

## **Firing problem employees**

One of the more common questions that comes up in my practice concerns firing a troublesome employee. Whether the employee is consistently absent or late for work or constantly bickers with coworkers, the employer needs to remove the problem to restore a business atmosphere and keep the good employees. But with horror stories of fired employees suing for discriminatory firing and the growing classes of protected individuals, how do you get rid of a problem employee without running into legal trouble?

As you probably can guess, the “problem employee” is usually the same individual who is likely to run to an attorney or administrative agency as soon as they are terminated. To protect your business (and you as a business owner/manager) you can take some precautionary measures, but they must be in place prior to terminating the employee. This is definitely an area where “an ounce of prevention is worth a pound of cure.”

First, create written attendance and substance abuse policies. If you have them posted in an employee break room or provide them to employees at the time of hiring, then any argument a fired employee makes regarding ignorance of the company policies is greatly diminished. If you provide them at time of hiring, have the employees sign a document saying they have received the policies and place it in their personnel file. Once you have these policies in place, make sure to evenly enforce them among all employees. One of the greatest mistakes an employer can make is to fail to punish a policy violation on a “good” employee and use it against a problem employee.

Second, incorporate a progressive warning program into your policies. Usually, most companies have three stages to firing for a violation of personnel policies: oral warning, written warning, termination. Most allow for a probationary period after each warning level which allows for the employee to redeem themselves and not have a warning held against them forever. For instance, after the oral warning, if the employee has no further violations for six months, then the essentially get to restart the warning process. For written warnings, the probationary period should be longer to emphasize the greater violation, say, twelve months.

Third, document any violations as they occur with specific dates and witnesses, if any. If the employee is consistently late, make sure to keep a good record of the days they are late, the time they do arrive and any action taken to address the problem. If you provide an oral warning, make a note of the subject of the warning and place it in the employee’s personnel file. With written warnings, have the employee sign the warning signifying that they have received a copy and put a copy in their file.

Fourth, take immediate action against substance abuse in the workplace. Substance abuse on the job is a valid reason for immediate termination and a substance abuse policy should be incorporated into company personnel policies. However, when firing for substance abuse, make sure to document witnesses, conditions and the employee actions that lead to the determination of substance abuse. If an employee is caught drinking on

the job, bottle in hand, make sure to note it. Witnesses are a great benefit in these situations and make sure to make note of any present as well.

Fifth, when it comes time to fire someone, it is a good idea to have a witness present.

Sixth, do not make the firing personal. Keep it professional.

Seven, take any threats of violence against coworkers, company or management seriously.

Eight, consistently apply employment policies and procedures.

Nine, appoint a management person to review termination and discipline procedures.

Ten, don't hire bad employees in the first place. Background checks, etc. are permissible, have standard questions and check on personal references.

Even with the best policies and enforcement procedures, some complaints are going to appear from disgruntled former employees. Whether the complaint is based on an Equal Employment Opportunity Commission (EEOC) cause of action for discrimination or from the Texas Workforce Commission (TWC) for an allegation of violation of state law regarding employment, the burden is essentially placed upon you as the employer to disprove allegations of wrongdoing. The employee must first satisfy the EEOC and/or TWC requirements to file a complaint. However, these requirements are surprisingly easy to satisfy and little or no evidence is required from the employee to start the complaint process. In answer to these complaints, evidence from properly documented personnel files is a great asset.