



Five common mistakes employers make during termination

By Geoffrey E. Odongo

When terminating an employee's services, it is important to consider the legal implications. Avoiding the following mistakes during termination will [minimize the risk of litigation](#):

1 Failing to follow the correct procedure

An employer needs to determine the correct circumstances under which the employee is leaving. Whether it is summary dismissal, termination or redundancy, the employer ought to follow the procedures stipulated for each of the modes of separation. The risk of failing to follow the correct procedure is being ordered to pay 12 months as compensation for unfair termination.

2 Failing to pay the requisite terminal dues

A majority of employment cases arise from failure to pay terminal dues. It is more economical to pay to an employee terminal dues at the time of termination as opposed to after an order by the court. This is because the employer may be ordered to pay terminal dues, the cost of the suit and interest. Such terminal dues may include any accrued leave days, one month's pay in lieu notice and any other unpaid amounts owed to the employee.

3 Giving employees preferential treatment

Employees whose services are being terminated at the same time ought to be treated equally unless there are special circumstances for the preferential treatment. This is most significant where the employees are being terminated under redundancy. Giving preferential treatment to some employees over others could result in a claim for [discrimination](#) against the employer.

4 Failing to give a certificate of service

An employee is entitled to a Certificate of Service after four consecutive weeks of employment. Often, employers may pay terminal dues but forget to issue a certificate of service. Note that a certificate of service is not a recommendation, which gives positive feedback on the employee but rather proof of employment.

5 Failing to accord an employee an opportunity to be heard

Where an employer wishes to terminate an employee's services due to misconduct, poor performance or physical incapacity, he is required to explain the same to the employee and allow him to the opportunity to explain the alleged misconduct or poor performance as well as allowing another employee to represent the accused employee. This minimizes the risk of claims for unfair termination.