



# ***John A. Fabian***

## **THE TOP ELEVEN MISTAKES EMPLOYERS MAKE**

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## **MISTAKE NO. 1: FAILURE TO DOCUMENT EMPLOYEE PERFORMANCE PROBLEMS**

- How are you going to defend the company's actions?
- How are you going to dissuade me from suing?
- How are you going to help your counsel defend the company?



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## **MISTAKE NO. 2: CALLOUSLY TERMINATING THE VULNERABLE EMPLOYEE**

- Be respectful and courteous
- Avoid actions that appear to be unreasonable
- Assume you're being watched





## **MISTAKE NO. 3: RELYING ON “AT-WILL” EMPLOYMENT AS A BASIS FOR TERMINATING AN EMPLOYEE**

- Most employees just want to know the truth
- Juries are impressed by candor and fairness

*Batter Up*



## **MISTAKE NO. 4: INVESTIGATIONS/ATTACKING THE ALLEGED VICTIM**

- Do not discipline without investigating
- Do not investigate the victim
- Get the employee's side of the story



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## **MISTAKE NO. 5: RESPONDING TO CHARGES OF DISCRIMINATION WITHOUT COUNSEL**

- Respondent's Answer helps to frame the issues
  - May persuade Plaintiff's counsel not to litigate or may lead to an early resolution
- Application for unemployment benefits



## MISTAKE NO. 6: FAILURE TO TAKE ACTION TO ADDRESS ALLEGED WORKPLACE HARASSMENT

- “He said, She said” situation
  - Some employers refuse to take action in the absence of direct evidence
  - Need to consider indirect evidence of discrimination
    - Emails, cell phone records, confidante



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## **MISTAKE NO. 7: EMPLOYEE HANDBOOK POLICIES – BE CONSISTENT**

- Do not deviate from policy
  - Perception of fairness
  - Evidence of pretext



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## **MISTAKE NO. 8: FIRING AN EMPLOYEE FOR NOT BEING A “TEAM PLAYER”**

- Find a concrete reason for termination
- Non-specific reasons are not persuasive



## **MISTAKE NO. 9: FAILURE TO TREAT EMPLOYEES WITH RESPECT AND CANDOR**

- I rarely encounter employees who tell me they have been treated with candor and respect
  - Prevent lawsuits before they happen





## **MISTAKE NO. 10: FAILURE TO RECOGNIZE BAD MANAGEMENT AS THE REASON BEHIND AN ADVERSE EMPLOYMENT ACTION**

- Typical fact scenario
  - Long-term employee with good performance
  - New Manager
  - Employee suddenly develops performance problems
  - New Manager decides to terminate employee





# MISTAKE NO. 11: FAILURE TO HIRE WINTHROP & WEINSTINE, P.A.



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