

# THE TWELVE MOST COMMON MISTAKES EMPLOYERS MAKE IN TERMINATING EMPLOYEES



In our experience, there are a number of common mistakes that employers make that often lead to time-consuming and costly litigation over employee terminations. Avoiding these mistakes should assist employers in maximizing the possibility that employee terminations will be lawfully carried out and not result in legal exposure.

The twelve most common mistakes employers make in terminating employees are:

1. **Giving overly positive and inaccurate evaluations.**
  - Reviews given to motivate employees, mask ongoing performance problems, or avoid confronting mistakes only results in a positive record that an employee can use to his or her advantage in litigation.
2. **Failure to document discipline or performance problems.**
  - Prior discipline must be documented, even in a memo to the employee's file, as should past performance deficiencies which are not mentioned in a formal review.
3. **Stating incomplete or untruthful reasons for the action.**
  - Discrimination claims often proceed based on the findings of "pretext," which means that the asserted reason for the termination differs from the real reason. Providing inconsistent and varying reasons for the action can more easily lead to a finding of pretext
4. **Conducting prolonged and unnecessary exit interviews.**
  - The termination reason should be communicated succinctly without any negotiation with the employee. A witness should be present at the meeting to ensure that any inaccurate allegations the employee makes about the contents of the meeting can be refuted.
5. **Making promises of future benefits that you cannot keep.**
  - Promising benefit continuation or severance pay that has not been approved by the necessary decision-maker can often result in claims if they cannot be kept. Any severance or other consideration given that the employee is not entitled to should only be provided in exchange for a full and complete release of claims.
6. **Getting too many people involved in the process.**
  - The decision should optimally be made by a responsible manager with input from the employee's supervisor. The more removed a decision maker is from the reason for the action, the harder it may be for that person to justify or explain later on.
7. **Telling too many people about the termination decision.**
  - The decision should be communicated to other employees and managers only on a "need to know" basis. Wholesale publication of reasons for an employee's termination may result in defamation claims, unless communications are necessary for operation of the business.
8. **Debating the reasons for the termination with the employee.**
  - When the decision is communicated, the manager delivering the message should not

be put on the defensive and have to justify all of the reasons for the decision. The decision should be communicated by a single person, without arguing over whether it was justified.

9. **Treating the employee like a criminal wrongdoer in carrying out the termination.**

- Even if misconduct is involved, employees should be treated with dignity and respect in the termination process.

10. **Failing to review your checklist for termination procedures.**

- Every employer should use a checklist in considering whether to terminate. The “20 questions” on this website can be used as a model. In addition, employment or labor counsel should be consulted if you are uncertain of the legal basis for the termination or have questions over whether it may result in a claim.

11. **Failing to follow your policies or practices for progressive discipline.**

- Beware of handbook provisions for past practices which require the use of warnings or prior discipline before terminating, especially for egregious misconduct.

12. **Imposing inconsistent discipline for similar offenses.**

- Employees who engage in similar conduct should be treated similarly. Failing to do so is often a major reason for discrimination claims being filed.

---

HILL, FARRER & BURRILL LLP  
300 South Grand Avenue, 37th Floor  
Los Angeles, CA 90071-3147  
(213) 620-0460 (714) 641-6605  
Fax (213) 624-4840  
[www.hillfarrer.com](http://www.hillfarrer.com)