



Termination Done Right

Terminations gone wrong often end up in court. Every employment lawyer will tell you that the reasons for termination are as important as how the termination is conveyed. Employers should consider these tips to minimize the risk of a termination ending in litigation.

Every termination needs a sound reason. Yes, at-will employers can terminate employees at any time, with or without cause. But no good lawyer will stand in front of a jury and say "at-will" employment means my client could fire the plaintiff for whatever reason they want. Juries and judges demand explanations. An employer without a good explanation loses; an employer with a logical and justifiable explanation wins. Simple as that.

Before making any termination decision, the employer should be able to articulate a logical, defensible explanation for why the employee is losing his job. Nonsensical reasons breed suspicion; sensible ones build credibility.

Avoid vague generalizations. Statements like "We are restructuring" or "We are changing how we do business" tell the employee nothing and leave room for misinterpretation and foster litigation. Instead, be specific: "Jill, we no longer need a receptionist because we're switching to an automated system." Or, "Joe, the Company invested in AI that eliminated the functions you performed." These examples may feel harsh, but truthful, logical and defensible should prevail.

Similarly, tell the employee the facts without sugarcoating. "You just don't fit in" or (my least favorite of all time) "We lost confidence in you" invite the employee to assume the real reason is an illegal reason (e.g., race, gender, or another protected characteristic). If someone really does not "fit" or "confidence was lost," explain the facts that support the conclusion rather than resting behind a generality that says little. In this regard, it is okay to be harsh when the truth is tough to hear. If someone is rude, obnoxious, or confrontational, simply say so.

Test the explanation by writing it in a single sentence-ideally ten to fifteen words. In wrongful-termination trials, I begin my opening statement with a theme slide that states the reason for termination in one line.

If you can't distill the reason to a single sentence, rethink the decision. Complicated reasons make bad explanations. Short and simple always wins.

My final tips relate to how to convey the unwelcome news. First, write a termination letter before you meet with the employee. The letter should serve as the short script for why the company made the termination decision. An employer willing to hand an employee a written explanation for termination demonstrates confidence in the decision. State exactly what the employee did or failed to do. Complex situations may require more thought and assistance from an attorney. An employer with concerns about the decision should always call a lawyer before making the decision.

Typically, the termination news should be conveyed in person. Keep the meeting short. Nothing good comes from prolonged discussion when someone is losing their job. Debate leads to misunderstandings and potential controversy. Have two company representatives present. If you're offering a severance package with a release of claims, present it at the end of the meeting.

No one enjoys firing an employee. Even in cases of serious misconduct, the task remains difficult. But following these practice tips makes the process less painful and less likely to lead to litigation.

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For further information on these developments, please contact [Mark J. Levine](#).