

EMPLOYERGuardian

EMPLOYMENT PRACTICES RISK REDUCTION STRATEGIES

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Managing the Risks of Termination

Beyond managing risk, smart employers are trying to manage their workplaces to maximize the results from, and rewards to, their most valuable asset: the human resource. As a result, managers are making every effort to avoid costly terminations and the possibility of any resulting litigation.

Despite an organization's best practices, it sometimes becomes necessary to terminate an employment relationship. And, when an employer terminates an employee, the risk and cost of potential litigation can increase significantly. Therefore, you should never take terminations lightly.

In reality, nobody in an organization truly benefits from a termination. Essentially, termination represents a degree of failure for everyone involved. Termination, much like litigation, has no real winners. As a result, at the very first sign that an employee is not measuring up to his or her defined responsibilities, you should act as quickly as possible to begin a process to counsel the employee. Remember: it's better risk management, and usually more

cost effective, to rehabilitate rather than to terminate an employee. However, continuing to employ a non-productive employee can harm an organization — and the employee.

Certainly, acts of wrongdoing may justify, or even require, immediate discipline, up to and including termination. Accordingly, for those situations in which termination is the appropriate outcome, you may wish to consider the following strategies to help manage the risks:

Preparation — Verify important facts and develop “talking points” for the actual termination meeting.

Teamwork — Be sure to include (in the preparation process and, perhaps, the ultimate meeting) those individuals in your organization who are trained in human resource management and employment law.

Documentation — Take time, before making any final decision, to review the employee's personnel and other files to make sure that the reason for termination is adequately documented.

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The image shows a screenshot of the AICPA Insurance Programs website on the left and several overlapping covers of the EmployerGuardian magazine on the right. The website features sections for Business Insurance, Personal Insurance, and Risk Management. The magazine covers prominently display the title 'EMPLOYERGuardian' and the text 'For more information on Employment Practices Risk Management or past issues of the EmployerGuardian, please visit www.cpai.com'.

The AICPA Professional and Personal Liability Insurance Programs Committee objective is to assure the availability of quality insurance products at reasonable rates for local firms and to assist them in controlling risk through education. For information about the AICPA Program, call your Regional Representative or the national administrator, Aon Insurance Services, at (800) 221-3023, write Aon at Aon Insurance Services, 159 East County Line Road, Hatboro, PA 19040-1218, or visit the AICPA Insurance Programs website at www.cpai.com.

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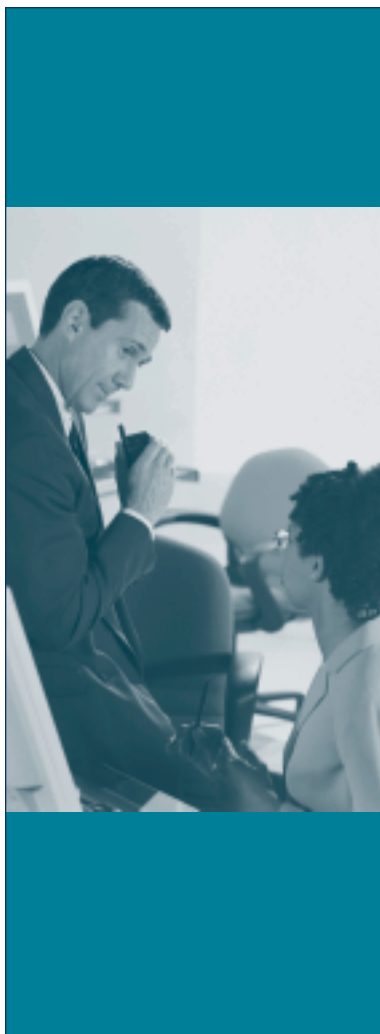
Discretion — Be as sensitive as reasonably possible, and terminate employees in an appropriate environment away from other employees and third parties. In most situations, however, an appropriate witness to the actual termination meeting should be present. If you are angry, take the time to cool off before counseling an employee.

Promptness — Manage the entire matter, from investigation to analysis, to determination, without a rush to judgment.

Exit Interview — Take special care during the exit interview, keeping in mind that everything you say and write may be presented to a jury, the media, and others, outside of, and sometimes hostile to, your organization.

Listening — Listen to what the terminated employee says, and document everything for the record — even profanity, wild statements, and anything else you observe.

While employee termination can be risky business, you can decrease your liability exposure through effective risk



management. In the event that a termination is unavoidable, seek legal counsel from experts who specialize in employment practices law. Additionally, follow the framework above, and maintain solid documentation throughout the entire termination process. Adhering to simple risk management guidelines can make the difficult task of employee termination a lot easier — and safer.

For practical risk management advice and assistance, CPA EmployerGard policyholders can call the Risk Management Assistance Hotline, administered by Ford & Harrison, LLP at (800) 569-3679. With more than 130 attorneys, Ford & Harrison is a national law firm engaged exclusively in the practice of labor and employment law representing management. CPA EmployerGard policyholders have access to an employment liability attorney who can provide legal advice on employment and practice management issues, including employee termination and much more. A consultation of up to 30 minutes per month is included at no additional cost.

By Jeff Chasen, Esq.
THE AGOS GROUP, LLC

AON TRACK

UNLIMITED ACCESS—24 HOURS A DAY, SEVEN DAYS A WEEK

A valuable risk management tool available to insureds as part of the CPA EmployerGard Program is access to Aon Track. This Web-based human resources risk management tool is a master database containing “best practices” tools, information on claims exposure, and state-of-the-art employee training programs for issues including employee termination and employment documentation. Features of Aon Track include:

- Experts’ Forum™ articles
- Workplace self-assessments
- Weekly training bulletins
- Model forms
- Best practices knowledge base
- Workplace links

At initial policy inception, CPA EmployerGard insured firms will receive a letter detailing the benefits and features of Aon Track. A customer service representative will contact your firm by phone to provide access instructions and answer all of your questions. For immediate access, call (800) 205-5262 and ask to be connected with your Aon Track Account Manager. Be sure to identify yourself as an Aon insured.

AVAILABLE EXCLUSIVELY TO CPA EMPLOYERGARD POLICYHOLDERS

Good Documentation is a Good Employment Practice

Experts in employment practices law cite documentation as a best practice in effective human resource management. Proper documentation of employee performance — both negative and positive — is an easy and valuable risk management technique that can create a solid defense in the event of an employment practices claim. In many cases, proper documentation can determine the difference between a trouble-free employment action and one that is a catalyst for costly litigation.

It's always a good idea to review your documentation policy and identify areas for improvement. Best practices in documentation include:

- Establishing and maintaining employee handbooks/policies.
- Implementing accurate and complete job descriptions.
- Conducting annual employee evaluations and recording employment actions.

Employee Handbooks and Policies

Conduct an annual review of your organization's handbook or policies. Changes in federal, state, or local laws may require policy changes, and vacation and leave policies may also need updating. When you make any changes to your policies, communicate them to your employees. You can accomplish this in a number of ways. You can include a notice with their next paycheck or direct deposit notice, or send out a memo that details the changes. It is also recommended that you obtain some sort of signed acknowledgement from each employee that indicates he or she has been notified of the changes. The employee should keep one copy, and another copy should be placed in his or her employment file.

Job Descriptions

Unfortunately, job descriptions are another task on which most employers do not spend enough time. It is important to develop thorough job descriptions for a number of reasons. When hiring new employees, job descriptions can help determine whether the applicant has the necessary

qualifications and make it easier for you to justify hiring decisions. Without job descriptions, the decision not to hire an individual may appear to be arbitrary — or worse, discriminatory.

A written job description is crucial in representing the true requirements of a position. In reviewing employee performance and considering raises or promotions, a well-written job description can aid you in your decision-making process. A job description will not only provide the metrics you need to measure employee skills — it will present the evidence you need to support your employment decisions. This could be extremely helpful in defending decisions to offer or refuse firm partnership.

Job descriptions are also important in determining accommodations required for employees under the Americans with Disabilities Act (ADA). At the core of the ADA is the following definition, “A *qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.*” Written job descriptions are critical in addressing the “essential functions” element of that definition.

Many employers avoid preparing job descriptions because they fear they are too complicated or because their employees wear many hats and cannot fit into one classification. Contrary to popular opinion, job descriptions do not need to be elaborate. A job description is simply a statement of the qualifications, duties, responsibilities, physical and mental demands, and working conditions associated with a specific position.

Employee Evaluations / Employment Actions

Annual evaluations are beneficial for both employers and employees. By giving employees specific feedback and establishing attainable goals, you'll be providing them with the necessary information for improving their performance. Having honest and accurate employee evaluations is vital for every employer. Employee evaluations provide powerful documentary evidence to support promotions and

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Help is Just A Telephone Call Away

For immediate legal advice on employment law and practice management issues such as employee termination and employer documentation, call **(800) 569-3679**. As a CPA EmployerGard policyholder, your firm is entitled to 30 minutes of legal advice per month from experienced attorneys at the national employment and labor law firm of Ford & Harrison, LLP (at no additional charge). Please have your CPA EmployerGard policy number handy.

demotions, and they can be used to defend against lawsuits based on claims such as wrongful discharge or discrimination.

There are many common pitfalls to avoid when preparing for and conducting evaluations. Here are just a few:

- **Poor documentation** — Evaluations full of subjective opinions, rather than objective comments do more harm than good.
- **Not referencing the written job description** — The job description should be the cornerstone of an evaluation.
- **Not evaluating the employee honestly and completely** — When you avoid being honest about performance problems or policy violations, you take away an employee's opportunity to succeed. And, you create a written record that is not consistent with what is really happening in your workplace.

Documenting employment actions is just as important as annual performance evaluations. If it is necessary to commend or reprimand an employee, document it. Doing so will help you to establish a written record of an employee's pattern of behavior — either good or bad. When seeking to justify a decision to terminate an employee, the employer can always think of those situations in which the employee violated company policy. However, if those situations were not properly documented, the truth will not matter. It will simply come down to who a jury believes.



Bottom Line

Documentation is not a complicated process. It simply takes commitment. The benefits of good documentation far outweigh the costs, and solid documentation could turn out to be your star witness if a claim goes to court. If you aren't certain about the efficiency of your company's documentation policy, take a fresh look to determine whether it meets the demands of the present corporate climate and be sure it incorporates the essentials mentioned throughout this article. A relatively easy and inexpensive Risk Management practice, the implementation of an effective employment documentation process is truly a worthy investment.

For more information about proper documentation and other employment practices issues, CPA EmployerGard policyholders can consult Aon Track — a valuable, web-based human resources tool. Aon Track is a master database containing best practices tools, information on claims exposure, and state-of-the-art employee training programs. For immediate, complimentary access, policyholders can call (800) 205-5262.

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