The Top 10 Mistakes Employers Make When Terminating Employees

We read a lot of HR-related material and every so often we come across some really great tips, like “The Top 10 Mistakes Employers Make When Terminating Employees” from US attorney Laura A. Pfeiffer of Winthrop & Weinstine.

Many items on the list seem like common sense, but that’s one of the reasons the list is important. Face it, terminating an employee can be charged with emotion and, as a result, common sense and best practices may get pushed aside. This list helps ensure that you follow proper protocol.

Here are The Top 10 Mistakes, which have been modified slightly for Canadian employers, along with Pfeiffer’s practice pointers.

1. The employer doesn’t examine prior documentation.

Practice Pointer: Examining documentation before the termination meeting will position the employer to better articulate and possibly adjust the termination reason.

2. The employer doesn’t properly investigate the facts upon which the termination is based.

Practice Pointer: Get the employee’s side of the story before terminating.

3. The employer doesn’t think through or provide the employee with a coherent, precise explanation why he or she is being terminated

Practice Pointer: Make a decision on why the employee is being terminated, keep it short and sweet, and stick to it.

4. The employer provides inconsistent explanations why the employee was terminated.

Practice Pointer: Make sure the termination reason is consistent over time—from the first meeting with the employee to the preparation of any documents submitted for Employment Insurance, and possibly all the way to litigation.

5. The employer mishandles the termination meeting by apologizing or providing too much information.

Practice Pointer: Draft talking points, including the reason for the termination and the related logistics, and stick to it—avoid talking too much or apologizing.

6. The employer mishandles how the communication of the employee's departure internally and externally.

Practice Pointer: Less is more. Tell others that the employee has left, and then focus on the logistics of how that employee's work will be handled. If pressed, the employer should simply state that it is a confidential employment situation.

7. The employer mismanages the logistics of the termination meeting and the employee's retrieval of his or her belongings.

Practice Pointer: Try to terminate someone at the end of the day (and possibly the end of the week), don't make a scene walking the employee out, and arrange for a time when the employee can retrieve his or her personal belongings in a respectful way (or deliver the belongings to the employee).

8. The employer is penny-wise and pound-foolish in not paying severance pay. In some cases, even when not required, severance should be paid to reduce risk.

Practice Pointer: In appropriate cases, discuss with your employment lawyer whether it would make sense to pay severance. If it does, get an up-to-date severance agreement and only pay severance pursuant to the terms of that agreement.

9. The employer mismanages the response to employee's request for the "truthful reason for termination."

Practice Pointer: Provide the information on time; produce what records you have to (and ask for assistance if there are questions); and provide the same termination reason you arrived at previously.

10. The employer doesn't seek assistance prior to terminating employee.

Practice Pointer: Use your judgment and call for help on higher-risk terminations.