Employee Separations: Learn to Say Goodbye



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The Jackson Five version of the Davis Clifton song “Never Can Say Goodbye” has enjoyed a lot of airtime lately. Although the song has nothing to do with employer-employee separations, hearing it reminds me of the heartache that many nonprofit executives face with they realize that it IS time to say goodbye to an employee. It is also a soulful reminder of the difficulty some leaders find making the decision to remove even poor performing staff. In his lighthearted take on this truth, author Robert Hall reminds us that “Good staff will eventually find other jobs. Marginal staff will stay with you forever.” (Source: *Chaos for Breakfast*, by Robert A. Hall.)

Handling employee departures is the subject of countless technical assistance calls to the Nonprofit Risk Management Center. I am always gratified to learn that even in cases of outrageous conduct, nonprofit executives are generally very concerned about the people they are preparing to separate from their organizations. It is difficult, if not impossible, for most leaders to avoid feelings of guilt about terminating an employee—feelings that seem to be exacerbated in difficult economic times.

As we explain in *Taking the High Road*, there are subtle but important differences in the labels used to describe the process of separating an employee from employment at your nonprofit. While the label isn’t determinative for your exposure to claims, exercising care in the choice of terminology is one part of minimizing the risks associated with this inherently risky process. The bottom line message of the book is that it is shrewd risk management to conduct any separation with great care and true compassion.

Each of the names or terms used to describe separation from employment carries emotional baggage, because of semantic implications, which in turn can sabotage the termination from a legal perspective. It’s important to know, and to label properly, what’s really happening. For example, the following are terms that are used to describe separation from employment:

- *Termination* also referred to as being *fired* or *let go*, with no particular implication as to the reason for the termination.
- *Dismissal* implies that the employee’s performance or conduct was unsatisfactory.
- *Retirement* implies that the employee has voluntarily decided to cease being gainfully employed.
- *Lay-off* implies that employees are being put on unpaid leave status, but as soon as work is available they may be rehired: *Random House* dictionary definition: “…an interval of enforced unemployment.”
- *Reduction in force* implies that more than one staff member is being terminated, but no particular

implication as to the reason for the terminations; generally, **not** appropriate to use when an employee's performance was unsatisfactory.
- *Reorganizing* implies that positions are being eliminated and that reporting relationships are being restructured.
- *Elimination of a position* describes a situation where a particular position is being eliminated; no implication as to the reason, although generally not appropriate when the reason is poor performance.
- *Right-sizing* implies that the organization was overstaffed to begin with, although this is really just a buzzword invented to put a positive spin on the concept of downsizing.
- *Delayering* implies that managers are being fired.

Terminating an employee is the single most risky action a nonprofit executive can take. The vast majority of lawsuits covered by nonprofit directors' and officers' (D&O) liability policies allege wrongful employment practices—often wrongful termination. Consequently, it's imperative to have a well-documented file prior to terminating the employment of any employee, regardless of the reason. The safe approach is to assume that every termination may result in a legal challenge and to proceed accordingly.

Nevertheless, terminating an employee who isn't pulling his or her weight, or one who is unaware of basic job requirements or simply acting inappropriately, can be the best risk management step the nonprofit takes. Firing an employee is never easy, but sometimes it makes sense both legally and from a business standpoint.

Do Not Pass GO; Do Not Collect $200

There are situations when putting an employee on notice and giving him or her an opportunity to improve isn't advisable. Some conduct justifies termination or suspension without an opportunity to improve. When an employee acts recklessly or dangerously, violates safety policies or exhibits aberrant behavior, it's advisable to take immediate action rather than to give the employee a second chance. In such cases, the recommendation to suspend the employee pending a termination decision should be put in writing as soon after the event as possible, explaining why suspension and termination thereafter was appropriate. The reason may seem clear today, but it probably won't six months from today.

Tell Me Why

Whether driven by poor performance, economics or some other reason, the decision to terminate a staff member is never easy. Discharging someone is an emotional challenge. Managers often cause greater exposure to liability than necessary by avoiding any confrontation in the process of discharging an employee. However, employees who aren't given a reason for their termination are much more likely to conclude that there was an illegal reason why they were terminated. By not communicating the reason or not appearing confident and in control, the nonprofit can expose itself to even greater risk.

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