

Preventing Claims While Disciplining and Terminating Employees

Insight for business owners and risk managers—provided by **Crendon Insurance Brokers Ltd**

Disciplining and terminating employees is an unpleasant task that brings high risk exposures for employers. If you're not careful, disciplining or terminating a difficult employee could end up getting *you* in trouble. Employee legal actions can be expensive—even catastrophic for smaller firms—to litigate. They are also time-consuming and emotionally draining, and they can create tension in your workplace.

What can you do to prevent legal actions that result from this process? Gaining an awareness of the different types of employee claims and having objective company policies and procedures in place are key. Although you may not be able to prevent all claims, maintaining accurate documentation about all incidents related to the employee's disciplinary and

termination action will bolster your case, whether the claim is handled at the company level or in court.

First Line of Defence: Objective Company Systems

Establishing a foundation of objective company systems can prevent a claim before it happens. Employees are less likely to file claims if they feel they are treated consistently and fairly. This includes the following:

Well-defined Company Policies. Well-defined employee policies are the backbone to a company culture where employees are treated fairly. Policies should cover topics such as harassment, retaliation and a company's code of conduct. An outline of procedures for company actions such as performance evaluations, performance improvement plans and the disciplinary process is also essential.

Employee Handbook. Once a foundation of fair and impartial company policies is established, employers should communicate the policies to employees through an employee handbook. If written properly, the handbook could prevent a legal action from happening or it could be a solid piece of evidence in the case of litigation.

Necessary for organisations of all sizes, the handbook outlines your expectations of the employee and what they can expect from you. Topics such as dress code, work schedules, compensation, and harassment policy are examples of what should be included and reviewed by a solicitor or human resources department. When you give a new employee the handbook, have them sign an agreement that they've received it, and keep it in their personnel file.

The handbook should be reviewed and revised regularly, especially when company policies change. Not only is it important to have a handbook, but it's critical to enforce the policies consistently and fairly among all employees.

Accurate Employee Files. Maintaining up-to-date employee files, including copies of all performance evaluations and detailed reports of employee incidents, is imperative in the event of a legal action.

All documents in the files should be truthful, accurate and written using plain, non-technical language.

If an employee disputes a disciplinary or termination action, they will be less likely to sue if there is a detailed paper trail to defend your decision.

Preventative Measures for the Disciplinary Process

Disciplining employees may be an unpleasant task, but avoiding it could exacerbate the situation and lower the efficiency and morale of your workforce. Employees should be disciplined or terminated only for legitimate, job-related reasons. Under a disciplinary system, employers usually want employees to correct their problematic behaviours and continue on as productive members of the workforce.

Before disciplining an employee, conduct an unbiased investigation of the incident or problematic behaviour. In some cases, the employee should be suspended to prevent further misconduct. After the investigation, follow these steps:

- Set a meeting with the employee to discuss the problematic behaviour
- Listen to the employee's side of the story
- Inform them of future consequences if they do not improve
- Provide written documentation of the disciplinary action. Have the employee sign the documentation, or make note if they refuse to sign. Provide them with a copy of the document.
- Follow up by acknowledging the employee's improvements. If the employee continues to violate company policies, consider subsequent disciplinary action or termination.

Preventative Measures for the Termination Process

Similar to the disciplinary process, the termination process should be objective and based on well-documented facts and details, including statements from the employee and other witnesses. It is usually

Types of Employee Claims

Employees can appeal unfair dismissals internally or appeal to the Employment Tribunal. Types of claims include:

Discrimination

Employers may not discriminate based on factors including: race, gender, religion, sexual orientation, age, sex or disability status.

Harassment

While discrimination claims are centred on mistreatment in official company actions, harassment claims revolve around interpersonal relationships in the workplace. These claims include verbal or physical harassment.

Retaliation

Employers cannot discriminate when employees "blow the whistle."

Wrongful Dismissal

Employees can file claims if they believe they were wrongly dismissed for an illegal reason or for a reason that violates the company's policy.

Post-termination

Some employees file legal actions after they've been terminated, claiming that the termination resulted in defamation, blacklisting or undue emotional distress. The right to claim unfair dismissal is:

1. 1 year for workers employed before 6 April, 2012, and
2. 2 years for workers employed after 6 April, 2012

not a good practice to fire someone on the spot; a comprehensive investigation should be conducted first. After a thorough investigation, if you determine an employee must be terminated, you should follow a fair protocol to avoid a legal action.

Some sources say the best time to terminate employees is mid-week, as opposed to a Friday afternoon. Timing is key; whatever day you choose to terminate an employee, make sure it will minimise the risk of humiliation to all parties involved and will cause the least disruption to company operations.

To prepare for the termination meeting:

- Gather copies of documentation, including severance packages, for the employee
- Compile a list of company equipment that the employee must return
- Assess potential security issues

During the meeting:

- Meet in a neutral location
- Have one or two others present, including a representative from your HR department
- Give a clear and consistent explanation as to why you are terminating the employee
- Avoid talking too much during the meeting or making promises you can't deliver on, such as helping the employee look for another job
- Treat the employee with dignity and respect during the entire process
- Allow the employee to vent if they get angry, but refrain from arguing about the decision

After the meeting is finished:

- Collect company property from the employee before he or she leaves

- Unless they were terminated for stealing or a violent offence, don't embarrass the employee by having them escorted out by security
- Don't belittle the employee to other staff members after he or she leaves

Be wary of statements that your company makes to the media and on social media sites, such as Facebook®, about the terminated employee. You are not legally protected for statements that are not true or are made with intent to damage someone's reputation.

To avoid post-termination claims, it's also important to avoid impinging on the employee's future employment. Direct all reference checks from other employers to your human resources department, or simply confirm the dates of employment and the last position the employee held.

Another Line of Defence: EPL Insurance

Even when you think you've done everything to mitigate the risks, employee claims can still happen. Legal actions—even if you aren't found liable—can be time-consuming and costly. Employment Practices Liability (EPL) insurance protects your company from costs associated with employee legal actions.

Depending on the limits negotiated with the insurer, EPL insurance provides cover for defence expenses associated with the types of employee claims highlighted in this article.

Contact **Crendon Insurance Brokers Ltd** today to learn more about preventing employment-related claims and EPL insurance.