

Avoiding Liability for Wrongful Termination: “Ready, Aim,...Fire!”

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Abstract We describe how the employment-at-will doctrine in the USA has eroded over time, allowing for the rise of wrongful termination lawsuits. Furthermore, we offer a prescriptive model practitioners can use to navigate the increasingly complex process of conducting terminations in order to decrease exposure to legal liability.

Key words wrongful termination · employment-at-will

Historically in the USA, employers have had the upper hand in the employment relationship, being able to terminate employees for a good reason, a bad reason, or no reason at all. For executives in this new millennium however, this legal principle has evolved such that it has become more challenging to navigate the process of handing out pink slips without legal liability. Wrongfully discharged employees may now be permitted to redress their grievances through the court system, thereby imposing significant costs on the employer in the process.

This paper describes this evolving phenomenon in employment law by taking a detailed look at the erosion of the employment-at-will doctrine and the rise of wrongful termination lawsuits. These legal trends prompt organizations to avoid legal liability when conducting employment terminations. While prior work has reviewed this erosion of the employment-at-will doctrine (e.g., Ballam 2000; Bockanic and Forbes 1986), little has been done in terms of giving practitioners insight into tangible steps they can take to reduce this exposure to legal liability. Therefore, this paper concludes by prescribing a framework that offers guidance on how to terminate an employee correctly by following a sequential pattern of action: Ready, Aim,...Fire.

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Employment-at-Will: Origins and Erosion

The extant legal theory for the modern employment relationship in this country is premised on the British feudal system many years ago (Bennett-Alexander and Hartman 2004). A product of this master–servant (contemporaneously known as the employer–employee) relationship is the employment-at-will doctrine, which specifies that either party can terminate the relationship at any time, for any reason (including no reason at all). In contemporary employment relationships in the USA, the employment-at-will doctrine has been inapplicable where employees are covered by a collective bargaining agreement which enumerates the conditions for termination. The doctrine would also be inapplicable to employees who have an express contract with their employer, delineating the term of employment and/or conditions permitting discharge of the employee. Although this policy, on its face, appears to grant broad and unencumbered power to employers without commensurate protection for employees, this legal theory has been firmly entrenched in U.S. jurisprudence for many years.

Over time, however, “courts and legislators began recognizing the inequality of bargaining power between employer and employee and that the inability of employees to protect themselves from unjust actions by their employers had not just economic ramifications, but also emotional and social ramifications” (Ballam 2000, p. 657). As a result, the at-will doctrine appears to be approaching extinction (Abrams 1999; Ballam 2000; Flynn 1996). Increasingly, it appears that employers must justify termination decisions with “just cause” (Flynn 1996). The erosion of the employment-at-will doctrine has made it possible for terminated employees to file lawsuits against their former employers for wrongful termination (also referred to as wrongful discharge or unjust dismissal) under some circumstances. We proceed to review how the employment-at-will doctrine has been eroded by statutory and common law.

Statutory Exceptions to Employment-at-Will

At first, the employment-at-will doctrine was eroded by statutory protections extended to employees, most notably through federal and state employment discrimination laws (Ballam 2000; Flynn 1996). Illustrative federal legislation includes: the National Labor Relations Act (NLRA; or Wagner Act) of 1935, forbidding termination due to protected concerted activities; Title VII of the Civil Rights Act of 1964, prohibiting termination on the basis of race, color, sex, creed, or national origin; the Age Discrimination in Employment Act of 1967 (ADEA), prohibiting termination due to age discrimination; the Occupational Safety and Health Act (OSHA), prohibiting termination in retaliation for an employee filing a safety complaint; the Americans with Disabilities Act (ADA), requiring employers to make reasonable accommodations for employees with disabilities provided no undue hardship is caused to the employer; the Family and Medical Leave Act of 1993 (FMLA), allowing employees to take up to 12 weeks of unpaid leave in any 12 month period and providing for job reinstatement or a comparable position—except for certain key employees whose pay falls within the top 10% of the company’s work force; and the Pregnancy Discrimination Act of 1978 (PDA), amending Title VII of the Civil Rights Act of 1964 and providing that women affected by pregnancy, child-birth and other medically related conditions must be treated in all employment decisions the same as employees who are not affected by such. Also impacting termination is the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), giving employees 60 days to decide whether to continue with the employer’s health care coverage for 18 months (20 months if disabled).

The premiums, plus an administrative fee must be paid by the employee. COBRA provides protection whether the termination is voluntary or involuntary, unless the worker is terminated for gross misconduct. Thus, although the employer still has wide latitude in terminating employees, if their decision is determined to be based on discrimination protected by legislation, federal and/or state, they may be found legally liable.

Common Law Exceptions to Employment-at-Will

While statutory protections were enacted to shield employees from egregious terminations grounded in discriminatory animus, courts have found the need to further proscribe the employer's right to terminate with several notable common law limitations. Common law limitations are grounded in contract and tort theories, and the four primary categories are (1) implied covenant of good faith and fair dealing, (2) implied-in-fact employment contracts, (3) tort claims, and (4) public policy claims. Each common law category will be covered in turn.

The implied covenant of good faith and fair dealing is a common law consideration that courts have used to limit employer prerogative to terminate. This provision is in place to prevent bad faith actions on the part of the employer that serve to deprive the employee of their contract rights in an implied covenant. In California, a court decided that the implied covenant of good faith had been breached when an at-will employee quit his job to move across country and begin work with his new employer, only to be dismissed before beginning work (*Sheppard v. Morgan Keegan & Co.* 1990). Under the theory of good faith and fair dealing, courts may even take the extreme position that “an employee can no longer be fired for any reason, but only for ‘just cause’” (Cihon and Castagnera 1988, p. 563).

Employees may also be able to file an action based on an implied-in-fact employment contract. This claim applies when the courts can construe employer assurances of continued employment such as commendations, promotions, or longevity. Contractual inferences may also be based on language from the employee handbook, employer practices, and/or promises made by organizational representatives (McAdams 1992; cf. McLean Parks and Schmedemann 1994). When the employer has a pattern, practice, or policy of terminating only for (good) cause and per a published progressive disciplinary policy, they may be held liable under this cause of action when they fail to abide by their own standards.

The previous two common law exceptions to the at-will doctrine are both grounded in contract theory, and are therefore fairly restricted in terms of awarding damages to terminated employees (McAdams 1992). In light of this situation, some plaintiffs resort to tort actions (which involve the violation of a duty that is not specifically contractual), which have greater potential for larger damages. Tort law is better situated to provide relief to injured individuals who have been harmed by abuse of power (Ballam 2000). In a seminal law review article, Blades (1967) argues that employers should be held liable for “wrongful motive”—any termination arising out of the abuse of power by the employer. Although courts have generally not fully embraced Blades' perspective, they have been moving in that direction (Ballam 2000). Possible tort actions might include defamation, wrongful infliction of emotional distress, fraud, invasion of privacy, and assault and battery. Contract based causes of action do not allow for punitive damages. On the other hand, tort based theories may provide for generous punitive damages where the discharge is based on fraud, discrimination, willful and wanton actions, and gross negligence.

The public policy provision to at-will employment is the most widely used exception (Ballam 2000; Cihon and Castagnera 1988), and is grounded in the notion that terminations

are unlawful if they are not consistent with the will of the people. More specifically, an employer may not terminate an employee on a basis that countermands a legitimate preference of the citizens: “If a statute creates a right or a duty for the employee, he or she may not be fired for exercising that legal right or fulfilling that legal duty” (Cihon and Castagnera 1988, p. 558). Action may be brought under this theory on the basis of extant statutes, or simply under the auspices of “good morals” and the welfare of the public (Ballam 2000). A South Carolina Court of Appeals noted the possibility of a wrongful termination suit on the basis of “unlawful or unethical conduct” (*Nolte v. Gibbs International, Inc.* 1998). Many states have adopted some form of public policy protection; specific exceptions are decided on a case-by-case basis, and policies are likely to vary among states (Ballam 2000; McAdams 1992). For example, in *Petermann v. International Brotherhood of Teamsters Local 396* (1959), the court determined that the employer could not terminate an employee for refusal to commit perjury, because such an action violates a public policy of truthful testimony. Thus, employment terminations may be found to be contrary to public policy under certain circumstances, such as when the employee is fired for exercising a protected right, performing a public duty such as serving on a jury, blowing the whistle on employer misdeeds, or refusing to engage in criminal activity at the request of the employer. When an employer’s decision to terminate an employee stems from their own unlawful or unethical actions, and/or is grounded in pursuit of retaliation, courts are likely to find a violation of public policy (Abrams 1999; Zachary 1998). Employers may also be held liable when their supervisors terminate employees based on personal bias.

As a brief footnote to the foregoing discussion on the four primary common law exceptions, we pause to acknowledge two other legal theories that are still in their infancy in eroding the at-will doctrine. Fraudulent inducement occurs when the employer makes misleading or fraudulent statements to encourage applicants to accept employment. Employers may be held liable when they terminate at-will employees contrary to their original promises (Ballam 2000). Promissory estoppel is another doctrine that may be used in the context of a post-hire promise not to discharge. In the absence of a formal contract, when the employer makes a promise that the employee relies upon (i.e., retained employment), the employer reasonably expects the employee to rely on that promise, and enforcement of the promise is the only way to avoid injustice, promissory estoppel may apply (Ballam 2000). Promissory estoppel finds its origin in Section 90 of The Restatement of Contracts 2nd. In order for most promises to be binding, legally sufficient consideration is required; i.e., a bargained for exchange accompanied with either a legal benefit to the person making the promise (promisor) or a legal detriment to the person receiving the promise (the promisee). The following example illustrates the lack of a legal benefit/detriment. An employer enters into a contract to hire an employee at an annual salary of \$75,000.00. The contract is in writing and signed by both parties and otherwise meets all legal requirements. After the contract is signed, the employee refuses to work unless the employer agrees to pay an additional \$10,000.00. Needing to have the employee’s services by the date specified in the contract, the employer agrees to the contractual modification. The court would find the modification to be unenforceable as there is neither a legal benefit to the promisor, employer, nor a legal detriment to the promisee, employee. In other words, the employer (promisor) got nothing more for his promise than he was originally legally due and the employee (promisee) did nothing more than he/she was originally obligated to do. The employee was not required to work longer hours nor perform additional services beyond those stated in the original contract. Section 90 of the restatement of contracts creates an exception to this consideration requirement in the cases of essentially gratuitous promises (gift promises).

An example of a gratuitous promise (promise to make a gift) would be what is commonly known as a charitable subscription promise. For example, one pledges \$5,000.00 to a university for a new school of business, or one makes a pledge of \$1,000 toward a building fund at their house of worship. These are simply gratuitous promises (i. e., promises to make gifts), unsupported by consideration and otherwise unenforceable for lack of consideration. Here, however, the university or house of worship will take some definite and substantial action in reliance on the pledge (such as hiring architects, engineers, contractors, etc.). Since the person making the pledge should reasonably expect that such action would take place, and in fact does take place, the court will enforce the gift promise to the extent that justice requires, even though no legally sufficient consideration is found to be present. So too will it be when employers make high sounding promises to employees, expecting that those employees will act on those promises, such as quitting their former job, selling their house, and moving to the new location of employment. Although nothing may be required in return from the employee (i.e., no consideration is present) courts adhering to the promissory estoppel doctrine have enforced those gratuitous promises to prevent an injustice from being inflicted on the employee.

Although we frequently hear mention of wrongful discharge, there is also the theory of constructive discharge. This notion refers to the situation where the employer did not expressly terminate an employee (e.g., on the basis of race, color, sex, religion, national origin), but creates working conditions for this employee such that no reasonable employee would be expected to endure that environment. For example an employer allows co-employees or supervisors of the protected class employee to be harassed with racial epithets, or be ridiculed for their religious beliefs. The employee who is the subject of the harassment quits their employment as they can no longer tolerate the abuse. Here the court could find that although the employee was not expressly discharged, they were enduring such a hostile working environment that they were forced to quit. This would result in what is termed a constructive discharge. This would be similar in theory to a constructive eviction where the landlord does not pay the sewer and water bills and the utility services are suspended. Although the landlord did not actually physically evict the tenant he/she made the premises non habitable, thus forcing the tenant to vacate and resulting in a constructive eviction. Additionally, some courts may require proof of employer intent of forcing the employee to quit in order to sustain this as cause of action based on the constructive discharge theory.

With the exception of applicable federal legislation, it should be noted that exceptions to the employment-at-will doctrine are not ubiquitous, as each state determines its own stance on the matter (Bennett-Alexander and Hartman 2004), and these standards may differ substantially (Ballam 2000).

The Costs and Incidence of Wrongful Termination Claims

Where a termination is found to constitute wrongful discharge, the employer may be liable for compensatory and punitive damages, which may also include compensation for emotional distress and suffering, and may also require reinstatement. “After 60 years of increased employment rights, juries tend to award large damages if their sense of fairness is offended, which attracts plaintiff attorneys” (Flynn 1996, p. 127). This reality provides employers with compelling reasons to ensure that their termination decisions are not being made in an inappropriate manner.

A survey by TEC and *Inc.* magazine (1995) asked 195 CEOs of small businesses about their experiences with litigation brought by employees. Almost half (46.1%) had been sued by an employee, and 33% of those suits were brought for wrongful discharge. In 1996, the median jury award for a wrongful termination case was approximately \$206,000, up 38% from the previous year (Goldberg 1997).

To assist companies in meeting the financial demands that accompany litigation, Employment Practices Liability insurance (EPL) is now offered by some insurance companies to offset the costs associated with claims such as sexual harassment, discrimination, and wrongful termination. Premiums are fairly expensive, however, and there are certain restrictions: “Costs [of the insurance] are based on a variety of factors including employment practices, location, number of employees, loss history and financial condition. Furthermore, some policies exclude intentional acts, punitive damages and coverage of costs associated with allegations of emotional distress” (Caudron 1996, p. 36).

In sum, wrongful termination suits are increasingly prevalent and pose significant financial threats to employers that may not be mitigated by at-will employment or EPL. Clearly, then, employers need to have an effective preventive structure in place to avoid legal liability for wrongful termination.

Avoiding Legal Liability

This paper advances a sequential program designed to help employers adapt to the evolving state of jurisprudence on the employment relationship as it concerns termination. A common colloquialism in the English language refers to the act of terminating employment as “firing” the employee—the same term is used to describe the act of discharging a firearm. It appears that the multiple uses of this term are more than coincidental: firing an employee, much like firing a gun, can bring dire consequences if not done properly. It is an action that should be undertaken only when appropriate, and following a sequence that ensures the intended result without unnecessary jeopardy. Such a chain of events may be described as the popular command sequence heard on the firing line of gun ranges: ready, aim,...fire!

Ready

The employer’s first line of defense is to communicate at-will employment status periodically throughout the employee’s tenure, noting such critical disclaimers in the employment application, the offer letter, and the employee handbook. This reminder may also accompany promotion letters, disciplinary memos, and so forth. The company should ensure that it is not sending its employees (explicitly or implicitly) the message that they will have a job forever if they do good work (Doyle and Kleiner 2001). For example, employee handbooks (and the like) should be examined for language that implies discharge only for just cause. Falcone (1999) argues that a progressive disciplinary policy and the at-will doctrine are not completely incompatible, mutually exclusive categories. In fact, although it is always in the employer’s best interests to terminate for just cause (as opposed to on a whim or for bad cause), at-will employment is the quickest route to summary judgment. If the plaintiff’s attorney can make a case for a legitimate exception to at-will status, then the employer will be required to show the termination was not for an illegitimate reason.

Employers also need to prepare against a wrongful termination suit by having uniform written employment policies that are consistently applied and well publicized to employees

(Flynn 1996; Prencipe 1997). This should include a formal disciplinary policy (Falcone 1999) that specifies automatic termination for egregious offenses (e.g., violence, theft, etc.), and some form of progressive discipline for lesser offenses. The employer should state that the list of rules and penalties are “illustrative and not all-inclusive,” and that they reserve the right to administer discipline in other appropriate circumstances (Steiner 1988). Prencipe (1997) encourages employers to use the golden rule: “Simply put, you should treat employees fairly and equally, just the way you’d want to be treated” (p. 93). This consideration involves communicating to employees when their performance is not up to standards, and giving them the chance to improve. A good disciplinary policy not only gives an employee plenty of notice of a performance problem and the chance to correct the problem; it also provides a way to appeal any adverse action taken (Leventhal *et al.* 1980; Steiner 1988). Both the courts and terminated employees are likely to look favorably on the opportunity for the employee to tell his/her side of the story and go through an impartial review process before resorting to legal action (Steiner 1988).

Once a policy is in place, supervisors must be trained to follow the company’s disciplinary program. This includes using the disciplinary system properly: *only* when discipline is warranted, *always* ensuring that the punishment fits the crime, *always* enforcing the policy equally among all employees, and *never* for an arbitrary, capricious, biased, or discriminatory reason. Some managers may become intoxicated with their authority over employees and be susceptible to the use of poor judgment or ethical lapses in effecting termination decisions. It is vital that employers take steps to prevent this, and proper management training will ensure that supervisors are aware of what wrongful termination is and how to avoid liability. Supervisors must also be sure to maintain good documentation to demonstrate that “the employee was treated fairly, that he or she knew about the rules, and that he or she received due process and fair warning about what the consequences would be for failure to follow the rules” (Flynn 1996, p. 128). It is wise to keep copies of all disciplinary warnings, documentation of conferences with problem employees, and any written performance improvement plans (Prencipe 1997).

Performance appraisals should be conducted on a regular basis, with careful and accurate evaluations based on the essential requirements of the position as specified in the job description (Doyle and Kleiner 2001). Evaluations should always be as objective as possible, and focused on job-relevant criteria. It is important that supervisors do not “sugar-coat” evaluations, as it will be hard to reconcile these evaluations with a termination decision in a court. Also, a poor performance evaluation may be a vital platform in initiating the progressive disciplinary actions mentioned above.

Employers should also ensure that all company-printed materials given to employees do not convey any discriminatory or inflammatory language (Doyle and Kleiner 2001). Such language may be construed by the court as indicating a discriminatory animus if the plaintiff is a member of a protected class.

In the event that terminations must occur due to reductions in force, employers should carefully document the method of determining who will be laid off (Caudron 1996). Care should be taken to ensure compliance with laws prohibiting discrimination (particularly age discrimination when layoffs are an issue). Employers should also strive to offer employees severance agreements with extra compensation in exchange for a waiver of discrimination claims. However, it should be stressed that employers must be careful to avoid the appearance of coercion in employing this strategy. Employers are also encouraged to provide complete, timely, and honest communication in a sensitive, respectful manner to laid off employees (Caudron 1996), and provide exit interviews. Research has shown that there is a strong association between perceptions of employer obligations and perceptions

of termination fairness (Rousseau and Anton 1991), as well as employee feelings of unfair treatment at termination and the initiation of wrongful termination claims (Lind *et al.* 2000). If possible, post-termination benefits should also be available, including outplacement assistance, job retraining, recall rights, and medical insurance coverage (Caudron 1996).

Aim

The fact that the employer is “ready” for termination decisions in general should prove invaluable when specific incidents arise. With the necessary policies and training in place, supervisors should be able to properly identify when termination is appropriate and when it is not. Managers should thoughtfully evaluate a problem employee with the considerations mentioned above in mind. If the basis for contemplating a termination decision is grounded in some type of biased, arbitrary, or retaliatory motive, it is clearly not an appropriate act and may be challenged in court. Not liking an employee is not “just cause” for imposing their separation from the company.

Given that the employer has a legitimate, “just cause” reason for contemplating termination (even if this is not a proximal objective, but merely raising an eventual possibility), managers should begin the appropriate steps of the disciplinary policy, being sure to document all relevant materials (disciplinary memos, performance appraisals, corrective plans of action, etc.). In the process, managers should treat the employee with dignity and respect, and fully explain how the employee is failing to meet the job requirements. If the employee does not take the opportunity to correct deficiencies, the employer may continue to move along the progressive discipline continuum. Prencipe (1997) relates a disciplinary problem a manager was having with a particular employee, who decided to detail the performance issues first before resorting to termination: “The manager sat the employee down, treated him like a first year college student and expected nothing more from him than of a new hire. The manager now reports that the employee who formerly had one foot out the door is a star performer” (p. 93).

Fire

By now, it should be clear that the decision to terminate an employee is indeed a serious matter, with expansive consequences for employee and employer alike. Accordingly, it should not be taken lightly, and employers should take the utmost care to ensure that the termination is done fairly, for “just cause.” There is nothing about this process that should be malicious, or even personal, for that matter. This decision should be based on objective, job-relevant criteria and the employee’s documented deficiencies in performing adequately. The progressive disciplinary policy should govern the termination process, and excepting violations that demand termination without warning (e.g., violence, theft, etc.), should be an action of final resort.

Before actually conducting the termination, the company should make a final check to ensure that all documentation is in order, all policies have been followed, the human resource representative has been notified, and so on (Prencipe 1997).

If at all possible, the supervisor should follow several important guidelines. First, conduct the termination as discreetly and quickly as possible once the final decision has been made. Of course, the entire disciplinary process should be kept confidential, and the terminated employee should never hear from another source (e.g., co-worker) that they are being terminated before this actually happens. Conduct the termination as early as possible in the week, to allow the employee to begin searching for a new job (Prencipe 1997).

Table 1 Summary of recommendations.

	Recommendations
Ready	<p>Insure that at-will status of employment is communicated in the employment application, employment interview, employee handbook, during performance appraisals, including promotion letters and any disciplinary proceedings</p> <p>Have well drafted, well publicized disciplinary and other policies, and apply those policies uniformly</p> <p>Be certain to <i>follow</i> the disciplinary and other policies that have been implemented, and provide training to supervisors respecting those various policies</p> <p>Let the employee tell his/her side of the story. Provide due process for employees in disciplinary matters, including an impartial internal appeal prior to resorting to termination. The employee's sense of fair treatment may go a long way in dissuading the employee from taking legal action in retribution</p> <p>Conduct regular performance appraisals and document any performance problems (the paper trail)</p> <p>Avoid any discriminatory or offensive language in company provided materials. This will help avoid the inference that discrimination was the pretext for the discharge</p> <p>In the event of a RIF, there should be detailed documentation establishing the methodology for determining layoffs. Be careful to avoid implications that layoffs were age-related in violation of the ADEA</p> <p>Offer reasonable severance packages and outplacement services in return for a written release and waiver of any discrimination or other claims</p>
Aim	<p>With respect to the above recommendations, the employer should take care to <i>document–document–document</i>. There should be a concise paper trail of all performance appraisals outlining performance issues, opportunities to correct deficiencies and progressively increasing discipline if such issues are not appropriately redressed</p> <p>Employees should be treated with dignity and respect, as well as with impartiality in performance appraisals and disciplinary actions. Again, a sense of fairness is critical in avoiding perceptions of discrimination and a desire for retribution</p> <p>While the employer may not wish to be harsh and may oftentimes delay the discharge because such action is unpleasant by nature, this may ultimately not be in the employer's best interest. A judge or jury may be curious as to why a so called "problem" employee was retained for a long period of time if they were deemed to be inefficient, incompetent, or a troublemaker. With well-kept documentation, discharging sooner, rather than later may be best</p>
Fire	<p>Be sure all documentation is in order and all policies, disciplinary and otherwise have been followed. From a legal perspective there is nothing much worse than an employer promulgating a policy and then not following its own policy</p> <p>Conduct the termination quickly and as privately as possible. A management level witness should be in attendance. Clearly explain the reason(s) for termination in a way that respects the terminated employee's dignity</p> <p>Do not discuss the reasons for termination with employees or individuals not directly participating or involved in the termination. The employer does not need to give the discharged employee a potential cause of action for defamation</p> <p>If violence is anticipated, have security and/or law enforcement at the ready. It may be advisable to have the employee escorted from the building by security. Do not give the employee time to do damage to the company such as running off with customer lists, trade secrets, computer files, or causing actual physical damage to the employer's property</p> <p>After clearly explaining the reasons for termination, do not express remorse for the discharge. Explain rights of appeal within the company structure, if any. Allow the employee during the discharge proceeding to make a brief comment, but do not turn the proceeding into a debate or permit the employee to be argumentative. This may only engender a sense of perceived unfairness or even provoke anger or violence from the employee</p> <p>If threats of a lawsuit or violence are made by the employee, ascertain the reasons for the potential suit and document the specifics of such, along with the nature of any threats</p>

Second, the termination interview should be conducted with at least one management-level witness (perhaps a human resources representative), and done in private (Bennett-Alexander and Hartman 2004; Prencipe 1997). In order to downplay the power differential, the meeting should be held in a neutral location such as a conference room. If a violent reaction is expected, security personnel should be nearby (Prencipe 1997).

Third, give a complete and honest reason for the termination decision. Make every effort to focus on actual behaviors by the employee, describing how the employee failed to meet the requirements of the job. Conduct the termination interview professionally, being sure to treat the employee with dignity and respect. Employees who feel unfairly treated at termination are more likely to seek revenge (Caudron 1996). In a study of 996 terminated Ohio workers, it was found that those given no explanation of the reasons for their dismissal were ten times more likely to report suing their former company than employees who received a complete explanation of the reasons for their discharge (Lind *et al.* 2000). *Do not* make an intentional effort to humiliate or embarrass the employee. This will almost certainly result in some kind of retaliation. Do not make statements conveying regret for having to terminate (Prencipe 1997), as this sends mixed messages.

Finally, explain completely any process in place within the company whereby the employee can challenge the decision, if so desired. If the employee threatens to sue, be sure to ask for the reasons why, and record them in case they are needed later (Prencipe 1997).

A summary of our recommendations appears in Table 1.

Conclusion

Wrongful termination is a serious issue in the modern employment relationship, and litigation in this area has witnessed explosive growth due to the erosion of the employment-at-will doctrine. This paper has described some common causes of action that a terminated employee can initiate based on a claim of wrongful termination, and offered a prescriptive program designed to insulate an employer from liability due to this cause of action.

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Note While the authors have been reasonably careful to assure the accuracy of the material contained herein, this paper should not be relied upon for or construed as the offering or rendering of legal advice and the reader should seek competent legal counsel to evaluate the merits of their proposed or intended actions.