

A Step-by-Step Guide for Conducting the Termination Process

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Employers need to make sure that they have thoroughly reviewed the facts and circumstances leading up to the termination and thoughtfully considered any possible concerns and legal, morale or policy issues before the termination(s), if possible. A prudent step for employers is to consult with an employment law attorney before a final decision is made to determine if there are any issues that can be resolved prior to the termination. After establishing that the termination is a wise business decision, all things considered, and is consistent with past practice and policy, as well as the best interests of the employer, preparation for the termination meeting should be a high priority. A few of those preparation steps are:

- Don't procrastinate, but make sure that you have "crossed the t's and dotted the i's" before you act.
- Make sure all documentation in the employee's personnel file is up-to-date, including performance reviews, documentation of disciplinary measures, etc.
- In the case of a RIF, make sure all factors justifying the RIF, the participant selections and methodology for those selections are completed and documented, including notice to RIF employees over 40 about the positions and ages of those employees who were and were not a part of the RIF, within the affected work group.
- In the case of a RIF, prepare WARN notice, if applicable, to be provided to laid off employees at least 60 days prior to business closing or mass layoff.
- Have the employee's final paycheck and/or other compensation made available at the time of the termination meeting, if possible.
- Decide whether the terminated employee will be offered a separation agreement and release of claims. If so, include the terms of the separation package in the talking points for the termination. (A follow-up letter to the employee, with the release document, suggests the employer is not so concerned about the release.)
- Prepare a termination or exit checklist of items the employee will need to turn in and action items for the company (e.g., shut off computer access, retrieve key).
- Determine whether the employee poses a threat for potential workplace violence and plan accordingly.
- Prepare a communication for the company/department/group that the terminated employee is no longer with the company.
- Designate an appropriate person(s) for questions by the terminated employee and from the employees who are not terminated.



- The termination conversation should take place in person, if possible, in a **private setting**.
- Have at least **one witness participate** the whole time, preferably a business partner/ executive/manager (a peer)...but do not appear intimidating.
- Allow no disruptions to the meeting (e.g., phone calls).
- Plan** what you'll say, **prepare** and **use talking points** to help you stick to (and document) the agreed-upon communications.
- Rehearse** using a peer or HR to map out a strategy for typical and worst-case scenarios.
- Prepare yourself for questions** the employee might ask and prepare appropriate, honest responses designed to diffuse.
- Don't initiate the conversation if your emotional state affects your objectivity or self-control.
- Do not attack or criticize the individual; focus on the behavior and events, not the person.
- Try not to take things personally; avoid expressing your personal opinion. This is about facts.
- Start** with a clear explanation of **why the Employee is there**: "As you know, we have discussed with you the concerns we have about your job performance over the past several months on many occasions."
- Explain how the Company has attempted to help the Employee improve** his/her performance through coaching, training, mentoring, etc. "As a result of our ongoing concerns about your performance, we sent you to ABC training, assigned you a mentor and suggested action-items you could take to assist you in meeting our objectives."
- Outline the Company's effort to communicate clearly**: "We placed you on a Performance Improvement Plan (PIP) outlining specific objectives for you to meet and highlighting, in detail, the areas needing improvement in order for you to continue at the Company. We selected a deadline for demonstrable improvement we thought was realistic for you and us."

- Explain how the PIP has not worked out as the Company had hoped**: "Despite our collective efforts (yours and ours), it is our assessment that you did not improve your job performance on a consistent basis within the timeline we discussed."
- Explain, specifically, how the Employee failed** to meet the outlined expectations, since your last meeting: "Since we started the PIP you have failed to consistently meet the performance expectations outlined for you. Here is a copy of a memo I prepared summarizing several continuing performance issues in the last [short time frame]. (The termination meeting is not the time to address ancient history, if possible.) I'm also giving you a letter from [someone in authority and preferably respected by the employee, at least at one point] explaining the decision in more detail."
- [HAND THE EMPLOYEE THE TERMINATION LETTER]
Explain to the Employee that s/he does not have to read the documents now: "You may read this now, if you would like; or, you may want to take it home to read. It is your choice." (Give the employee a chance to respond)... Pause...
- [HAND THE EMPLOYEE THE FINAL PAYCHECK]
Explain to the Employee what it is and what it covers: "I'm also giving you your final paycheck. This paycheck covers your last day of work and your accrued but unused PTO in accordance with our policy."
- Explain to the Employee **s/he should leave the building**: "We understand you are probably taking this all in right now; so, we ask that you go home now and not go back to your office."
- Explain to the Employee s/he will be provided an opportunity to come back to pick up his/her belongings: "We will schedule a time when you can privately come in either before or after business hours so you can get all of your personal things and bring in any Company property you may have. Please call _____ to arrange that time."
- If possible, try to end the meeting on a good note: "We are sorry this turned out this way. Please let us know if there is something we can do to assist you during this transition."



Examples of Scripted Answers for Potentially Tough Questions

If the Employee asks:



If the Employer says:

What about severance? Are you going to pay me severance?



If you have a severance plan, specifically outline the provisions of the severance plan. If the Employee is bringing up the issue of severance when s/he has no entitlement to it, do not accept or reject the request for severance. Rather, you might say: "If you have any requests, I ask that you put them in writing and we'll consider them and respond promptly."

What about the continuation of my health insurance? Are you going to pay for that?



If you have an employer-paid health care continuation plan, specifically outline the provisions of that health care continuation plan. If the Employee is bringing up the issue of the employer paying for health care continuation benefits when s/he has no entitlement to it, do not accept or reject the request. Rather, you might say: "You will be receiving information about COBRA coverage to continue your health insurance within the time periods proscribed by law. If you have any additional requests, after reviewing that correspondence, I ask that you put them in writing and we'll consider them and respond promptly."

I thought I had good job performance; you *never* told me my job was in jeopardy, what's up with that?



Do not argue. You might say: "It doesn't make sense for me to try to persuade you of our position or to argue with you about this. The Company has made its decision based on its perception of the situation (and the job performance concerns previously discussed with you)."

What are you going to say to others about my performance?



You might say: "We will not be discussing your performance with others. Regarding your termination, we will merely state that you are no longer with the Company and are pursuing other interests."

Can I get documentation of the reasons for my termination?



"You may put any request in writing to me, and I'll respond to it."

Can I resign instead of being terminated?



"If you put your request in writing, I'll consider it and respond appropriately."

What about my unused vacation time?



Optimally, you would know what the Employee's accrued vacation (PTO) is prior to the meeting and how the Company's policy applies to the payment of accrued PTO upon termination, so you could answer this question with "according to our records, you have ___ hours of accrued vacation (or PTO). Accordingly, under our policy,..." If you are not prepared to answer that question, you might say "You will receive the benefits to which you are entitled under Company policy, this may include any unused vacation pay (PTO). We'll need to review that policy and your time off records. We'll let you know."

Will I get unemployment compensation?



"You are free to apply for unemployment compensation and the state will decide if you receive it. The state has its own criteria for assessing a former employee's entitlement to unemployment compensation benefits."

Will you give me a letter of reference?



You might say: "If you put together a draft of a neutral proposed letter of reference and send it to me, I'll consider it and respond to your request for a letter of reference promptly" OR "We are not in a position to provide you a favorable reference" OR "We have a company policy of not providing letters of reference for terminated employees."

Responding to Other Employee Conduct That May Occur During the Meeting

If the Employee:



Acts:

Becomes Emotional



Be empathetic, but not apologetic. You might say something like "We know this is a tough time and are genuinely disappointed this did not work out." You may also ask, "Would you like us to stay or step out of the room?"

Becomes Angry



You might respond, "Now, we've tried really hard to handle this as respectfully as possible and we are going to have to insist that you do so as well."
AND/OR
"If you need some time to compose yourself, we can step out of the room (or ask him/her to leave) to give you some time to collect yourself. You can let us know when you are ready to communicate respectfully with us and, then, we can continue."