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- ◆ We feature high-quality standard, premium and luxury AR coatings at profits-boosting prices.
- ◆ We sport the sexiest, most dynamic mirror lens collections available.
- ◆ We proudly offer the fastest turnaround anywhere—in and out the same day.
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Follow This Checklist Before Firing Employees

Andrew Gould, Esq.

Here's a news flash, people occasionally engage in behavior at work that is unprofessional, unproductive, malicious, or even worse. While there are certainly examples of employee conduct that may warrant immediate termination, in general the following factors should be considered.

❑ Does the employee have a contract of employment? If so, you'll want to determine whether the proposed basis for termination meets the "cause" language of the agreement and, if not, what the consequences are for terminating without cause.

❑ What's the reason for termination, and does it comply with applicable policies and your handbook?

❑ Is there any union collective bargaining agreement?

❑ Is the termination consistent with past decisions? If there are prior examples of similar behavior that have resulted in termination from employment, it will be far easier to justify the decision than if there are no prior examples or, worse, if the prior examples did not result in termination.

❑ Has past performance been documented? As part of your evaluation process, review any available documents, talk with other supervisors, and talk with the employee in question to make sure you have the relevant facts. You'll certainly want to see whether prior documentation is consistent with the reason for termination.

❑ If the recommendation for termination is from a supervisor, determine if there is a motive for this supervisor to

dislike the employee and wish to retaliate?

❑ If documentation is lacking or if you have questions about the supervisor's motives, evaluate whether discipline rather than discharge is appropriate.

❑ Be knowledgeable about the laws that apply to your workforce. For example, might any absences be protected under the Americans With Disabilities Act or the Family Medical Leave Act? Did the employee recently complain about not being paid in accordance with the Fair Labor Standards Act?

❑ Consider a third party's (i.e., juror's) perspective. If a terminated employee challenges your decision, you may need to convince a juror of the appropriateness of that decision.

Separation Agreements

Some companies attempt to secure releases from all departing employees in exchange for severance. This is always something to consider depending on the facts. Speak with counsel, however, before proposing a release agreement as some courts consider these offers to be evidence of a guilty mind.

This is certainly not a comprehensive list, and there are often unique considerations in every termination situation. Still, if you consider these items and think through whether a decision will be considered (and actually is) fair and legal, you will be in a far better position should that employee ever attempt to challenge you.

Andrew Gould is a labor and employment attorney, Board Certified by the Texas Board of Legal Specialization, with the law firm Wick Phillips, LLP.