

HR Tips from Express



When and How to Terminate

With the increase in employment-related lawsuits, terminating employees is a touchy issue. Many supervisors are afraid to fire employees for fear of repercussions. But, tolerating bad behavior and poor performance frustrates top performers. By learning the proper way to terminate employees, supervisors can improve their team and protect the company from litigation. As your total HR provider, Express Personnel Services can help you handle this and other HR issues. Contact us today for more information.

At-Will Employment

The principle of at-will employment means that either employers or employees can terminate the employment relationships at any time and for any reason. However, terminations cannot be for illegal or discriminatory reasons, violate collective bargaining agreements or employment contracts, or contradict public policy. Also, many states have limited the at-will rule further by not allowing employers to terminate the employment relationship without good cause or for reasons against public policy as defined by the particular state. Make sure you check your state requirements regarding at-will employment before making termination decisions.

Implied Employment Contracts

An implied contract occurs when managers/supervisors make oral promises to employees or when the company has made statements in company literature that gives a perception that a contractually binding employment relationship exists. This jeopardizes the at-will status of the employment relationship even though you have no written contract with employees. Employers can avoid creating implied contracts by not using words such as “permanent” when referring to full-time employees in the employee handbook, not stating that employees will only be discharged for good cause and being careful not to make promises to employees about job security.

Constructive Discharge

Constructive discharge occurs when an employee resigns due to their working conditions being so intolerable that a reasonable person would leave rather than submit to the continued abuse. Examples of such intolerable conditions include any form of harassment or discrimination, or a significant demotion designed to embarrass the employee. If the employee can prove that constructive discharge occurred, they may be eligible for back pay, damages, reinstatement and attorneys' fees.

Progressive Discipline

Progressive discipline is a process where employers give employees a series of escalating warnings for inadequate performance or unacceptable conduct. Courts tend to uphold an employer's disciplinary action if it establishes a systematic method of providing counseling and warnings that clearly state that future misconduct would jeopardize the employee's continued employment. However, if you have a progressive discipline policy, make sure you are cautious of how you word it in your employee handbook. Detailed progressive discipline language could limit your right to discipline employees as appropriate and could alter the employment at-will status. Some courts have been known to consider some progressive disciplinary policies as a contract of employment, forcing you to always follow the progressive disciplinary process or risk being charged with wrongful termination.