

# Wrongful termination: 6 steps to keep firings from burning you



In most states, workers are employed on an “at will” basis. That means employers typically may terminate workers at any time for any legal, nondiscriminatory reason.

However, at-will status doesn’t mean you won’t get sued. More and more employees are filing and winning wrongful-termination lawsuits that allege they were fired for some discriminatory reason or in retaliation for engaging in protected activity. Employees’ lawyers often look at wrongful-termination suits as easy pickings, good at least to squeeze a quick settlement from an employer.

The key, then, is prevention. Minimize your exposure to wrongful-termination claims by following these six steps:

## 1. Use progressive discipline

Establishing a step-by-step process for discipline is the most reliable way to protect your organization from wrongful termination charges.

Clearly outline the behaviors that may trigger discipline and the actions you will take as a result. That ensures fair and consistent treatment for poor performers. Make sure supervisors know they must follow the procedures. A written policy is a powerful defense in court.

## 2. Publicize your policies

Ensure that everyone is on the same page by including your progressive discipline policy in your handbook. Have employees read and sign it. In addition to providing documentation in case of lawsuits, this gives employees a chance to correct performance problems.

**Advice:** Regularly review all policies for relevance. Attendance and misconduct policies, for example, probably don’t change often, but your dress code may.

## 3. Regularly review performance

Employees who are surprised by firings are more likely to sue. Also, employees often introduce in court inconsistencies between performance evaluations and adverse decisions to demonstrate that the company’s

reasons for terminations were just excuses to fire employees for other, unlawful reasons.

#### **4. Document all warnings**

Develop forms for oral and written warnings. Use them religiously. Include a section that asks the manager to describe the problem and what the employee was asked to do to improve it, plus any warning about what would happen if the problem resurfaced. Finally, document what the employee said in response and ask the employee to sign it.

#### **5. Beware constructive discharge**

Some managers try to sidestep the unpleasant task of firing by resorting to constructive discharge. *The logic:* If I make an employee's work experience intolerable, he or she will choose to quit.

This exposes your organization to charges of discrimination by the targeted employee. The employee will argue in court that he or she was singled out for special, unfair treatment.

#### **6. Watch your timing**

Avoid firing employees immediately after they have filed complaints. One test the courts use to determine whether a worker was fired in retaliation for a complaint is timing. Firing workers just after they file a complaint or return from protected leave is asking for legal trouble.

In such cases, it is best to wait and build an airtight case for dismissal before acting.

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