HOW TO: Terminate an Employee (And Be Decent About It)

Resource Type: Articles

Topic: HR Risk and Employment Practices

When you hire someone, you want them to find success with the organization. But sometimes, they don't. Terminating someone's employment is the riskiest action a nonprofit can take, but sometimes it's also a risk-aware decision and possibly a necessary step in the employee's journey to find a fulfilling role for which they are well suited. Here's how to meet your obligations when you terminate an employee—including the obligation to treat them with decency.

Before You Terminate an Employee

Articulate your reasoning. Document the objective, business-related reason to terminate the person's employment. If you can't articulate it, stop and reconsider your decision.

Check for fairness. Ensure that disciplinary and termination decisions are not based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, age (40 or older), or genetic information, including family medical history. Ensure that disciplinary and termination decisions are not based on an employee's decision to report discrimination, participate in a discrimination investigation or lawsuit, or oppose discrimination (for example, discussing filing a discrimination complaint).

Review your organization's directors' and officers' liability insurance or consult with your insurance broker or agent. Confirm that your organization has coverage for employment practices liability claims and make sure you understand when you must notify your carrier of an incident that could give rise to a claim.

Consider a separation agreement and release. This legally enforceable contract commits the organization to compensate the departing employee more than they would otherwise receive, per existing policies, in exchange for a commitment not to bring legal action against the employer. Caution: do not offer separation agreements for every departing employee. Reserve this tool for instances when there is risk of a future claim due to the circumstances surrounding the termination. Always obtain legal review of a release before presenting it to an employee.

Consult legal counsel experienced in employment matters. This is a worthwhile step in all terminations, but especially if you plan to deviate from your organization's established employment procedures.

If possible, don't terminate an employee on the spot. Termination for unsatisfactory performance should only happen after the employee has received a reasonable opportunity to improve. If you terminate an employee for conduct, document the conduct, and the fact that the employee knew or should have known the conduct was inappropriate. If immediate termination for unprofessional, illegal, or dangerous conduct seems necessary, consider whether you should instead suspend the employee. This can provide a brief window for your organization to investigate the situation and, if you do terminate the employee, have documentation of your deliberations.

During the Termination Proceedings

Ensure two members of the organization's management team meet with the employee to deliver the news. One should deliver the information, and one should take careful notes on what was said. Write down the most important things you plan to say and stick to your script.

Stick to the handbook. Closely follow the policies and procedures laid out in your organization's employee handbook. Before you take an action that will have a negative impact on the employee, determine whether the handbook covers the situation. If so, follow established procedures if at all possible. If you deviate from procedure, have a clear reason why, and document it.

Deliver the news in person. If the employee works remotely and can't come into the office, notify them of their termination by phone or video conference. Clearly explain that their employment has ended, briefly state why, and explain what will happen for the employee in terms of final pay and benefits. Request the employee's computer password and the return of the organization's property. If the employee has demonstrated violent or unstable behavior, don't terminate their employment in person. You can ask legal counsel to help you draft a termination letter to communicate necessary information.

Be direct and concise. It's OK to show empathy, but don't say anything that could be construed as flip-flopping on your decision. Don't say you know how the employee feels, or that this is as hard for you as it is for them. The most important role you can play is to listen and communicate essential information about what happens next.

After You Terminate Someone's Employment

Meet your obligations to the employee on final pay. Tell the employee when their final paycheck will be delivered, if not immediately. Know your state's requirements. Federal law does not require immediate delivery of a final paycheck to the employee, but some states do. Generally, it's illegal to withhold anything from an employee's paycheck without the employee's prior written authorization.

Meet your obligations to the employee on their health care options. The Consolidated Omnibus Budget Reconciliation Act (COBRA) generally requires group health plans sponsored by employers with 20 or more staff to offer employees and their families a chance to temporarily extend health coverage in certain instances where coverage under the plan would otherwise end.

Keep details confidential. Don't discuss details of an employee's separation with other staff members, clients, or members of the public.

After the conversation, take time to process. Although the conversation wasn't as hard for you as it was for the employee, it was hard. Give yourself time and space to process that. Ending someone's employment is a very difficult decision. It merits a moment to breathe. Acknowledge the many emotions the conversation may have brought up for you, and the lessons those emotions may have to teach you for your future as a manager.

Resources:

- Termination – U.S. Department of Labor
- I need to discipline or fire an employee – Equal Employment Opportunity Commission