



# Top 10 Litigation Mistakes Employers Make (and How to Avoid Them)

Practical Lessons from the Trenches

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# Why This Matters

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- » Most cases are won or lost before litigation begins
- » Small decisions = big exposure
- » Preventable mistakes drive costly outcomes
- » HR is the first line of defense

# Mistake #1: Poor Documentation

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- » Vague, non-existent, or inconsistent write-ups
- » Missing key facts
- » Backfilled documentation

# Mistake #2: Failure to Follow your Own Policies

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- » If you have a handbook, follow it
- » Treating similar employees differently
- » Exception culture
- » Manager discretion without guardrails
- » Inconsistent discipline

**FAILURE**

# Mistake #3: Timing Missteps

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- » Discipline after complaints or leave
- » Waiting too long to discipline
- » No documentation of prior issues
- » No separation in decision-making

# Mistake #4: Inadequate Investigations

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- » Delayed response
- » Missed witnesses
- » No credibility assessment
- » No written findings



# Mistake #5: Manager Freelancing

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- » Off-script actions
- » Unauthorized promises
- » Emotional decisions
- » Failure to involve HR

# Mistake #6: Inappropriate Communications

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- » Bad emails and texts
- » Sarcasm or frustration in writing
- » Inconsistent messaging
- » Train employees that everything is discoverable



# Mistake #7: Accommodation Failures

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- » No interactive process
- » Rigid policies
- » Poor documentation
- » Ignoring temporary fixes

# Mistake #8: At-Will Overconfidence

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- » 'We can terminate for any reason'
- » Ignoring protected factors
- » No review process
- » No litigation lens

Ignore

# Mistake #9: Failure to Preserve Evidence

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- » No litigation hold
- » Deleted communications
- » No device preservation
- » Incomplete collection

# Mistake #10: Sloppy Terminations

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- » Pulled the trigger too quickly
- » Missed strategy
- » Did not involve appropriate HR decision makers
- » Reactive approach
- » No documentation



# Key Takeaways

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- » Consistency is key
- » Documentation matters
- » Process matters
- » Train managers
- » Pause and assess risk

# Next Steps

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- » Audit documentation
- » Standardize investigations
- » Train managers
- » Pre-termination checklist
- » Review communications



# Q&A



» Questions?

» Contact information



Contact Mark



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