

# HOW TO FIRE AN EMPLOYEE LEGALLY & FAIRLY



# Fair and Legal Firings Require a Careful Approach

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In an ideal world, every employee would be a perfect, productive fit – and you'd never have to let someone “go” for missing the mark or violating the rules. But we know that's not realistic. No matter how careful you are when hiring and growing your workforce, you're bound to encounter difficult situations that ultimately lead to termination.

Today, it's more important than ever for employers to be on firm legal footing when firing employees or taking other disciplinary action. A sloppy or unfair firing could put you at significant risk if a disgruntled employee turns around and files a lawsuit.

Whether taking notes during a counseling session, creating a written warning or drafting a final termination notice, you should take the view that any documentation could someday be used as evidence for, or against, you.

This e-guide will walk you through the technicalities of legally sound terminations (including proper documentation) so you can handle firings with confidence and clarity, from start to finish.

# At-Will Employment as Your First Line of Defense

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Employment relationships generally fall into two categories: contractual and “at-will.” If a contract exists, termination must be handled per the terms of the contract. In the absence of a contract, however, an employee’s status is considered at-will employment.

This means the employment relationship may be terminated by either the employee or the employer at any time and for any reason – except for an illegal one. In other words, you can terminate an employee because of poor work performance or difficulty working with others, but you can’t fire someone for being Asian, a female, too old, and so on. Firing someone because of race, color, national origin, religion, age, gender, disability or other legally protected characteristics is prohibited by various federal laws.

Keep in mind, too, that most states have laws that give employees additional protection beyond what is provided under federal law. These laws often apply to smaller employers not covered by federal law, and typically provide more “employee-friendly” coverage.

## Federal Laws Restricting Illegal Terminations

These are the most common federal laws that come into play in termination decisions. **If you have one or more employee, these laws apply to your business:**

- **Uniformed Services Employment and Reemployment Rights Act (USERRA):** USERRA prohibits employers from discriminating against applicants or employees based on their membership in the uniformed services, application for membership or performance of military service obligations. The law also requires employers to grant employees time off for military service obligations, and to re-employ workers returning from military service when eligibility requirements are met.
- **National Labor Relations Act (NLRA):** The NLRA protects union and non-union employees from adverse employment decisions based on “protected” and “concerted” activity. This means it is illegal to terminate someone based on his/her union membership, efforts to join or establish a union, participation in a group protest over working conditions or other union-related activity. Also, union contracts typically restrict employers from terminating union members without meeting certain procedural requirements and establishing “reasonable cause.”
- **Occupational Safety and Health Act (OSH Act):** The OSH Act requires employers to provide a safe workplace, and makes it illegal to fire someone in retaliation for reporting safety/health violations or participating in an OSHA investigation.
- **Fair Labor Standards Act (FLSA):** The FLSA requires employers to satisfy minimum wage and overtime requirements, and prohibits retaliation against employees who complain of FLSA violations or participate in related investigations or proceedings.
- **Whistleblower Laws:** There are a host of federal, state and local laws that protect employees from retaliation for reporting certain hazards on the job (such as environmental concerns or unsafe practices) or otherwise accusing their employer of unlawful activity.



## If you have 15 or more employees, these federal laws apply to your business:

- **Title VII of the Civil Rights Act of 1964 (Title VII):** Title VII prohibits workplace discrimination/harassment based on race, color, religion, sex and national origin. This law applies to every aspect of employment, including hiring, job assignment, compensation, promotion, demotion, discipline and termination. Title VII also makes it unlawful for covered employers (generally those with 15 or more employees) to retaliate against employees for opposing job discrimination, filing a charge of discrimination or participating in any investigation or proceeding involving Title VII claims.
- **Americans with Disabilities Act (ADA):** The ADA prohibits employment discrimination against qualified individuals with disabilities. The law applies to every aspect of employment, and requires covered employers (generally those with at least 15 employees) to make “reasonable accommodations” for individuals who qualify for protection under the ADA. The ADA also prohibits workplace harassment, and protects employees from retaliation for opposing discrimination, filing a charge of discrimination or participating in any investigation or proceeding involving ADA claims.
- **Pregnancy Discrimination Act of 1978 (PDA):** An amendment to Title VII, this law prohibits discrimination against applicants or employees based on pregnancy, childbirth or related medical conditions. The law requires women affected by pregnancy or related conditions to be treated in the same manner as other applicants or workers with similar abilities or limitations. It also prohibits employers from retaliating against an employee for opposing pregnancy discrimination, filing a charge of discrimination or participating in any investigation or proceeding involving PDA claims.

## If you have 20 or more employees, this law applies to your business:

- **Age Discrimination in Employment Act (ADEA):** The ADEA applies to employers with 20 or more employees. It prohibits age discrimination against individuals

who are 40 years of age or older. The law applies to every aspect of employment, from hiring to termination. Individuals protected under the ADEA also are protected from workplace harassment, and from retaliation for opposing age discrimination, filing a charge of age discrimination, or participating in any investigation or proceeding involving ADEA claims.

### **If you have 50 or more employees, this law applies to your business:**

- **Family and Medical Leave Act (FMLA):** The FMLA requires covered employers (generally those with 50 or more employees) to provide up to 12 or 26 weeks of job-protected leave to eligible employees for certain kinds of absences, and prohibits retaliation against employees for exercising their rights under the law. The FMLA makes it illegal to fire someone for requesting or taking time off when the absences are protected by the FMLA.

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*Remember: State and local laws often provide more protection to employees than federal law. Even if some of these federal laws do not apply to your business, there may be additional local laws that do.*

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## **Other Considerations with At-Will Employment**

Legislation and court decisions have given employees increased protection against termination, largely through additional limitations to the at-will relationship. Depending on your jurisdiction, it may be illegal to terminate someone's employment if:

- The termination is intended to prevent your employee from receiving a benefit that has been earned or is about to be earned (this is known as implied covenant of good faith or fair dealing). You generally are required to deal in good faith with your

employees. You can't, for instance, fire an employee to prevent him or her from becoming vested in the company pension plan.

- The termination is under circumstances that violate public policy. This occurs if your employee is terminated for refusing to do something that public policy forbids, such as committing perjury or fraud -- or for doing something that public policy encourages or permits, such as volunteering in a disaster or getting screened for a disease, even if there isn't a specific state or local law addressing it.
- The termination violates your company's policies, such as employee handbook provisions addressing discipline, grievances or termination procedures.

## Legitimate Reasons for Termination

So, where does this leave you? When is it acceptable to fire an employee?

Examples of legitimate business reasons for termination include:

- **Poor performance:** Your employee has consistently performed below expectations, despite you giving clear feedback that improvement is needed.
- **Misconduct (rule/policy violations):** Your employee's conduct is in violation of a company rule, policy or standard, or your employee has acted in a way that significantly jeopardizes the best interests of your company, your customers or fellow employees.
- **Failure to meet eligibility requirements:** Your employee is unable to provide valid documentation proving his or her identity and authorization to work in the U.S. as required by immigration laws; or your employee fails to maintain licensing or certification requirements for his or her job position.

■ **Failure to meet job qualifications:**

Your employee no longer has the skills, expertise, knowledge or other qualifications to successfully perform his or her job (for example, due to advancements in technology, or modifications to the position following a reorganization); or the employee is disabled and unable to perform the essential functions of his or her job with or without reasonable accommodation.

■ **Layoff or elimination of position:**

There is a lack of available work, or other financial/budgetary concerns justify termination or elimination of your employee's position as part of a reduction in force (RIF) or reorganization.

- **Expiration of contract:** Your employee has a contract with a definitive term and end date, and the termination has been handled in compliance with the contract's terms.



**ComplyRight Tip**

To communicate at-will status with employees, you should:

- 1 Include an at-will disclaimer on every employment application.
- 2 Make sure your employee handbook reinforces your right to discharge at-will.
- 3 Have employees sign an acknowledgment that they received and understand the employee handbook.
- 4 Keep a copy of the signed acknowledgment in the employee's personnel file.

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The bottom line is this ...

*You have the right to fire employees for any reason at all, but the best way to avoid legal liability is to make sure every termination decision is based on legitimate business reasons supported by objective facts and documentation.*

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# Disciplinary Measures and Documentation Before the Termination

In most cases, specific disciplinary measures lay the groundwork for fair and legal firings. Discipline puts the employee on notice of the severity of the problem, as well as the consequences for not correcting it. If the problem persists and terminating the employee becomes necessary, you'll have a record of the problem and the actions you took to address it.

1. Verbal Warning
2. Written Warning
3. FINAL WARNING
4. Termination  **EXIT**

## Documentation Is Key

Most employers follow progressive discipline wherein an employee receives a series of warnings before termination. For example, the employee may get a verbal warning for a first offense, a written warning if the problem continues, a final written warning and, as a last step, termination.

Cutting corners with documentation is the single biggest mistake managers make when handling progressive discipline and terminations. You need to recognize that your company may have to explain a termination decision long after it occurs. In the case of employees terminated for poor job performance or misconduct, this means having on file all performance reviews, notes from counseling sessions and written warnings leading to the termination decision.

For complete and effective documentation, be sure to cover all the following elements:

### 1 The facts

Include the date, time and location of the problem. Where applicable, cover the five W's (who, what, where, when, and witnesses). Be as precise and thorough as possible.

**Example:** *It's not enough to just write that an employee is "excessively late." Your documentation should indicate each date the employee was late, and how late he or she was each time.*

### 2 The specific rule or standard violated

Identify whether the employee has violated a rule or standard and specify what it is. These rules or standards don't have to be included in an employee handbook to apply. They may be found in managers' manuals, email announcements, memos, postings and other formats.

**Example:** *If a sales manager has distributed a memo establishing sales objectives, this could serve as a written standard referenced in the write-up about poor sales performance.*

### 3 Objectives and expectations for improvement

If applicable, indicate exactly what you expect the employee to do to correct or resolve the problem.

**Example:** *If an employee is being written up for tardiness, your objective could be, "You must be present and ready to begin work each scheduled day at 8:30 a.m." Or if a write-up addresses poor sales performance, you could state the number of sales to be met in a specific timeframe (or however you measure sales productivity).*

#### 4 Suggestions for meeting objectives

If applicable, indicate what you've done or what you agree to do to help the employee meet the objectives described in the write-up.

**Example:** *You may suggest specific tools or resources that will help the employee, such as training, webinars, instructional videos, practicing certain tasks or pairing up with a helper or mentor.*

#### 5 Disciplinary action being taken

Indicate the specific action you are taking now because of the employee's non-performance or rule violation.

**Example:** *This could be a verbal warning, written warning, suspension with or without pay, demotion, decrease in pay, probation or termination.*

#### 6 Consequences for failing to correct problem

A formal write-up should also indicate what action you will take later if the employee fails to meet the stated objectives and expectations for improvement.

**Example:** *Depending on where you are in the disciplinary process, this could be an additional written warning, suspension with or without pay, demotion, decrease in pay, probation or termination.*

#### 7 Signatures and dates

The manager who prepares the write-up should always sign the document and indicate the date when it was reviewed with the employee. It's also important to have the employee sign and date the document. At a minimum, the employee is acknowledging that he or she reviewed the document and that his or her manager discussed its contents.

# What to Consider Before You Fire

Because of the legalities and emotional pressures surrounding terminations, it's important to carefully plan for them. Preparation includes completing necessary paperwork, anticipating the employee's questions and reactions, and coordinating the employee's departure. The likelihood of a legal challenge often stems from the way you handle these details, so it's critical to get them right.

To avoid any missteps, you should:

- Check that the firing is approved by top management and conforms to written company policy.
- Decide who will handle the termination meeting. This is typically the manager or supervisor with the most knowledge about the employee's performance or misconduct, and who's coached and counseled the employee on the issues.
- Make sure your documentation is in order before you meet with the employee. Pull together performance appraisals, notes from previous disciplinary discussions, written warnings, salary information and any other support materials.
- Make sure you properly investigated any incidents leading to the termination, and documented the investigation process (including all interactions with the employee). Ask yourself: "Did I give the employee a notice of the infraction and provide an opportunity to explain, or provide additional facts or evidence? Am I certain I didn't overlook any preliminary actions?"



- Be prepared to answer any questions the employee might have about the termination. Typical questions include: “When will I receive my last paycheck? Will I get a severance package? Will I be paid for accumulated sick leave or vacation time not taken? Am I eligible for unemployment insurance? What about my health benefits?”
- Review your company’s handbook policies and the employee’s personnel file (including the employee’s initial offer letter) to make sure there is nothing specifying length of employment or indicating employment lasts “if performance is satisfactory” or any similar language. If the employee has a contract, make sure you’re complying with the contract’s termination provisions.
- Create a termination notice in advance. The document should include the last day of employment and the start/end day of any benefits the employee will receive. Company policy will dictate what additional information to include.
- Consider day of week and time of day. Most experts agree that the best time to fire someone is at the end of the day when other employees aren’t likely to be around or the beginning of the day before the employee goes to his or her workstation. Otherwise, the employee is likely to become embarrassed or humiliated by the exposure to coworkers.
- Plan what to say to avoid saying something you may later regret. Walk through potential scenarios in your mind and draft your talking points.
- Arrange to have another person at the meeting to serve as a witness. Make sure this person knows his or her role, and has been briefed on how to respond to any comments.



### ComplyRight Tip

Be careful not to draft discipline policies so air-tight that warnings are required in every situation. Some situations don’t fall under progressive discipline and may require immediate termination, such as zero-tolerance events like violence or stealing. Your policies should reinforce the fact that employees are at-will and that management has the right to terminate someone immediately, if necessary.

- Consider a separation agreement or release. A separation agreement is a legally binding agreement in which the departing employee agrees to release legal claims against an employer. In return, the company promises some form of “consideration,” or something of value beyond what an employee is already entitled. It could be money (such as severance pay), a few extra months of health insurance or keeping a company-issued item, such as a laptop. Because of the legalities, separation agreements should be approved by legal counsel.

- Keep all discussions confidential. No matter how frustrated you may be, you need to treat an employee with respect and dignity during the entire termination process. Tell only the necessary parties involved – usually other supervisors and upper management – that the employee will be terminated.

- Take precautions if you fear the employee may become violent or seek revenge. Consider changing door locks or building access codes while the termination meeting is in progress. Or, if necessary, arrange for security to escort the employee from the building. (Be sure to weigh any decision to involve security personnel carefully against the employee’s pride and how such treatment may be perceived by onlookers.)



### ComplyRight Tip

If you’re not sure you should fire the employee – or are worried it’s open to misinterpretation – you should consult your HR manager or attorney. Other options include:

- Suspending the employee while you investigate the situation. However, be careful about suspending a salaried, exempt employee without pay so you don’t violate the FLSA.
- Entering a “last chance” agreement with the employee, where he or she agrees in writing to improve performance and follow proper conduct, “or else.”
- Transferring the employee to another position/department.
- Demoting the employee by reducing his or her responsibilities and/or pay.

## CHECKLIST

### Fair and Legal Firing for Violation of Company Policy

Do you have an employee who violated a company rule or policy? Before firing the employee, consider the following questions:

- What established company rule or policy has been broken?
- How did the employee's conduct violate the rule or policy?
- Was the employee aware of the rule/policy?
- How was the rule or policy communicated to employees?
- Has the rule been consistently enforced?
- Do you have all the facts?
- What supporting documentation is there?
- Has the rule violation been properly documented?
- Do you have documentation, witness accounts or admissions establishing that the employee violated the rule?
- Is this a first-time offense, or has the employee been counseled for the same violation in the past?
- If the violation has occurred before, was the employee warned of the potential consequences of breaking the rule again, and did the warning include the action you are considering?
- Is the offense serious enough to justify immediate termination without a warning?
- What is the employee's service record?
- What is the seriousness of the violation (for example, its effect on coworkers, employee morale and the company's bottom line)?
- Does the company have any written policies or guidelines requiring a certain type of discipline for the violation?
- What type of discipline has been used in the past for similar rule violations?
- Was there a personal problem or other extenuating circumstances that led to the employee's actions (for example, sickness, death in the family or divorce)?
- Will the disciplinary action appear fair and reasonable to a jury under these facts and circumstances?
- Will the disciplinary action be a surprise to the employee?

## **FIRING SCENARIO 1:**

### **Different Facts May Justify Different Outcomes**

Frank, an employee at a major delivery company, was terminated for not promptly reporting an on-the-job accident in a company vehicle, as required by company policy. The policy states that employees must call from the road within one hour of any accident that causes physical damage or injury. Frank didn't report the accident until a week later, and only after another manager noticed the damaged vehicle.

A few months later, Bob was involved in an on-the-job accident in a company vehicle and, like Frank, didn't report the accident within an hour, per company policy. However, the circumstances were different and the company decided not to terminate him. In Bob's case, he was unable to notify the company from the road because the company had inadvertently deactivated his mobile phone, and he had no other way of calling. He reported the accident a few hours later as soon as he had access to a phone.

This is a legitimate reason for treating Frank and Bob differently. Frank had a working mobile phone yet deliberately concealed the accident for a week, whereas Bob couldn't contact the company (through no fault of his own) and made an honest attempt to report it as soon as he could. By documenting the reason for treating Bob differently, the employer would have a strong defense to a claim for discrimination or wrongful discharge by Frank.

## CHECKLIST

### Fair and Legal Firing for Poor Performance

Perhaps you have an employee who isn't performing to company standards, ask yourself these questions before disciplining for poor performance:

- What established performance standard hasn't been met?
- How has the employee fallen short of the performance standard?
- Was the employee aware of the performance standard?
- How was the standard communicated to the employee?
- Has the standard been consistently enforced?
- Do you have all the facts?
- What supporting documentation do you have for poor performance?
- Do you have documentation, witness accounts or admissions establishing that the employee didn't meet performance standards?
- Has the employee had the opportunity to develop the skills necessary to meet the performance standard?
- Has the employee been "coached and counseled" on the poor job performance? Are all coach/counseling sessions documented?
- Has any other method of progressive discipline been used? If so, is each step documented?
- What measures have you taken to help the employee improve his or her poor work performance? Are these efforts documented?
- Has the employee been given adequate time to improve his or her performance after being counseled?
- Is there anything else you can do to correct the employee's performance?
- Has the employee been warned that failure to meet the performance standards could result in the consequences you're considering? Is this reflected in your documentation?
- What is the employee's service record?
- Does the company have any written policies or guidelines requiring a certain type of discipline for the performance issue?
- What type of discipline has been used in the past for similar performance problems?
- Was there a personal problem or other extenuating circumstances that led to the employee's performance problem (for example, sickness, death in the family or divorce)?
- Will the disciplinary action appear fair and reasonable to a jury under these facts and circumstances?
- Will the disciplinary action be a surprise to the employee?

## **FIRING SCENARIO 2:**

### **Termination Decision After Unsuccessful Progressive Discipline**

Michelle is a project manager for a busy department at ABC Company. For three years, she has been a consistently reliable employee who works hard and does her job well. But lately she's been slipping. Not only has she missed important details on several projects, but other employees have shared that she's not tracking jobs and following up on deliverables. The manager holds a private meeting with Michelle to talk about the issues and, together, determine what can be done to improve the situation.

It's been two months now and things aren't going well for Michelle. When the manager first addressed the performance issues, Michelle promised to try harder. Things seemed to get better for a few days, but it didn't last. She kept making careless mistakes and falling short on her job responsibilities, and recently started arriving late to work. In the last two months, the manager has issued two written warnings, per company policy, documenting all these issues and the risk of termination.

Since then, Michelle's work has gotten worse. It's starting to cause bottlenecks in the department; critical projects are lagging and more team members have expressed their frustrations. At this point, the decision to terminate is clear. Although it's difficult to fire a formerly strong employee, Michelle is no longer meeting expectations and hasn't responded to progressive discipline.

## How to Handle the Termination Meeting

It's no wonder employers get nervous about termination meetings. You can have solid and compelling reasons for a termination, as well as certainty that your business will be better off after the cut. Yet, when it comes time to let someone go, you may still experience feelings of fear, anxiety or even guilt.

One way to ease your fears is to remember this: If you've done your job well, terminations due to performance or misconduct won't be a surprise to the employee. After all, you've counseled, coached, warned and in many other ways let the employee know he or she is in trouble. You've also pointed to the rules, standards or policies violated, and what it takes to turn the situation around. Finally, you've given the employee an opportunity to respond or vent. You've done your job; the employee hasn't. Terminations are never pleasant, but knowing you're in the right should make them easier to handle.

Here are some guidelines for conducting a proper, pain-free termination meeting:

- **Choose a private setting.** Hold the termination meeting in the decision-maker's office or another neutral setting. Don't do it in the employee's office, cubicle or workspace. You want a quiet location where you won't be interrupted, overheard or observed by others.
- **Be clear and straightforward.** Always tell the truth about the reasons for firing, regardless of how uncomfortable it is. Don't attempt to spare an employee's feeling by stating that his or her job is being eliminated when, in fact, the reason for the termination is poor performance. Sugarcoating the reasons for the firing is never smart. Although your intentions may be good, this puts you at risk of contradicting yourself (and losing credibility) if you're forced to defend or explain your decision in a legal dispute.

- **Remove emotion.** Never argue with an employee to justify a termination decision. Be courteous, confident and firm. If the employee becomes violent or threatens to harm you, others or company property, call security or the police immediately.
- **Keep the meeting as brief as possible.** Don't allow the employee to engage in detailed discussions of the underlying facts, performance issues or who's to blame. Your decision shouldn't be negotiable at the termination meeting. Nor should you give the employee the impression he or she can change your mind.
- **Have the employee sign a copy of the termination notice and other related paperwork.** If the employee refuses to sign, have a witness do so, indicating that paperwork was presented to the employee but he or she refused to sign.
- **Treat the departing employee with respect and compassion.** Being let go from a job is emotional and upsetting under the best of circumstances. A poorly handled termination meeting can make matters worse. Follow your plans for monitoring the employee's departure and securing company property, but treat the employee with dignity and respect. Remember that how you treat a person during and after the termination meeting can influence whether he or she seeks legal advice and/or files a lawsuit.



**A few final tips:**

- **Have documentation with you in case you need it for verification** for example, to remind the employee of previous disciplinary write-ups.
- **Tell the employee how long he or she has to gather personal belongings and leave the premises.** If necessary, offer to send the employee his or her personal belongings.
- **Always bring a witness.** This could be another manager or an HR representative, for example.
- **Consider offering to help the employee find another job, if appropriate.**

## Access to Personnel Records

Be prepared for employees to ask for copies of all your documentation concerning the termination decision as well as other records from their personnel files. State laws often dictate whether employees have a legal right to inspect their personnel records, the specific kinds of records they may access, whether requests must be in writing, whether employees may photocopy records and at what cost. If access isn't required by law, your company has the right to establish its own rules and procedures regarding access, and employees may be completely banned from obtaining their personnel records. (Different rules apply for government workers, as their personnel files may be considered public records.)

## Be Ready to Provide Mandatory Notices

Understand that federal, state and local laws may require you to provide certain notices upon termination.

Examples include:

- Notices regarding continuing health coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Certificates of “creditable coverage” to establish dates of group health coverage under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- Certificates of “creditable coverage” to establish dates of group health coverage under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- Notices required for mass layoffs under the WARN Act and related state laws
- State law notices explaining reasons for termination, unemployment compensation insurance and/or availability of health benefits

It's important to know what notices are required upon termination, when they must be provided and whether there are required forms or formats for each kind of notice. Be prepared to give the employee mandatory termination notices at the termination meeting or, where appropriate, mark the deadlines on the calendar and send them by registered mail to the employee's last official address of record. For notices related to health insurance and other benefit plans, find out if they're sent directly by your insurance provider, and make sure they are provided to all affected individuals in a timely manner.

## Final Pay Requirements

Federal law requires employers to pay terminated employees on their next regular payday, but state laws often impose more stringent requirements (for example, final payment due upon termination). State laws also may dictate whether accrued vacation or sick pay must be paid upon termination. If the paycheck is due upon termination, have it ready and make sure it includes all money owed for work performed through termination.

# Post-Termination Considerations

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## Communication About Terminated Employees

Whenever an employee is terminated, make sure someone is assigned to inform other employees and key customers or clients (if necessary) about the employee's separation from the company. This might be you (as the ex-employee's supervisor), a member of upper management or an HR representative.

In general, the less said to coworkers and other individuals about an employee's termination, the better. People naturally will be curious about what happened. However, you do not want to infringe on the terminated employee's privacy or leave yourself open to legal action because of something you say. Although it's important to communicate that the employee is no longer with the company, you don't need to provide any additional information about the situation.

## References

Regarding references, federal and state laws dictate what can and can't be revealed to a person's prospective employer. Additionally, most companies have strict policies about providing employment references. The best way to avoid potential legal complications is to centralize all references so only designated individuals may respond to requests. Also, reference information should be limited to factual details, such as an employee's title, dates of employment and compensation.

## Retention of Records

Even though you've ended an employment relationship, you must continue to store certain personnel files in a secure location. The length of time varies, based on federal and state laws concerning employer recordkeeping. Here are some general guidelines:

### ■ 1 year

All termination-related paperwork, including discipline documentation and the final termination notice, needs to remain with you for a year.

### ■ 2-3 years

Keep pay-related records, such as timesheets, schedules and pay rates, for two years. Actual payroll records should be on file for three years after the employee's departure. Form I-9 and other verification paperwork should be kept for either three years from the date of hire or one year after termination, whichever is later.

### ■ 5 years

OSHA requires employers to retain all information related to a workplace injury or illness, including a summary of details, for five years.

# Conclusion

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Although difficult, terminating under-performing or rule-breaking employees is an inevitable part of running a business. Holding on to these types of employees just isn't an option in today's competitive environment.

Like with any legally sensitive workplace decision, terminations require careful planning and execution. Realize, too, that a former employee can be your company's best or worst promotion. It's up to you to handle terminations professionally and to leave employees with a good impression of your business as a whole – even if the situation didn't work out on an individual level. Treating departing employees fairly and respectfully also goes a long way toward preventing damaging lawsuits.