



This article presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

The Reasons Employees Sue

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Even if they have done everything “right,” employers will get sued. That is just a business reality these days. So, if doing things by the book is not enough, what is? The answer is to avoid what inspires a former employee to visit an attorney. Here are four lessons learned from litigating employment claims for over 20 years.

1. Give A Reason Even If You Do Not Have To

Lawyers advise employers to have short termination meetings to avoid high emotions. However, saying too little can also inflame negative feelings and increase the risk of litigation. Some employers think that just because they are not legally obligated to give a reason for terminating employment, they should resort to a simple unexplained Trump-style “you’re fired.” Unless advised of specific deficiencies, employees tend to fill the void with reasons outside of their control, such as race, gender, etc. If the employee sues, an employer will need to give the reason then anyway.

Lesson: Provide employees a simple and direct reason why their employment is being terminated so that their imagination does not run away with them.

2. Put Yourself In The Employee’s Shoes

The usual anxiety over money and health is increased exponentially when combined with the stress of losing a job. An employee may be mute in a termination meeting only to go home to discuss the uncertainty of the future with partner or friend. An employee wants to know what to expect, so explain when the employee can expect a final paycheck and what how much it will be. Also, most employer-sponsored insurance plans maintain coverage through the end of the month employment is terminated, so making a termination effective at the beginning of the month provides employees a little extra time. Telling employees any information that you would want to know if you were getting fired also avoids “the company just doesn’t care” sentiment that is common among employees who sue.

Lesson: Determine the impact of the termination on the employee's finances and insurance, and give the employee a letter with exactly what to expect.

3. Papering The File Can Create Suspicion

As managers are well aware, the first thing HR and the lawyers ask before terminating an employee is, "where is the documentation?" In the haste to build a record, there is often a surge in recorded performance issues immediately before an employee is fired. An employee bombarded with criticism just before termination may feel set up. A new zeal for recordkeeping is sometimes interpreted as scheming against the employee to justify a predetermined result. Furthermore, juries are already suspicious of employers (as are many judges for that matter). It is not unusual for there to be a plaintiffs' verdict because an employer "seemed shady," to quote one jury foreperson.

Lesson: Instead of papering the file after the fact, proceed with the termination in a way that you would be able to justify. Another good reality-check is to handle it in a way you would be proud to testify about in court or in front of your mother, to use one jury consultant's test.

4. Apologize If You Make A Mistake

Getting fired is often a life-changing event for an employee, but the logistics have necessarily become routine to those who must process the paperwork. In one case, HR inadvertently copied an employee on an email requesting the employee's final paycheck. Sounds like a simple oversight, except the employee did not even suspect she was going to be fired. While the slip-up had no impact on the legal issues, it triggered an emotional backlash that poisoned any hope of a peaceful parting of ways. It still cost the employer many thousands of dollars to defend even though it ultimately "won" the lawsuit. An apology for a mistake (not for the decision itself) is not like admitting legal liability by apologizing at the scene of a car accident. People make mistakes and it costs nothing to apologize. An employee who feels mistreated is more likely to seek solace and recourse from a plaintiffs' attorney.

Lesson: When mistakes happen, don't be afraid to apologize, a simple gesture that goes a long way to repairing hurt feelings before they snowball into litigation.

Avoiding these common missteps may reduce the time you spend in court. Even more importantly, they will help your business and your former employee move forward from a difficult situation in a productive way.