

## Handling Terminations of Employment

**Kim Medwar**

Nonprofits Insurance Alliance Group

*No termination should ever come as a surprise.* This is a common mantra by labor, employment and human resource specialists alike, because it summarizes the topic of employment terminations so well.

Preparing to terminate an employee is no simple matter because the way an employer handles the employment relationship from the start all the way through this final event, can either set the stage for lengthy and costly litigation, or more preferably, end a relationship in an uneventful farewell.



Typically a termination follows conduct that is either so egregious, the employee is foolish not to expect a termination (e.g., theft of company property, assault on a coworker, engaging in sexual harassment), or results from a series of disciplinary measures where the employee was put on notice that continued poor performance or behavioral issues would result in further discipline or termination.

Certain misconduct may result in more immediate and severe consequences. For instance, in the event of workplace violence, sexual harassment, theft/dishonesty, or being under the influence of drugs or alcohol, it may be more appropriate to issue an immediate termination rather than use progressive discipline. Contrast this to intentional reduction in output, insubordination, or consistently late/incomplete work.

These types of issues may not warrant immediate termination, but should still be documented as soon as a pattern of poor performance is noticed. Importantly, inaccurately stellar performance evaluations will do more harm than good when it comes time to defend a decision to terminate for “poor performance.”

While it may be true that the doctrine of employment-at-will is the fundamental employment relationship in the United States, meaning that without notice, an employee may quit at any time and for any reason, or an employer may end employment at any time and for any reason not prohibited by law, caution must still be taken when terminating an employee, and employers would be prudent to carefully evaluate their decision for any termination.

Managers and supervisors are often hard pressed for time, but taking the time to clearly document misconduct or concerns will help demonstrate objectively, the reasons for discipline and/or termination. Also consider whether policies and procedures have been explained to staff and consistently applied. Did the employer review similar incidents and apply consequences as they would for any other employee who engaged in similar misconduct? Was this employee properly trained and made aware of expectations? Were all employees, without regard to their protected

class, treated the same? If applicable, were they given the proper warnings prior to termination?

Some best practices in preparing for and conducting a termination include:

- Ensuring credible documentation is in the employee file regarding negative performance/behavior
- Discussing termination with direct supervisor(s) and HR
- Being honest with the employee about reasons for termination but keeping the explanation to a minimum
- Expecting the unexpected. Employees will react in all different ways, be prepared ahead of time for all possible scenarios.
- Supervising the removal of personal effects
- Scheduling a termination to minimize disruption in the workplace
- Communicating the termination privately, but considering a witness, especially in terminations you think will be contentious on any level
- Allowing the employee the opportunity to respond to any investigative findings or decisions for termination
- Arranging for timely termination of access (e.g., email, computer logins, key access) to prevent sabotage
- Communicating other housekeeping items to employees such as the continuation of benefits, when they can collect their belongings, and how you will logistically exit the room once the termination meeting ends
- Acting swiftly and without hesitation once a decision has been made

Lastly, even those terminations that are well-documented and warranted may not be a welcomed action by employees, and the employer may want to consider severance pay in exchange for a release of claims. If an employee is litigious, a member of a protected class, has recently requested or taken a medical leave of absence (whether for physical or mental illness), filed a complaint regarding the workplace, or has disclosed a disability or need for some accommodation, employers should consider risk of a lawsuit for discrimination or retaliation. Inconsistencies applying rules to any employee will lend to a risky situation for the employer.

The EEOC prohibits consideration of race, religion, sex, national origin, age, disability or genetic information when making decisions to terminate employment. Other laws also require employers to provide certain notices to employees following termination (e.g., COBRA) and may require that final pay and all reimbursements are made to an employee at the time of termination.

No matter the reason for a termination, employers should remember that the loss of a job could be detrimental to the employee, so it is always best to practice courtesy, compassion, respect and professionalism during the process.

If your nonprofit is not a member of the Nonprofits Insurance Alliance Group and you'd like to learn more about joining our community, please check out our list of coverages as well as the benefits of membership, or simply send an email to [info@insurancefornonprofits.org](mailto:info@insurancefornonprofits.org).

All members have unlimited access to risk management and loss control consultations, and those members with Directors & Officers coverage (who also have employees) have access to unlimited consultations with our Employment Risk Managers on issues such as HR, labor and employment.