Avoiding Termination Mistakes

1. **Not Applying or Having Employee Policies and Procedures**—Having proper termination policies and procedures should provide good directions for terminating an employee in accordance with applicable state and federal laws.
   - A well-written employee handbook, which spells out issues of misconduct and poor job performance, adds to an employer’s credibility while negating claims to the contrary from a terminated employee.
   - Review the employee’s employment history, note specific problems that have occurred and attempts to correct those problems.

2. **Lack of Documentation**—Without adequate documentation, your basis for terminating an employee may appear to be groundless and lack substance.
   - Be sure all employment related documents are up to date.
   - Document poor performance in detail along with a substantiating basis. Misconduct issues should have an unbiased investigation in alleged incidents.
   - Organize documentation by date to provide a solid foundation for the termination.
   - When disciplinary actions are taken, you should have a witness present and ask the employee to sign a description of the incident and the action taken by the employer (you). If the employee refuses to sign, this should also be documented.

3. **Failing to Give Employee Notice of a Termination**—Not all states require you to give notice to an employee; however, legal experts say doing so can prevent further action (like the employee using discrimination to cloud the real issue behind the termination). Should an employer terminate an employee without a prior warning, the employer may need to prove that the employee should have known they would be terminated based on their actions.
   - Give the employee notice that if they commit the same or related infraction again, they will be terminated.
   - “Get to the point” when providing the employee with notice. Do not drag out the reason why the employee is being terminated. Keep the explanation of the decision brief, clear, and factual.
   - Provide the employee with the opportunity to have his/her say, but be sure to avoid an argument. If you need to reply, stick to the facts.

4. **Failing to Provide a Just Cause for Termination**—In many states, workers are employed “at-will,” which means that employers can terminate an employee at any time. Unfortunately, this is not necessarily true and you are not immune from negative consequences.
   - Many employees fall in some protected class such as age, gender, race, religion, or disability. Many lawsuits can be avoided or won by employers who base their termination decision on a “just cause” or who provide a legitimate reason for the employee’s termination. A “just cause” reason must have its foundations based on facts or proof.
   - Keep the reason for termination business-related. Do not base the decision to terminate the employee for discriminatory reasons.
   - *CAUTION* If you terminate certain classes or types of employee’s (examples below), be careful to avoid potential legal issues. Be sure not to make reference to anything that could be considered discriminatory.
     - An older employee (over age 40)
     - An employee with a disability
     - A pregnant employee
     - Minority employee

5. **Not Providing Accurate Performance Evaluations**—Proper performance evaluations aren’t always given, often because managers seek to avoid confrontations with employees and because the evaluations have been used as the basis behind many wrongful dismissal actions. An employee may entertain thoughts of litigation when their performance appraisal states their performance met expectations, but the employer terminates them for alleged poor performance.
   - Those conducting performance evaluations must be taught to be honest when completing appraisals.
   - Develop an improvement plan so the employee is given an opportunity to correct a behavior or perform better.

**Additional Tips**

- Make arrangements for the employee to collect their items and return the store’s items.
- NOTE: Be sure to promptly collect any ID badges, keys, etc. and remove any access they may have.
- If termination may be complicated or involve controversial matters, you should seek legal advice as to what should be said and given to the employee. You may want to consider providing that employee with a “Separation Agreement” if you believe that employee may file a lawsuit.
- If a termination is voluntary (resignation), get a signed resignation stating the reason(s) for leaving.
You should be aware of state laws that may apply. These are a few examples:
- Employee’s request of personnel records.
- Employer obligation to provide letter of termination.
- Employee’s last pay check.

Remember, one important benefit of MHA membership is that we’re here to help you with questions on topics like this, or other matters regarding employment issues. Take full advantage of your association membership. Contact Andrea Ramage, Membership Services Coordinator at 800-888-1817 ext. 365 or andrear@midwesthardware.com.