

EMPLOYEE TERMINATIONS:

**Keeping the Process Legal
and Fair**



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Circumstances surrounding an employee termination can vary widely, from downsizing to misconduct to underperformance. A responsible manager, however, will be prepared with a consistent set of guidelines when terminating any relationship.

Human resource professionals and academics agree that it is essential to always make an informed decision, take appropriate precautions to avoid litigation, and execute the termination effectively, without damage to the company.

The Decision

“It’s not a decision anyone likes to make,” says Mark Johnson, Ph.D., J.D., the founder of ERISA Benefits Consulting in Grapevine, Tex., but the decision to fire an employee is one almost all business owners and managers will have to face.

Like any aspect of running a business, employee termination should be a carefully considered decision. You should be informed of the tangible and intangible costs involved with ending an employment relationship.

Terminations mean money. In many situations, you will end up providing the employee with a severance package or transitional help; in other situations, you risk getting dragged into an expensive legal battle; and in almost every case, there are significant replacement costs.

“Replacement can be extremely expensive,” says William Anthony, Ph.D., a professor of management at Florida State University’s College of Business in Tallahassee. “There are recruiting costs, training costs, and then there’s the learning curve.” Anthony suggests promoting from within to reduce these costs, but points out that this can create a chain reaction, and still requires replacement at a lower level.

Johnson says a company should expect to pay the equivalent of a month’s salary for replacement costs. But Anthony notes that for a high-level executive, he has seen companies end up paying as much as \$200,000 dollars in replacement costs.

Additionally, terminations can affect company morale. “That’s a very real cost that most companies don’t factor in,” says Anthony. “If it’s an isolated case, employees will understand, but large numbers of terminations will make employees nervous.”

During transitional periods -- which can take weeks or months -- the remaining employees’ workloads may be burdened by the empty positions. There is also a danger that remaining employees will sympathize with the terminated employees. If they view the terminations as unfair, it could create an “us versus them” mentality between the staff and the management.

To limit the negative effects that terminations have on you remaining employees, it is important to communicate. If a termination was a result of layoffs, let the remaining employees know where the company stands and reassure them that their jobs are safe. Offer to meet privately with any employees that have concerns about what a termination means for the rest of the company. Keep the conversation focused on the future of the company, and not on past mistakes or past employees.

In the case of employee misconduct, hold a meeting to review the employee manual, and go over the progressive disciplinary policy.

Firing an underperformer, on the other hand, will generally be viewed as responsible management, and according to Johnson, can actually boost company morale. “Good employees don’t like having a bad employee on their team,” he says. “It means more work for them.”

After you have weighed the costs and decided that termination is, in fact, the best recourse for your company, how do you proceed?

In short: carefully.

Keeping It Legal

Lawsuits, be they warranted or frivolous, are a headache for small companies that don’t have the time and money to devote to litigation. Fortunately, the chances of an employee termination lawsuit can be reduced through careful planning.

Employment laws vary by state. To make sure your employment and termination practices are in accordance with your state’s laws, it is best to consult a lawyer.

According to Johnson, the majority of companies in the majority of states are at-will employers. This means either the employee or employer can terminate the relationship at any time for any reason, as long as that reason doesn’t violate federal anti-discrimination laws. (Terminating relationships with union and contracted employees, by contrast, is restricted by the terms of their contracts.)

Still, Anthony warns, “Even an at-will employer must make sure a termination doesn’t contradict the employee manual.” Avoiding promises of employment in the company manual will help limit grounds for a lawsuit.

Another way to avoid litigation is making sure the employee leaves on good terms. Courtesy and respect never hurt, but that’s not all you can do. Especially in layoff situations, helping employees through the transition can help maintain a good relationship, lessening the chances of litigation and reducing the risk of a former employee badmouthing the company. Anthony suggests providing counseling and outplacement services to help terminated employees find new jobs. Additionally, as a measure of good will, many companies offer severance pay in exchange for a non-litigation agreement and, in some cases, a non-compete agreement.

Johnson says severance pay varies by the seniority of the position and the time spent with the company. “Typically, it will be a multiple of the years of service -- a month’s pay for each year, for example,” says Johnson.

If you do end up in court, however, it pays to be prepared.

Document everything. Your company should have a progressive discipline policy, which outlines behavior expectations, a progressive discipline structure, and a list of offenses that warrant

termination. Your managers should not only follow it, but also leave a paper trail. Every complaint, instance of misconduct, performance review, and disciplinary action should be documented in a file that justifies the termination. Even the termination interview should have a witness present to safeguard against allegations of unfair treatment.

That means the documentation process must begin when warning signs first appear, not after a decision has already been made. "In court," Johnson says, "if the problems weren't documented, they don't exist."

The Firing

After management makes the decision to terminate, the company's human resources department should be consulted about the logistics.

"Follow your termination policies to the letter," says Anthony. Involving your HR department will ensure that the process is consistent from one instance to another.

Be tactful, but be explicit. The actual firing is a notification -- not a negotiation, warning, or debate.

"A manager should explain to the employee why they are being terminated," says Anthony, but not apologize or get dragged into a discussion. Simply explain what is happening and the steps that entails, starting with instructions for what the employee is supposed to do immediately after the interview.

Johnson says that most termination policies will provide a laundry list of things that must happen during a termination interview. The departing employee is often presented with a final paycheck, including payment for unused vacation time; company property is retrieved; technology devices are deactivated; passwords are changed and entry passes are turned over; employee benefits are explained; and the employee is presented with a written statement of termination.

Frequently, questions about employee satisfaction are also part of the process -- asked even if the employee quits or is fired for misconduct.

"Many companies have a policy requiring exit interviews at any separation," Anthony explains. Depending on the conditions surrounding the termination, the employee may not always cooperate, but the management should at least try to learn what they can from departing employees.

Finally, know what to expect.

"Emotion is going to be part of the process," Johnson admits. "It's hard to balance sympathy with firmness," he says, but being prepared for a range of reactions -- sadness, anger, even panic -- will help a manager stay calm and resolute.

If you think there is a risk of the employee becoming belligerent, be sure to alert corporate security ahead of time, and consider having them escorted out of the building. Furthermore, let

the receptionist know that the person should be leaving the building and will no longer be working at the company.

After It's Over

Learn from the experience and be honest with yourself. Ask yourself why an employee you hired failed to meet company standards. Is there room for improvement in your hiring process? Were there failures in management that led to the termination? Did your managers and HR department handle the termination as well as they should have? Answering these questions will help you hire more confidently and help you set standards for the process in the future.

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