

## SAFELY TERMINATING EMPLOYEES

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Since insurance companies estimate that up to 85% of all lawsuits involving ministries result from employment decisions, many ministries hesitate to terminate employees. Further complicating the situation, ministries attempt to extend the concept of unlimited grace to employment circumstances. If ministries can avoid employment related lawsuits, it has gone a long ways towards reducing risk. This article will highlight the things that a ministry can do to reduce the risk that it will be on the losing end of the lawsuit. This article does not address the situation where the ministry has a written employment agreement with the employee.

### START WITH THE HIRING PROCESS

To protect the ministry, the ministry should have a clear written employee handbook. This handbook will detail the expectations the ministry places on its employees. A good employee handbook will include policies on sexual-harassment, theft, drug use, performance, attendance, behavior expectations and excusable absences. Every employee should be given a copy of the handbook. Each employee should acknowledge in writing that they have read and understood everything in the handbook.

I suggest that ministries consider requiring new employees to sign an agreement that mandates Christian arbitration if a dispute arises. This agreement will avoid the possibility that the ministry can be dragged into court and receive unwanted publicity. It does not mean that the ministry can avoid liability for its wrongful actions. Many ministries include this agreement in their employee handbooks.

The employee should also be given a written job description. The employee should also acknowledge in writing receiving the job description. Employees should also represent in writing that they have the ability to perform all the duties listed in the job description.

### DOCUMENTATION

Ministries find it difficult to create the documentation that is needed before terminating an employee. Unfortunately, ministries do not write down criticisms of employees. Grace has no place in the decision whether to document. Honesty and integrity must prevail in the documentation. Supervisors write glowing reviews of problem employees because they do not want to hurt their feelings. Imagine a jury's reaction when a ministry terminates an employee two months after receiving glowing reviews for the last five years. Without the proper documentation, the jury will believe that the employee was wrongfully terminated.

I suggest either eliminating the annual review or make the annual review meaningful. This means that supervisors must be brutally honest in their reviews. It also means that the review accurately reflects the employee's performance.

Supervisors must also be taught to document individual instances of concern. If a specific incident of misconduct is discovered, then that incident must be documented in the employee's file. (Of course, your employee handbook should define misconduct.)

## WHEN TO TERMINATE

Before terminating any employee, you should determine that the reason for the termination is not one of the reasons protected by law. Congress, state legislatures, county commissioners, and city councilman have the authority to pass laws reducing the availability of lawful reasons to fire an employee. This will require you to check not only the Department of Labor standards, it will also require you to check with your state employment agency and local city offices to determine all of the unlawful reasons to terminate an employee. If you are unsure that your reason is lawful, you should check with an employment lawyer in your area.

You should consider terminating an employee only after you have fully documented the reasons for the termination. You should follow all procedures that are described in your employee handbook. Under usual circumstances, this means you have provided an oral notice to the employee that his or her conduct is unacceptable. If the employee fails to change, you provide written notice to the employee that his or her conduct is still unacceptable.

Once you have properly documented the problem, you should act promptly to terminate the employee. Most employment lawyers do not recommend terminating the employee on Friday afternoon because the employee cannot start looking for another job until Monday. This means they spend the weekend stewing over the termination. A better approach is to terminate them earlier in the week.

## THE FINAL MEETING

Your employee handbook is in order. The job description is accurate and complete. You have properly documented the problem. You have decided the best day to do it. Now you must face the final meeting. Everyone dreads that meeting. It is best to get it over with early in the day.

The final meeting should include at least two representatives of the ministry and the soon to be terminated employee. You should meet in a private place. The meeting should be short and controlled by the ministry's representatives. You should announce the termination decision at the very beginning of the meeting because employees might blurt out something that might make the termination questionable. For example, employee may state that he or she is about to file a worker's compensation claim for carpal tunnel syndrome. It is unlawful for an employer to terminate an employee because

they file a worker's compensation claim. If you announce the decision at the beginning of the meeting, then it cannot be inferred that the termination was related to the filing of a worker's compensation claim.

You should provide very general information about why the employee is being terminated. Your reason should be based on the employee handbook, job description, oral warnings and the written warnings. Some experts suggest that you prepare a letter outlining the general reasons for the termination and provide instructions for post termination benefits.

While in the meeting, you should have the employee's computer passwords changed. You should request that the employee turn over all ministry property immediately, including keys.

### RELEASE AGREEMENTS

The employment bar frequently debates the value of release agreements. In sum, a release agreement relieves the ministry of any liability for its wrongdoing in dealing with the terminated employee. The employee frequently receives compensation for executing the release agreement. If the ministry is offering anything in excess of what the ministry owes the employee, I suggest that a release agreement be secured. I also suggest that you provide the employee an opportunity to discuss the release agreement with an attorney of his or her choice. While a release agreement will not prohibit the employee from filing a lawsuit, it reduces the risk that the employee will do so.

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