



# The Termination Checklist

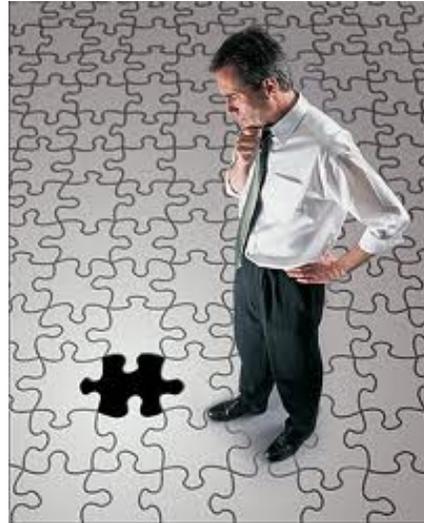
*Essential Questions Your Company Should Be Able To Answer Before It Terminates An Employee*

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*As labor and employment lawyers, the most frequent question we receive from employers is, “Can I terminate an employee.” Asking a rigorous set of questions will help you get the right answer. That’s why we have created this invaluable “Termination Checklist.”*

**Did the employee violate a *published* rule or standard?**

**Did the employee ever receive a personal, written copy of the rule violated (i.e., employee handbook)? *Hint:* Have new employees sign a form attesting that they have read the handbook or rule.**

**If other employees have violated this rule or order, were they also terminated?**

**Are you consistent and unbiased in applying rules and standards?**

**Do you have factual records on all your employees covering all violations of this rule or order?**

**Does this employee have the worst record of all employees who violated this rule or order?**

**Has the employee ever received a written warning of the violation of this rule or order?**

**Has the employee ever received a final warning for the violation of this or any other published rule or order?**

**What is the employee's warning record during the last twelve months?**

**Would a failure to terminate raise questions of consistency of application of your policy?**

**How long has the employee been employed; positions held?**

Does terminating the employee vindicate a compelling business purpose or need, or does it look like “nitpicking”?

If performance is an issue, has there been adequate written counseling? If not, why?

If relevant, are prior written performance reviews consistent with your grounds for termination?

Was the incident which triggered the final warning or discharge carefully investigated and documented prior to taking serious or final disciplinary action?

Does your evidence include names of witnesses, dates, time, places, and other pertinent factors on all past violations, including the last one?

Have you obtained the employee’s version in writing?

Was the degree of discipline imposed on this employee related to: the seriousness of the proven offense; the employee’s past record; the employee’s length of service?

Has the employee recently filed a workers’ compensation claim?

Has the employee filed a charge with the EEOC or otherwise raised a claim of discrimination or unfair treatment?

If you are terminating based on absences, are any of the absences covered by the FMLA?

Has the employee asked for an accommodation due to an alleged physical or mental impairment covered by the ADA? If so, have you exhausted the interactive process required by the ADA?

Is this a high-risk termination - one involving a long-term employee, an employee with a grave illness, or some other factor that makes them very sympathetic?

Consider a possible delay if necessary so you can prove, should the need arise, that you were fair. This may mean one final warning or counseling session before termination.

**Note:** Whether you terminate or not, capture an accurate snapshot of the situation in a concise, contemporaneous and compelling memo - an Exhibit "A" for any judge or jury.

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*Mark Oberti and Ed Sullivan left partnerships at a major U.S. law firm to pursue their vision of running a boutique employment practice that sets the standard for excellence in labor and employment law. Both are Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization.*

*We invite you to visit our website, where you will find out more about us, our mission, and results.*

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