

toolbox

TERMINATION

There is no pleasant way to terminate an employer/employee relationship. Many managers never learn the right approach, but it doesn't have to be something that is completely tortuous for the supervisor or the employee. Termination has become a necessary part of business; however, an employer should remember to legally cover all their bases, so as not to encounter a lawsuit. A successful termination would end on a positive note, and still allow the employee to walk out of the office, ego intact.



The Best Way to Terminate an Employee

Employee termination. Most managers hate having to do it and the impact on the employee is self-evident. Many managers never learn the right approach. The goal is to have the employee leave the company with ego intact, without filing a lawsuit. With that end in mind, here is a host of strategies to follow.

Communication

There must be a dialogue with the employee right from the start. Outline your expectations and the company's rules. If the employee is performing poorly, you need to inform them of specific performance issues, in a timely manner. That is called "due process." You shouldn't fire an employee for poor performance if the employee has no idea that his performance is poor. In the case of a plant closing or a major layoff, the law to follow is

called the Worker Adjustment and Retraining Notification Act. Each employee slated for termination as a result of a mass layoff, plant or office closing, must be informed of their impending termination 60 days in advance.

Establish a Probationary Period

Many uncomfortable situations can be avoided if the company has a probationary period policy. When new employees are hired for a 60- to 90-day probationary period, it is much easier to let them go at that point if they are not working out.

Don't Act in the Heat of the Moment

Don't terminate an employee in the heat of the moment; you're setting yourself up for a lawsuit. There is also the possibility the employee might respond in an over emotional

way. A good first move would be to suspend the person with pay. Then conduct a thorough investigation, obtain information from all parties involved and terminate the person only if the facts support the charge of willful misconduct or violation of rules. Make sure that "the last straw" is a solid one.

Work With the Union

If yours is a union environment, you need to have the union's backing on the termination. You should sit down with your counterpart in the labor union to discuss the problem employee. Hopefully, both of you can agree that you have done all the coaching, counseling, training and disciplining possible. If you don't have the union's backing, the union is just going to file a grievance and get the person's job back.

Be Prepared

Being the stressful meeting that it is, you actually may want to rehearse your conversation. Write down your thoughts beforehand to reduce the likelihood of getting tongue-tied, when you are sitting in the room with this employee who has a zillion reasons why you shouldn't terminate him.

Time the Event Carefully

Be sensitive to timing. Too many companies lay off their employees around the holidays. You are not creating any goodwill by doing that. Terminate an employee privately. Always treat the employee with dignity.

Pick a Neutral Site

Have the termination meeting in a neutral area, like a conference room. Don't hold the meeting in your office because if the employee gets too upset, he/she might not want to leave your office for what seems like hours. Also, you might not want to conduct this meeting in the subordinate's office. This is not a developmental meeting, like a performance appraisal interview should be.

Have the Direct Supervisor Terminate the Employee

The department manager (not the human resource manager) should be the one announcing "you are being terminated." The HR person's role in this meeting is to provide support, for both the manager doing the terminating and the employee being terminated, making sure the conversation doesn't blow up, and to serve as a witness.

Be Honest

The employee is typically thinking, "Why me, why are you firing me?" You'd better have a good answer. You might say, "The last time we discussed this you were suspended for three days. I said that if this happened once more you would be terminated. Since it has happened again, I am afraid that today is your last day." The termination should not be a surprise to the employee.

Never Lose Your Cool

The more hostile you become, the greater the likelihood that the employee will file a lawsuit or a grievance or become violent. Be a little empathetic.

Keep it Short

The meeting should not be lengthy. Don't begin the meeting with the normal small talk, like, "How are the wife and kids?"

Let the Employee Vent

Give the employee a chance to vent. Using your "active listening" skills will take some of the wind out of their sails.

Explain Their Benefits

You might continue by saying that, "Jay from human resources is going to explain your severance package and what's going to happen with your unused vacation time." This information should also be given to the employee in writing, because they are usually too emotional to listen clearly to those particulars at that point.

To read more on the Worker Adjustment and Retraining Notification Act (WARN), visit www.doleta.gov/programs/factsht/warn.htm.

Source: Jay Liebowitz, Ph.D., Vault, www.vault.com/nr/newsmain.jsp/.



Three Legal Reasons for Terminating an Employee

1. The employee violated a known company rule or rules.

The first legal reason that an employer can use to justify the termination of an employee is if the employee violated a "known" company rule. In order for this reason to be upheld in a court of law, the employer will need to prove that: (1) the rule actually exists; (2) the employee knew that it existed; (3) the rule was violated; (4) other employees were terminated for the same infraction; and (5) the termination was reasonable punishment for the infraction.

2. The employee is unable to perform the job adequately.

The second legal reason to terminate an employee is if they are not able to perform their job adequately. To be able to defend this reason for termination in a court of law the employer must be able to prove that the employee was incompetent, that the employer took reasonable steps to try and improve the employee's performance, and that the employer had addressed the issue in several instances before terminating the employee. To prove that the employer's position in this kind of situation they will need documented evidence.

3. The company is reducing its workforce for economic reasons.

The final legal reason for terminating an employee is if it is in the best economic interest of the company in question. Layoffs are common reasons for terminations, especially in larger corporations that are downsizing or restructuring. Here, courtesy is expected, and employees who are involved in a large-scale layoff need to be given at least 60 days notice of the layoff. This courtesy is required by the Worker Adjustment and Retraining Notification Act (WARN).

Documentation

Documentation is your key to protecting yourself from wrongful-termination law-

suits. To make sure that you have all of the documentation that you need, keep your personnel files current and complete. Try to keep the following items on hand, either in every employee's file or in a clearly labeled personnel file:

1. Critical incident reports.
2. Employee evaluations (at least one a year; every six months, especially for new employees for the first three years).
3. Job analysis of all jobs (Conduct job analyses at least every two or three years.).
4. Job descriptions for every job (Update job descriptions at least every two or three years.).
5. History of how infractions have been handled in the past.
6. Supervisor's employee log documenting good and bad incidents.
7. Customer evaluations and feedback forms.
8. Work samples.
9. List of rules, signed by each employee.
10. List of progressive disciplinary actions signed by each employee.
11. Employment-at-will doctrine signed by each employee.

The Employment-at-Will Doctrine

The basis for an employer to terminate an employee without being sued is the employment-at-will doctrine. This doctrine is a statement that is signed by both the employee and employer at the time of hire that states that the employee can quit at any time for any reason without notice and that the employer can terminate the employee at any time for any legal reason.

Source: Robbi Erickson, GoogoBits.com, www.googobits.com/articles/p0-2259-how-to-legally-terminate-an-employee.html.





Employee Termination Checklist

How do you know when enough is enough? For starters, ensure the following seven questions can all be answered with a resounding "YES."

1. Did you give the employee advance warning of the consequences of the unacceptable conduct?
2. Was the rule or procedure violated related to the safe and efficient running of the business?
3. Did you conduct an in-depth investigation to determine whether the employee did, in fact, violate the rule or procedure?
4. Did you conduct the investigation fairly and objectively?
5. Did the investigation provide substantial evidence or proof that the employee was guilty of the offense?
6. Has the company applied a similar penalty to other associates who have committed a similar offense in the past?
7. Is the employee's termination fair in light of the employee's years of service and record, the seriousness of the offense, and has progressive discipline been used, if warranted, based on the offense, to try and correct such unacceptable behavior in the past?

Source: Ed Lisoski, AllBusiness.com, www.allbusiness.com/human-resources/workforce-management-termination/682487-1.html.

Top 10 Employee Firing Mistakes

While terminating employees is one of the more unpleasant tasks that owners and managers have to carry out, it is a necessary part of business. Mistakes committed during the firing process can come back to haunt you by way of legal action, if you're not careful. Here are 10 common mistakes made in the termination process:

1. **Failing to have a signed employment agreement or offer letter with each employee.** It's always to your advantage to have an agreement that essentially states that the employee understands the hiring terms and the "at-will" nature of employment, meaning either the employer or the employee can terminate employment at any time.
2. **Not having standard policies in writing.** Whether it's in the form of an official handbook or several pages stapled together, you should have clear policies in place so that employees know exactly what is and is not expected of them while employed.
3. **Not having proper appraisal documentation.** If someone is performing poorly or there is any indication that you may need to terminate an employee, you should keep records of warnings or discussions regarding poor performance or failure to abide by company policies. You will want documentation in the event the employee takes legal action after being terminated.
4. **Not having a legitimate job-related reason.** In many states, you do not have to provide a reason for firing someone. However, whether you tell the employee or not, you should always have a legitimate reason for terminating an employee if you do not want to get hit with a discrimination lawsuit.
5. **Failing to prepare for termination.** Know what you're going to say, and have all paperwork prepared ahead of time. If there is severance pay or anything else owed to the employee, such as vacation pay, you should have a check cut to give

the employee. In addition, you need to be knowledgeable about state and company policies. If you are unsure, read up on them in advance, or even call the state unemployment office for clarification.

6. **Taking too long.** If you are planning to terminate someone and continue to wait for the right time, you can run into several problems. First, the employee may get wind of the situation and become disruptive, slack off completely or begin to set up a lawsuit situation. Second, other people in the department may become aware that something is up, and morale will drop quickly. If the decision has been made, act promptly.

7. **Not having a follow-up plan.** Terminating someone may be the best way to solve a problem, but there remains a need to have the work completed. You should be prepared to address your next course of action, which may be dividing the work among other employees, hiring someone new or outsourcing the work.

8. **Talking too much.** Too often employers talk too much and say the wrong thing. Don't make promises you can't keep, such as to help the employee find another job. Don't make excuses or pass the blame. Keep the conversation to a few minutes, and stick to the matter at hand. There's nothing wrong with saying that you are sorry, but be careful regarding anything else you say.

9. **Letting the word out.** A slip of the tongue can be a big mistake. Nobody else should know about the impending termination except those involved in the decision process. The individual being terminated deserves to be treated with respect and dignity, and not be embarrassed because everyone in the company knows he or she is being terminated.

10. **Arguing.** A common mistake is getting into an argument with the employee being terminated. You should not let this happen. If he or she is angry, let them vent. You can only lose if you start arguing back.

Source: AllBusiness.com, www.allbusiness.com/human-resources/workforce-management-termination/4010-1.html.