

The Record BUSINESS

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ASK A LAWYER

Documents a big help in firing process

Q. How do we deal with a problem employee?

There is an adage: "Good in, good out; bad in, bad out." In other words, the better your interviewing and screening techniques, the fewer headaches you will have when it comes to employee discipline and termination. In short, hire only good people.

From time to time, however, all employers need to deal with a problem employee.

The approach should be twofold: First, get the employee "back on track" so that he or she quickly becomes productive again. Second, at the same time, document any performance issues in case termination becomes necessary and the employer

needs to defend itself in litigation. Documentation is the key.

Each company should give its employees written performance evaluations at least once per year and should train supervisors how not to sugarcoat these evaluations. They need to "tell it like it is." When a problem develops that cannot be dealt with simply by verbal counseling (and a memo to the personnel file), supervisors and HR professionals need to work together to prepare a written performance improvement plan. This plan needs to identify specific areas for improvement and be able to measure performance improvement based upon objective, rather than subjective, criteria. Most impor-

tant, it needs to be fair. If the plan does not give adequate time to demonstrate improved performance or if the employer does not provide feedback to the problem employee throughout the process, it later might be viewed by a jury as mere "window dressing" and an attempt by the employer to justify the employee's termination. If the employee, after being given sufficient time to improve, still is not performing at the required level, consider terminating the employee and offering some severance pay in exchange for a release of all claims. For the release to be enforceable, it must be entered into knowingly and voluntarily by the employee. The release should be drafted by an ex-

perienced employment lawyer to make sure it complies with various employment laws. A general release from a form book will not suffice.

Steven J. Adler is chairman of the Employment Law Department at Cole, Schatz, Masel, Fennan & Leonard, P.A., the largest law firm in Bergen County. This is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of a client.

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