



TERMINATION CONSIDERATIONS

If you answer “yes” to any of these questions, you may have an increased risk of liability. You should seek legal counsel and contact ICRMP (208-336-3100) before proceeding with termination.

	Yes	No
There is little to no documentation of a performance problem in the employee’s file.		
Employee recently received a favorable review.		
Employee is on a performance improvement plan that gives them additional time to improve performance, but time has not yet expired for them to improve performance.		
Employee is a long-term employee, employed by employer for many years, and employer seeks to terminate for what could appear to be a minor performance problem.		
Employee has not received notice of a performance problem.		
Employee belongs to a protected class under Title VII, the Idaho Human Rights Act, local ordinances or other state and federal laws. Discrimination is prohibited on the basis of sex, gender identity or sexual orientation, age (over 40), religion, national origin, race, disability and pregnancy.		
Other employees experienced same performance problem(s) but were not terminated.		
Employee has complained of discrimination, harassment or hostile work environment.		
Employee could be considered a whistleblower.		
Employee was a witness in an internal investigation.		
Employee recently disclosed health problem or other medical condition necessitating time off or need for accommodation.		
Employee has requested accommodation under the ADA.		
Employee has requested leave, recently returned from leave, or otherwise has sought protections under FMLA or worker’s compensation laws.		
Employee is pregnant.		
Employee is a member of the military.		
Employee has an employment contract.		
Employee is covered by a collective bargaining agreement.		
Employee has received written assurances that could alter their at-will status.		
Employer seeks to terminate employee for conduct alleged by co-worker, but employer has not listened to employee’s side of story and has not conducted a neutral investigation.		
Employer seeks to terminate employee for conduct that is not prohibited by policy/handbook. (Also problematic if employer lacks a handbook, if handbook is outdated, or if employee never signed an acknowledgment proving they received policy.)		

Special thanks to **Pam Howland** at **Idaho Employment Lawyers, PLLC.**