

## WRONGFUL TERMINATIONS

For many years, employers enjoyed protection from Wrongful Termination claims based on the Employment-at-Will doctrine. Employees who did not have a separate, individual written contract or collective bargaining agreement were considered to be employed at the will of the company, and therefore, subject to termination at any time with or without cause. There has been significant deterioration of the doctrine of Employment-at-Will. Due to the litigious nature of our society and the growing sophistication of the workforce, claims and litigation have increased regarding human resource issues involving alleged employee wrongful termination and/or discrimination.

Specific procedures should be in place and followed prior to terminating any employee whether or not an employment contract is used. Pastors, principals, managers and supervisors can take the following steps to avoid Wrongful Termination losses.

- Standard job applications, performance evaluations, and probation/disciplinary procedures should be used with all employees.
- Before hiring, conduct thorough interviews, check references, and as appropriate for the position, the following background checks should be conducted: criminal, vehicle operation, and credit.
- After hiring, put all employment matters (positive, negative and neutral), in writing.
- Give a copy of personnel policies to each employee and obtain a signed acknowledgement of receipt.
- Write a job description for each position and make sure each employee has a copy of his or her own job description.
- Conduct routine performance evaluations. Throughout the year, discuss any problems with the employee and give him or her the opportunity to improve in the deficient area. *All problems should be documented and placed in the employee's personnel file.*
- Develop and use written termination procedures.
- Catholic Mutual's insurance coverage requires a designated contact (i.e. qualified attorney, Arch/Diocesan Human Resource Employee) to be contacted *prior* to any employee termination.

Law changes across the country illustrate the need for developing and using personnel policies. For example, Title I under the employment section of the "Americans with Disabilities Act" (ADA) deals with discrimination against a qualified individual having a disability. This would apply to all aspects of the employment process, such as hiring, advancement, and training. Another example would be California's requirement of employers to instruct each employee in the physical hazards of his or her job and in how these hazards might be avoided. In order to comply with this law, employers must first know whom they employ and have the specific job description for each position. This change in California's state law could be easily adopted by other states. Therefore, the sooner proper risk management procedures are implemented, the better.