

Avoiding Allegations of Wrongful Termination

BY RUTH E. PARISH

In the past two columns we have dealt with legal issues relating to sexual misconduct and child molestation. These, along with wrongful termination, constitute three common sources of litigation that may be brought against church schools and organizations.

Wrongful termination occurs when an employee is terminated or resigns under conditions that he or she feels is unjust. The current legal climate appears to favor the plaintiff in wrongful termination cases. Seventy-five percent of claims that proceed to completed jury trials are won by plaintiffs. In California three-quarters of these trials end with awards in excess of \$400,000, and awards in other states run in the six-figure range as well. Legal experts predict that wrongful termination litigation will continue the upward trend that began in the late 1980s. If this projection is even partially accurate, then organizations need to recognize the potential for problems and prepare by instituting better employee-relations programs.

Realizing that preventative measures are the key to the future will enable organizations to adopt a policy of fairness in dealing with their employees.¹

To facilitate better employee-employer relations, organizations should do the following:

1. Carefully review all preemployment and postemployment written material, both internal documents and those provided to employees, to determine whether there are any implied long-term promises that the organization is unwilling or unable to honor. The following should be carefully scrutinized: advertisements, applications, recruitment information, employment letters, postemployment correspondence that contains implied statements, oral conversations that may promise by implication, employee manuals or handbooks.

2. Provide training for those who interview applicants. Ensure that these individuals have current information on employment-at-will² as well as organizational policy.

3. Carefully review internal policies and practices. If these are hard and fast rules, say so. If they are only guidelines, be sure to make that clear. Ensure that whatever is stated will be followed by the organization.

4. Implement a reliable, realistic performance appraisal system. Such a system should be honest. It should include only job-related content and should be quantitative in nature. It must allow for goal setting and employee comments. Employers should schedule follow-up sessions during the new appraisal period in order to ensure feedback and open

communication among concerned parties.

5. Monitor the performance appraisal system frequently in order to be sure it meets organizational and employee needs.

6. Conduct periodic audits of the personnel files. Retain only pertinent material such as objective up-to-date personnel information. Conspicuously absent should be material pertaining to non-job-related activities.

7. Keep in mind that it is unlawful to discharge an employee because he or she is nearing vesting in the organization's retirement program. Arbitrarily requiring an employee to retire at a certain age may be unlawful unless there are specific Bona Fide Occupational Qualifications (BFOQ's)³ justified by

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could prove extremely beneficial. If done properly, it could increase the competency of the system, of individual institutions, of academic departments, and of instructors and students. Since there are a number of legitimate ways to implement such a program, assessment would probably not prove excessively complex.

The possibilities for success are high; the risks are relatively low. Therefore it would be worthwhile for Adventist colleges to implement assessment programs for their students. □

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REFERENCES

¹ William W. Turnbull, "Are They Learning Anything in College?" *Change* (November-December 1985), p. 23.

² K. Patricia Cross, "Making Students Successful: The Search for Solutions Continues," *Change* (November-December 1985), p. 48.

³ James Sledd, "A Basic Incompetence in Defining Basic Competencies," *English Journal* (November 1986), p. 26.

⁴ Charles J. McClain, "Assessment Produces Degrees With Integrity," *Educational Record* (Winter 1987), p. 49.

⁵ "Testing Students May Raise Legal Issues for Reformers," *Phi Delta Kappan* (February 1987), p. 481.

⁶ Jeri J. Goldman, "Political and Legal Issues in Minimum Competency Testing," *Educational Forum* (Winter 1984), p. 207.

⁷ Merle Steven McClurg, "Are Competency Testing Programs Fair? Legal?" *Phi Delta Kappan*, 59 (February 1978), p. 397.

⁸ Donald Marion Lewis, "Certifying Functional Literacy: Competency Process and Equal Educational Opportunity," *Journal of Law and Education* (April 1979), p. 159.

⁹ Goldman, p. 210.

¹⁰ McClain, p. 51.

¹¹ *Ibid.*

¹² Myron Blee and John Nickens, "Is Statewide Exit Testing for Community College Students a Sound Idea?" *Community, Technical, and Junior College Journal* (October-November 1985), p. 52.

¹³ Peter Ewell, "Assessment, What's It All About?" *Change* (November-December 1985), p. 35.

¹⁴ Frank Newman, "States Join the Debate," *Ibid.*, p. 7.

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the nature of the work.

8. Beware of sidelining an employee, that is, removing him from his current position and placing him in a less desirable job in order to avoid termination. If the employee resigns from the unwanted position, he or she may charge the organization with "con-

structive discharge," which may open the way to a legal action alleging wrongful discharge.

9. Review your employee handbook. Ask a labor attorney to examine the handbook before it is distributed, and to review any changes that are planned. Handbooks often cover the following areas:

Probationary Periods (or other appropriate terminology)

Definition
Length
Extensions

Grievance Procedures

Steps to be followed
Alternatives (if any)

Employee Access to Personnel File(s)

State law
Time frames

Progressive Levels of Discipline

Evaluations
Offenses meriting various levels
Verbal warnings
Written warnings
Probation
Time frames

Termination

Procedures⁴
Settlement
Release statement

Compensation/Benefits/Retirement

Philosophy
Employee/employer participation

Consistency and fairness are the key words to remember when designing an employee-relations policy. As long as these concepts are put into action, and lines of communication are kept open, the threat of wrongful discharge litigation may be significantly reduced.⁵

Awareness of potential risks relative to the topics covered in this column and the two previous columns—sexual harassment, sexual abuse, and wrongful termination—is essential in order to reduce possible liability. Preventive measures as well as guidelines for handling an accusation/complaint must be in place *before* such situations arise in order to safeguard against unjust and unlawful acts.

However, in considering these issues, each person, whether employee or employer, administrator or policy maker, must keep in mind his responsibility to conduct both personal business, as well as the Lord's business, in a Christlike manner. If this policy is reflected through "every action, thought, and deed"⁶ it will offer the greatest protection and the greatest rewards. □

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NOTES AND REFERENCES

¹ Since each geographic locality has specific laws governing employment, organizations should contact an attorney knowledgeable about the local statutes for advice and clarification of these issues.

² The term *employment-at-will* means that the employer has the right to terminate an employee at any time, for any reason, or for no reason. Also the employee has a right to terminate his or her employment at any time, for any reason, or for no reason.

³ In the United States, Bona Fide Occupational Qualifications (BFOO's) are permitted for sex, religion, and national origin under Title VII, Section 703(a), Civil Rights Act, 1964.

⁴ See North American Division Working Policy.

⁵ *Risk Management Services Guidelines—Wrongful Termination*, September 1987.

⁶ Ellen G. White, *Patriarchs and Prophets* (Mountain View, Calif.: Pacific Press Publishing Assn., 1913), p. 308.

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of action between Washington's troops and the British who occupied it.

Friday, August 25

This day we had a conventional historic tour of colonial Philadelphia, including Independence Hall, the Liberty Bell Pavilion, Carpenter's Hall, and Christ's Church. All in all, a quite informative and exciting week.

School administrators should be aware that Freedoms Foundation presents programs in the school system throughout the United States. Through cooperation with the American Legion, this foundation sponsors many excellent programs, seminars, and workshops.

The American Legion of California sent more than 40 teachers to the Delaware Valley Workshop. The St. Helena Post paid for my books and the \$500 tuition charge. Freedoms Foundation also has a national awards program open for applicants in both education and citizenship categories.

Topics for 1990 programs include "The American Revolution" (Boston to Philadelphia; Charlotte, North Carolina to Philadelphia; and Philadelphia/Delaware Valley; "The Civil Way" (the eastern campaigns); and "Hispanic American Heritage" (the California missions). Five one-week workshops will be held between June 24 and August 24.

For more information, write to Freedoms Foundation at Valley Forge, Valley Forge, PA 19481. □

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