

Can I fire him? A Checklist

1. Will the employee be discharged for any of the following reasons?
 - a. race
 - b. religion
 - c. sex
 - d. age(over 40)
 - e. national origin
 - f. children or childbirth
 - g. pregnancy
 - h. disability
 - i. FMLA Leave

2. Will the employee be discharged for acting in concert with other employees to:
 - a. organize collectively?
 - b. push for a raise or shorter hours?
 - c. ask for changes in other working conditions?
 - d. support another employee in his/her protesting?

3. Will the discharge violate any type of implied contract or your own Employee Handbook?
 - a. does the company employee handbook provide that warnings must be given before an employee may be discharged or that an employee may be discharged only "for cause"?
 - b. does the company have written employee policies that promise "fair treatment"?
 - c. is there a written, signed employment contract?

4. Will the discharge constitute a tort?
 - a. has the company committed the tort of outrage, by being abusive during the discharge through either high-handed interrogation

KAUFMAN LAW, A Professional Corporation
11350 Random Hills Rd. Suite 800
Fairfax, VA 22030
703.764.9080
703.764-0014 (fax)
www.dzklaw.com

methods or flagrant misrepresentations to the employee as to the reason for discharge?

b. has the company been negligent or inconsistent by failing to follow its own policies, which failure resulted in the employee's discharge?

5. Will the employee be discharged for any of the following acts or omissions?

a. refusing to do an illegal act

b. filing a worker's compensation claim

c. reporting violations of EEO, OSHA, or ERISA regulations or

d. "whistle-blowing" on the company's possible violations of laws.

6. Will the employee be discharged for refusing to do a job he or she considers unsafe (if objective facts back up that the job is unsafe, this gives rise to a possible OSHA violation)?

a. Would doing the job reasonably place the employee in imminent danger?

b. Has the job been performed safely numerous times in the past? If so, why does the employee now consider it unsafe? Has there been an accident on the job shortly before the refusal so that the employee has reason for concern?

7. Will the company deny a hearing (with witnesses present) to provide the employee an opportunity to admit or deny the reasons for discharge?

8. Has the company failed to give the employee an oral or written warning to correct the conduct?

9. Has the company let other employees get away with what the employee is to be discharged for?

KAUFMAN LAW, A Professional Corporation
11350 Random Hills Rd. Suite 800
Fairfax, VA 22030
703.764.9080
703.764-0014 (fax)
www.dzklaw.com

10. Did the company promise the employee, at the time of hire or subsequently, that "the job will be yours for as long as you want it?" Was the employee promised an "annual salary"?

11. Will the employee be discharged for a physical condition (for example, high blood pressure, diabetes, or a back condition) in violation of federal and state statutes prohibiting discrimination on the basis of disability or FMLA leave? Has the company tried to make reasonable accommodations for the employee to work at some other job?

12. Is there no written documentation (for example, prior reprimands) of the conduct leading to the employee's discharge?

13. Did the employee give up a job and/or home in another city to work at the company? Were promises made to induce the employee to do so that were not kept?

14. Will the company call the discharge one motivated by a need for reduction in force when in fact the reason is unsatisfactory work performance?

15. If the company plans to hold an investigatory interview prior to the discharge, will the employee be denied a union or coworker representative, despite his or her request?

16. Ask yourself "Am I retaliating in any way 'against an Employee's protected rights?'"

KAUFMAN LAW, A Professional Corporation
11350 Random Hills Rd. Suite 800
Fairfax, VA 22030
703.764.9080
703.764-0014 (fax)
www.dzklaw.com