

WHY CAN'T I JUST FIRE HER? I THOUGHT INDIANA EMPLOYERS
COULD FIRE EMPLOYEES AT ANY TIME FOR ANY REASON. IS THAT NO LONGER TRUE?

Unfortunately, it's not quite that simple. Indiana generally follows the employment at will doctrine, which permits employers to terminate the employment relationship at any time for any reason or no reason – except certain reasons. As you may expect, however, the litigation and claims of employees commonly involve defining and applying the exceptions. The following is a partial list of some of the currently recognized exceptions to the employment at will doctrine:

1. Race Discrimination
2. Sex Discrimination
3. National Origin Discrimination
4. Religious Discrimination
5. Age Discrimination
6. Disability Discrimination
7. Pregnancy Discrimination
8. Discrimination on the basis of Union status
9. Discrimination or retaliation against members of the US Military
10. Retaliation for opposing unlawful discrimination
11. Retaliation for participating in EEOC or other administrative investigations or litigation involving unlawful discrimination
12. Retaliation and/or interference with rights under the Family and Medical Leave Act
13. Retaliation for filing a claim or participating in an investigation pursuant to the Occupational Safety and Health Administration
14. Retaliation for exercising rights under the National Labor Relations Act
15. Retaliation for whistle-blowing under Sarbanes-Oxley
16. Retaliation for asserting rights under the Fair Labor Standards Act
17. Interference with vesting or exercise of benefit rights under the Employee Retirement Income Security Act
18. Retaliation for filing a claim for Worker's Compensation
19. Retaliation for refusing to perform an act which would subject the employee to criminal penalties
20. Individual employment agreements or collective bargaining agreements which require "just cause" for termination

I'm sure I have left out several other exceptions, however, the above list effectively illustrates that the exceptions to the employment at will doctrine are numerous.

Employee discharges generate the greatest amount of employment related litigation. Accordingly, if an employer desires to terminate an employee for poor attendance, poor performance, bad attitudes, poor work habits, insubordinate behavior, etc., it must be sure to thoroughly document such problems and the employer's responses to those problems prior to the termination. Don't wait until the problems become serious.

Supervisors should review performance issues regularly, and when problems develop, the supervisor should discuss the problem with the employee as soon as possible. The supervisor should then document the problem and place his or her notes in the employee's personnel file. If possible and where appropriate, the employer should follow a progressive disciplinary procedure rather than simply terminate without warning. Uniform, consistent and fair treatment of employees is the key to avoiding and defending lawsuits. Employers who have clearly articulated work rules and expectations, document employee problems concurrently with the events and follow a progressive disciplinary procedure to ensure that employees are given a meaningful chance to reform and succeed will often avoid having to defend costly charges of discrimination and wrongful termination lawsuits.

In addition, wise employers often contact legal counsel before making a final termination decision. An experienced employment attorney can perform a quick review of the facts, analyze the possible legal issues and claims which could be raised by the employee, and offer advice to the employer regarding the timing and procedures for the termination.

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