

## Keys to Effective Termination

Employers who handle terminations without a plan or appropriate procedures in place are assuming considerable risk. The goal should be to establish termination procedures that are consistent, well documented and keep subjective actions to a minimum. Good basic Human Resource practices are the key, including:

- Avoid summary discharge (on the spot terminations). A reasoned and careful investigation should take place before the termination, even if the employee has committed a serious offense or seems to be caught “red-handed.”
- Prepare and review thoroughly. Remember, fair treatment wins cases.
- Did the employee understand the rules and standards? Did he have notice or a warning (as appropriate)? Was there an opportunity to improve?
- Have you reviewed the employee’s work history? Do performance appraisals support the termination decision?
- Have performance and behavior standards been consistently applied to similarly situated employees?
- Is the termination consistent with organizational policies and past practices? Does the punishment fit the crime?
- Guard against discrimination or wrongful discharge claims.
- Is the employee in a protected class? Has he filed a discrimination, harassment, workers’ comp, OSHA, or other claim recently? Has he requested an Family and Medical Leave Act (FMLA) or Americans With Disabilities Act (ADA) accommodation?
- Avoid surprises. Employees who are not “shocked” by a termination may be less likely to sue. Most employees do not become unacceptable overnight.
- Ensure that the decision to terminate is well documented.
- Have all termination decisions reviewed (in advance) by senior management.
- Be sure that everyone has “cooled down” before the termination takes place.
- Terminate employees in a professional and dignified manner in a private setting. Have two company representatives present. Ensure that the reasons given to the employee for the termination match those recorded in the personnel file. Employees who don’t understand the reason for the termination may suspect a hidden reason.
- Don’t discuss or argue about the termination. Make your explanation brief. Convey your termination decision at the beginning of the meeting.

- Document the employee's feedback. It may be useful if he later sues.
- Inform the employee of the company's reference policy.
- Beware of being set-up. In some cases an employee may be anticipating the firing and have retained an attorney even before the actual termination. Or, he may have been fired before, understand the process, and is simply looking for a settlement. A few signs that you might be getting set up include: employee requests to see personnel files, requests for various statements from the employer, discussions about "protected status" or unfair treatment, and specific, detailed questions about company policies and procedures. Employers who believe they may be dealing with a future lawsuit should consider contacting their attorney immediately. Additionally, be careful not to overreact and retaliate or treat the employee any differently than you would treat anyone else. Follow your established processes.
- Consider having the employee sign a release, conditioned on the provision of severance pay.
- Make sure the final compensation is paid on time as required by state law.
- Remember, what you say can and will be used against you.

### **Bottom Line**

If a termination is appropriate and you have done your homework, proceed. Don't be paralyzed by fear of a potential lawsuit. The costs of retaining a problem employee may be greater than the risks.