

**HOW TO INCREASE YOUR ODDS OF GETTING SUED
WHEN TERMINATING AN EMPLOYEE
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One of the most dangerous types of lawsuits for a company is an employment law claim that is strong enough to avoid getting dismissed before trial. The cost of resolving these types of claims starts at around \$25,000 and climbs rapidly from there. For most small and medium business, kicking away \$25,000 of what would otherwise be profit because you didn't do your basic due diligence can be devastating. Here are a few of the key ways employers walk into an employment lawsuit by simply not paying attention.

1. **Ignore the differences.** Most employment claims arise based upon claims of employment discrimination. Under state and federal law, there are a variety of protected characteristics such as age, race, gender, religion, disability and others. The first and most obvious question you should always ask is whether the employee in question is "protected" in this way. Young white male? Generally, not much to worry about with a discrimination claim. Older, non-Caucasian female? Lots of obvious protections. If you want to make it easy to get sued, ignore those protections and don't bother to check whether you are treating her the same way you are treating her younger, white male co-workers. Don't bother to ask whether she is paid the same, held to the same standards, subject to the same scrutiny, given the same opportunities as her co-workers. That's a great start on your way to a very expensive lawsuit.
2. **Make up a reason for the termination, and keeping making up reasons until you find one that really works.** One of the biggest mistakes employers make is to fail to really identify why they have decided to terminate someone. Many employers make the decision to terminate and then go looking for a reason to support the decision even if they have ignored similar conduct by others in the organization. You know you want that person gone, so let's just go find a reason, right? Wrong. Nothing will increase the cost and difficulty of defending a claim than an untrue statement of the reasons why you terminate a person or worse a partially true statement that ignores important facts like the fact that everyone else in the company has committed the same offense. Your parents are still right, honesty is the best, and only, policy to use when terminating an employee.
3. **Don't write anything down until after you terminate.** A close cousin to making up reasons that sound good for the termination is to make sure you don't document anything until after you decide to terminate someone. The strongest support for your decision are the contemporaneous notes, e-mails and memos that show you have been concerned about an issue for an extended periods of time. Those notes lose a lot of their value and can even turn against you when they are made up after the fact, especially if they reflect reasons for the termination that weren't ever discussed with the employee or don't ring true as a valid rationale for your decision in light of how others have been treated.
4. **Never, never call your attorney for advice before you pull the trigger.** That half hour

phone call with your attorney prior to pulling the trigger on your decision will cost you a little money, but it is nothing in comparison to the cost of defending a lawsuit. A good attorney will be able to spot potential problems before they happen and then help you make your best business decision with the least amount of legal exposure. If you don't call your attorney before you act, you may be calling him or her a lot more afterwards.