



LEHR MIDDLEBROOKS
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Ten Questions to Ask Before an Employee Termination

A termination decision is a risk management event. The answers to the ten questions below should permit an employer to complete a rapid risk assessment of any proposed termination and adjust the decision or revisit the process before making a potentially costly mistake. In light of the Supreme Court's holding in *Muldrow v. City of St. Louis*, a wide range of employment decisions may now be litigated.

1. Is the termination consistent with the employer's written policies, including its disciplinary policy?
2. Does the documentation in the employee file support the reasons for the discipline or discharge?
3. How have others subject to the same policy who have committed the same or similar infraction been treated?
4. Was the employee told in advance that certain behavior may result in termination?
5. Was the employee given an opportunity to explain his or her version of what occurred?
6. Was the employee's explanation of what occurred thoroughly investigated?
7. Is the termination decision consistent with the performance appraisals in the employee's file?
8. Is the termination decision timely in relation to the incident or incidents justifying the decision?
9. Has the employee been given the opportunity to correct the problem?
10. Did the employee recently engage in a protected activity or enter a protected status? This includes activities like requesting FMLA, returning from FMLA, requesting accommodation or leave related to pregnancy or disability, complaining about unequal pay, asking questions about overtime/salary exempt status, being injured at work, or filing a Charge of Discrimination with the EEOC.

The advice here is focused on disciplinary and performance-related discharge decisions. I discussed considerations particular to reductions in force in a prior article, [here](#).

If you have any questions or would like additional information, please contact Richard Lehr at 205-323-9260 or rlehr@lehrmiddlebrooks.com.