

THE C & D NEWSLETTER



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EMPLOYMENT TERMINATION LAW

There are numerous federal and California laws restricting an employer's right to terminate an employee. This newsletter shall discuss the restrictions on an employer's right to terminate an employee, the methods by which an employer can protect itself from potential liability for wrongful termination, and the rights of the employee who has been wrongfully terminated.

Laws. The general rule in California is that an employee's employment is "at will", meaning that an employee may be terminated at any time, with or without notice, for any reason or for no reason. However, there are numerous restrictions on an employer's right to terminate an employee. Thus, an employee may not be terminated because of the employee's race, religion, national origin, sex, pregnancy, marital status, age (over 40), physical or mental disability, or because the employee refuses to perform an illegal act or reports a violation of the law by the employer. In addition, an employer may not terminate an employee in violation of any existing employment agreement, or where the course of dealings with the employer, through its statements and past practices or company policy, creates an implied-in-law contract. An employer is prohibited from intentionally treating an employee or group of persons in a protected class differently than other employees (for example, it is illegal to discharge a minority employee for a particular conduct when a nonminority employee was not discharged for the same conduct.)

Avoiding Liability. There are several steps an employer can take to minimize its exposure to a wrongful termination lawsuit. Before terminating an employee, the employer should:

- * Determine if the employee is a member of a protected class and whether there is any possibility of discrimination;
- * Determine if other employees similarly situated have been treated the same as the employee to be terminated;
- * Determine if the company has followed its internal personnel policies and procedures;
- * Properly document the employee's poor performance, so as to be able to substantiate the reasons for termination;
- * Consider the possibility of transferring the employee to another position as an alternative to termination;
- * Consider having a different supervisor evaluate the employee;
- * Make sure the employee understands the reason for termination; and
- * Consider the possibility of a severance agreement.

In general, all employment policies and procedures should be regularly reviewed by an attorney to ensure that they do not inadvertently create potential liability and that they are up to date with the constant changes of the law in this area.

Employee's Rights. Although the various federal and California laws protecting employees differ somewhat in the remedies afforded to the employee, in general an employee who has been wrongfully terminated in a breach of contract case can sue for compensatory damages such as lost wages and benefits. An employee who has been wrongfully discharged because of discrimination or other violation of a public policy by the employer can sue for tort damages, punitive damages and attorney's fees. In the employment law context, tort damages are the amount that a jury determines will compensate the employee for all injury and losses caused by the employer, whether foreseeable or not. Punitive damages are the amount that a jury determines will punish the employer for its wrongful conduct and deter it from such wrongful conduct in the future.

This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.

