

# Safely Terminating Employees

## Legal Advice to Help You Avoid a Costly Lawsuit

By Frank Sommerville

Since insurance companies estimate that up to 85 percent of all lawsuits involving ministries result from employment decisions, many ministries hesitate to terminate employees. Further complicating the situation, ministries attempt to extend the concept of “unlimited grace” to employment circumstances. If ministries can avoid employment-related lawsuits, they’ve gone a long way toward reducing risk.

### Start With the Hiring Process

For protection, the ministry should have a clearly written employee handbook that details the expectations it places on its employees. A good employee handbook will include policies on sexual harassment, theft, drug use, performance, attendance, behavior expectations and excusable absences. Every employee should be given a copy and acknowledge in writing that they’ve read and understood everything in it.

I suggest ministries consider requiring new employees to sign an agreement that mandates Christian arbitration if a dispute arises. This will avoid the possibility that the ministry can be dragged into court and receive unwanted publicity. However, it doesn’t mean the ministry can avoid liability for its wrongful actions. Many ministries include this agreement in their employee handbooks.

The employee should also be given a written job description, and acknowledge in writing receiving it. Employees should also represent in writing that

they have the ability to perform all the duties listed in the job description.

### Documentation

Ministries often find it difficult to create the documentation needed before terminating an employee. Unfortunately, ministries don’t usually write down criticisms of employees. However, “grace” has no place in the decision whether to document. Honesty and integrity must prevail in the documentation. Supervisors often write glowing reviews of problem employees because they don’t want to hurt their feelings. Imagine a jury’s reaction when a ministry terminates an employee two months after receiving glowing reviews for the last five years. Without proper documentation, the jury will believe the employee was wrongfully terminated.

You should either eliminate the annual review or make it meaningful by requiring supervisors to be brutally honest in their reviews, accurately reflecting the employee’s performance.

Supervisors must also be taught to document individual instances of concern. If a specific incident of misconduct is discovered, it must be documented in the employee’s file. (Of course, your employee handbook should define misconduct.)

### When to Terminate

Before terminating any employee, you should determine that the reason for the termination is not one of the reasons pro-

tected by law. Congress, state legislatures, county commissioners and city council members have the authority to pass laws reducing the availability of lawful reasons to fire an employee. This will require you to check not only U.S. Department of Labor standards, but also your state employment agency and local city offices, to determine all the unlawful reasons to terminate an employee. If you’re unsure whether your reason is lawful, you should check with an employment lawyer in your area.

You should consider terminating an employee only after fully documenting the reasons for the termination, and after following all procedures described in your employee handbook. Usually, this means you’ve provided an oral notice to the employee that his or her conduct is unacceptable. If the employee fails to change, you provide a written notice, stating that his or her conduct is still unacceptable.

Once you’ve properly documented the problem, act promptly to terminate the employee. Most employment lawyers don’t recommend terminating employees on Friday afternoon, because they can’t start looking for another job until Monday. This means spending the weekend stewing over the termination. A better approach is to terminate them earlier in the week.

### The Final Meeting

In review: make sure your employee handbook is in order, the job description is accurate and complete, the problem

has been properly documented, and the best day to make the termination has been decided. Now you must face the final meeting everyone dreads. It's best to get it over with early in the day.

The final meeting should include at least two representatives of the ministry and the soon-to-be terminated employee. The meeting should be private, short and controlled by the ministry's representatives. Announce the termination decision at the beginning, so the employee doesn't blurt out something that makes the termination questionable.

For example, the employee may state that he or she is about to file a worker's compensation claim for carpal tunnel syndrome. It's unlawful for an employer to terminate employees because they file a worker's compensation claim. If you announce the decision at the beginning of the meeting, then it can't be inferred that it was related to filing such a claim.

Provide very general information about why the employee is being terminated. Your reason should be based on the employee handbook, job description, and the oral and written warnings. Some experts suggest you prepare a letter outlining the general reasons for the termination and provide instructions for post-termination benefits.

While you're in the meeting, have the employee's computer passwords changed. You should also request that the employee turn over all ministry property immediately, including keys.

### **Release Agreements**

The employment bar frequently debates the value of release agreements. In summary, a release agreement relieves the ministry of any liability for its wrongdoing in dealing with the terminated employee, and the employee

frequently receives compensation for executing the release agreement.

If the ministry is offering anything in excess of what it owes the employee, I suggest a release agreement be secured. I also suggest providing the employee an opportunity to discuss the release agreement with an attorney of his or her choice. While a release agreement won't prohibit the employee from filing a lawsuit, it reduces the risk that he or she will do so.

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