations are consistent.

As stated at the beginning of the article, these by no means cover all issues that arise when firing an employee. However, by remembering to "Fairly Investigate Records and Evaluations," you help minimize some of the legal risks associated with firing an employee. If you have general questions about other legal risks associated with firing an employee or want to discuss a current situation you have with an employee, please let us know, and we will be happy to help you in anyway we can.

The Employment Team at Collins and Lacy, P.C. strives to ensure you and your business avoids lawsuits. If you have any questions or there are any topics you would like us to address in future articles, please call our office, 803-256-2660, or send an email to cappleby@collinsandlacy.com.

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