

Personnel Notebook

For Your Most Important Resource -- The Human Resource

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TERMINATING EMPLOYMENT

STAGE II - If You Have To Do It, Do It Right!

Even in this tight labor market, employers find themselves terminating about 15% of all new hires.

Recent surveys are showing that employers feel that most of their new hires have bad work attitudes and inadequate skills.

If you are someone who manages or supervises other employees, you will probably have to terminate someone's employment someday.

You will want that process to be legal, effective and fair.

In the previous issue of "HR University," entitled, "Terminating Employment - It's A Two-Stage Process," we covered Stage I, "Don't Do It." In that issue emphasis was placed on achieving the desired job results by changing the employee's performance or behavior. The message there was:

1. Don't predetermine that termination is the goal.
2. Try to achieve the desired results by changing behavior or performance.
3. Find a more useful function/job in the company that the employee can do.

At a law seminar, a Washington, DC attorney stated that when taking into account that the federal and state government now list minorities, women, people over 40, handicapped (which includes stress, obesity, high blood pressure and "perceived" disabilities), pregnant employees and adoptive parents as protected classes, it means that over 91 percent of all workers fall into the category

of protected classes.

According to an Inc. Magazine interview with a Miami employment lawyer, "Nowadays it's rare that a fired employee will not have some basis for a claim to get into court."

Stage II. If You Have To Do It, Do It Right!

So, in Stage II, "If You Have To Do It, Do It Right!," let's proceed with these steps:

- A. Understand Your Position.
- B. Nine Things To Check Before You Terminate
- C. The Termination Process
- D. The Exit Interview
- E. After The Fact

A. UNDERSTAND YOUR POSITION

1. Ask yourself, why am I terminating this person? Is it job-related? Does this person have control over this situation? Have I exhausted other remedies? Write the reasons down. Does it look logical? Does it accurately and fairly describe a problem of employment performance that you have tried to resolve and cannot?

2. Ask your personnel department, supervisor or legal advisor to play "devil's advocate" to challenge this termination. Does it still seem reasonable?

3. If you are just trimming down, downsizing, right-sizing, reorganizing, re-engineering, etc., be prepared to establish grounds or documents to

support the decision to do so and why this individual was selected for job abolishment. If the reason for termination is to "cut back" or to abolish the job, then do not hire someone new or transfer another employee into this job 30 days later.

If you still feel that termination is the solution and your reasons are sound, then proceed.

B. NINE THINGS TO CHECK BEFORE YOU TERMINATE

1. Your Employee Handbook

Does it have a policy or procedure for terminations? Be sure to follow it. Does your policy state that you follow a three-step warning process, or give two weeks notice, when in practice you tend to fire immediately? In the event of an EEOC charge or lawsuit, your employee handbook will be requested to see if you violated your own rules. If you do not have an employee handbook, your past practices will be determined by employee interviews and subpoenaed documents. Those practices, regardless of how contradictory or illogical, will be viewed as your policy.

2. Union Process

In most union contracts, provisions for procedures, grievances, appeals and reviews are required. You must follow them.

3. EEO Considerations

Do you have an Affirmative Action Program (AAP)? Does it call for procedures? How does this termination affect that? Prepare a list of all your layoffs or terminations over the last 12 or 24 months. Were they primarily minorities, women, over 40 or handicapped? Even if you do not have an AAP, if your terminations are primarily among the "protected classes," you can be charged with discrimination.

4. WARN (Worker Adjustment and Retraining Notification Act)

If you have 100 or more employees and are laying off or terminating 50 or more (or 1/3 of your workforce, whichever occurs), then you must

give them 60 days notice and also inform your local community officials of this action.

5. Retaliation

Have any of the employees you are terminating filed lawsuits, EEO charges or grievance procedures against you? Are they whistle blowers? Could you be charged with retaliatory termination?

6. Patterns

Can you identify any intentional or unintentional pattern to your terminations? Have many of them had expensive health benefits claims? Can you identify any patterns that might be significant?

7. Consistency

Check your procedures and actions in prior terminations. Are you being consistent? Have you given two, three or more chances for others to improve and none for this employee? Why? Do you give two weeks notice in some cases, 30 days in others and none in this case? Have you given severance pay to some employees but more or none to others? Although you do not have to be consistent, be prepared to justify why when you are not.

8. Documentation

Documents win lawsuits! But equally valuable is the illuminating process of creating, collecting and examining them. You will be amazed at how facts change, stories are altered, opinions differ and memories conflict when you start the documentation process. Check these documents over, lay out a chronological timetable of the events. Check the time sheets, are they accurate?

9. Your Script

Check your procedure. Write it down. Determine your opening statement. Know your reasons. How much notice? Is there any severance? If so, how much? Are you providing an outplacement service? Notify the human resources/personnel department that an exit interview must be scheduled. Know what your final step is. Are you going to end by sending them to the human

resource (HR) department, to an outplacement counselor or home?

C. THE TERMINATION PROCESS

- The supervisor does it. Not a peer, not your attorney, not a secretary and not the HR department. The only exceptions to this are:
 1. If not the supervisor, then someone directly up the chain of command. The employee being terminated must recognize that the person doing it has the clear authority to terminate him and is familiar with the reasons.
 2. The only time the HR department does the termination is when a large number of employees are going to be laid off for downsizing, etc. In such cases the HR department may be the best suited to handle terminations using a more structured, organized system. To use the HR department as "The Terminators" will destroy the central connection you have to your employees.
- Schedule it for Monday through Thursday before noon, preferably not Friday at 4:30 p.m., not after an employee's business trip or just before a holiday.
- Get right to the point. Be direct. Be tactful, respectful, considerate, but direct. Do not beat around the bush avoiding the issue. Doing so is usually more uncomfortable and painful for the employee than it is for you. Be prepared with your statement, i.e., "Jim, I'm afraid that I'm going to have to let you go" or "Jim, this isn't working out and I've had to make a decision to terminate your employment here." Use whatever terms or words you are comfortable with and that gets you right to the point.
- State the reason. Express it in terms of respect and fairness, not like an empirical decree. Listen to the comments, but be direct and clear that this is a termination and the reason.
- Do not debate, argue or negotiate. Do

not cave in and agree to a delay. If you're not ready to act on this matter, do not schedule it. You should be beyond the point of doubt and reconsideration before you take these steps. If the employee startles you with some unknown fact that shows this all to be a mistake, you might want to investigate further, but you don't want to be led into a drawn-out negotiating debate. Over many years of HR management I have never seen a cause to reverse a termination decision at that final meeting.

1. If there are lesser issues on which you are willing to negotiate or requests you are willing to consider, that's okay. However, you should consider how far you are prepared to go before you start this meeting. These issues may be such things as the use of a company office and phone to support a job search, the continued use of a company car for a week or two, the continued payment of an educational program, etc.
2. Keep this in mind. You are at your most vulnerable at this point. Your tendency will be to grant almost any request in order to alleviate some of the pressure on you. Career counselors often advise employees to pressure the employer for privileges at this point. You should be prepared to know how far you will go and what effect this will have on other employees when this becomes known (and it probably will become known).
3. The most important point here is to stick to your goal. Do not agree to reconsider or delay the termination date. Do not enter into a debate or argue merit over the issue. Be tactful, considerate, but firm. The action can be discussed, a few minor details can be altered, however, as a rule, the conditions are set and the action is final.
 - Send them immediately to the HR department or payroll for an exit interview and other employment-ending procedures.

D. THE EXIT INTERVIEW

1. You should do exit interviews on all employees leaving the company for any reason. Although many people feel that you will not get a very

objective response at this time, most experts agree that this is the most objective time because they are no longer influenced by company politics. Overall the value of exit interviews is to show trends over a long period of time and occasionally to discover a serious current problem.

An exit interview form should be prepared that might ask such things as:

- Do they feel they were treated fairly?
- Can they suggest any changes or improvement in the way it was handled?
- Prepare a list of items for the individual to rank for his/her opinion on each. Ranking from poor to excellent, the list might include the interview process, the orientation process, insurance benefits, pay, the supervisor, the overall treatment of employees, the company, any opinions about the company and additional comments. What would they change if they could?

Your form should ask the things you think are most useful to you. An example of an exit interview form is shown on the next page.

2. Explain their COBRA (Consolidated Omnibus Budget Reconciliation Act) rights. You are required by law to explain COBRA to employees leaving your employ. COBRA allows employees to continue their insurance benefits for 18 months at their own expense. Often your insurance provider does this for you. However, you are responsible to assure it

3. Explain the severance package, if any. This may include pay for two weeks to three months (seldom is it ever longer), assistance in preparing resumes, preparing for interviews, etc. Know precisely what the package is. One primary value of a severance package is that it resolves the employee's initial fear of a financial crisis by continuing the income for a defined period of time. If you offer a severance package (approximately 37% of companies do), you should always ask for a signed release agreeing not to pursue charges or claims against the company. Severance packages, if offered by a company, are never offered to an employee being terminated for cause! Only in cases where the employee is blameless.

4. Request the return of all keys, manuals, company credit cards, calculators, security pass cards, customer lists, client files, etc. Obtain the list of such items from their supervisor, accounting, security, etc. Are there any outstanding loans, advances, automobiles, relocation payments, student loans, educational expenses to be paid or collected? Resolve them now.

5. Give them their paycheck, if practical, and any unused vacation pay. (In most states you are not required to pay for unused vacation, but it is certainly a customary practice.) Explain the processing of 401(k), savings programs, stock plans or pensions, or have someone do it for you.

6. Allow them to speak freely about their feelings at this meeting. You will eliminate almost all potential lawsuits if the individual perceives the termination and the process as fair.

7. Unless you have solid, valid reasons for not doing so, you should allow them to return to their office, say a few good-byes, clean out their desk or locker and go without embarrassing or harassing them. Of course, if you give them two weeks or more of notice, that may be a mute point.

Escorting them out of the building with a security guard is a humiliating, degrading action that should only be considered in top secret environments or in very extreme cases.

If you feel that they are so emotionally unstable, as to give you concerns for their own safety, then have someone arrange their transportation home and/or ask if they would like someone called to pick them up. Treat them with respect. Treat them as if their next job was going to be a loan manager at your bank.

E. AFTER THE FACT

As a rule, you should not issue a letter of termination with all the reasons to the individual. Tell them the facts and you can put it in writing if you choose. But the documents should only state the date of termination without locking you into the reasons. Don't lock your position into a legal document.

Notify all managers and employees who need to know (supervisors, payroll, security, company credit card companies, etc.) of this action, but protect the individual's reputation.

Keep records on why the individual was terminated, the process that followed, the exit interview and the severance package, if any.

- References. There is no law that prevents you from giving a job reference to a potential employer. The issue instead is that the former employee may sue you for causing him to lose potential employment as a result of your poor and inaccurate reference. You may then have to prove that what you said is true. Most companies refuse to give references because the potential suit and the accompanying legal costs just aren't worth it. However, I have been told by every lawyer I have asked that they have never seen a lawsuit on this issue. You should feel free to give any reference you are prepared to support or document.

If you choose not to face the risk, then when a potential employer calls you should:

1. Confirm employment dates, title, salary.
2. State whether the individual was terminated or resigned.
3. State if the individual would be considered, or is eligible for rehire (yes or no). If refusal to rehire is not because of the employee's performance but because of company policy, say so.
4. If the potential employer needs more information, ask them to refer the ex-employee back to you to review the reference and to have the employee sign a release.
5. Do not allow general employees to give references. Designate someone in your company (ideally your HR department) to respond to all reference requests. Train them to do it well.

Terminated employees are human beings with feelings, families and responsibilities who deserve respect and consideration. You or your children or friends may be working for or with them someday. These are the people you have chosen to work with. If that was a mistake, then learn from it and make the appropriate changes next time.

Terminations are difficult and are emotional strains on all parties involved. Everyone should learn from this and eventually gain from it. It is still a necessary part of progress and survival for the company and the individual.

To repeat a comment from the previous issue, for the sake of your company's competitiveness and in fairness to all concerned, keep this fundamental fact as a guideline: regardless of a person's race, sex, age or handicap, no law requires you to employ someone who cannot do the job.

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EXIT INTERVIEW

Name: _____
Position: _____
Department: _____

Date Of Hire: _____
Termination Date: _____

Reason For Leaving:

New Company, Position, Salary: _____

	Excellent	Good	Fair	Poor
Overall Rating Of OUR COMPANY_____				
Company Benefits_____				
Salary_____				
Working Conditions_____				
Manager/Supervisor_____				
Advancement or Training Opportunities_____				
Other_____				

Additional comments on above items: _____

What specific circumstances led to this termination? _____

Did you look into other positions in the company? _____

Did you receive enough information about your job and the company when you started with employment?

Would you consider, at some other time, working for this company again?

Would you recommend this company to others for employment?

What advice would you give to us to prevent terminations in the future?

Any other comments?

Interviewer comments: _____

Interviewed by: _____

Title/Date: _____