

Managing Employee Separations: Practical Steps and Considerations

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Terminating an employee is one of the most difficult decisions an employer can face. Even when the decision is justified, the termination process can create significant legal and workplace risks if not handled carefully. Proper planning, clear communication, and thorough documentation can help reduce the likelihood of disputes and employment-related claims. Below are several practical steps employers can take to make the termination process as smooth and legally defensible as possible.

1. Set Clear Expectations and Provide Advance Warning When Possible

A termination should rarely come as a surprise to an employee. Employers should establish clear performance expectations from the outset and regularly communicate with employees about their progress through evaluations, coaching, and performance discussions. When performance issues arise, employers should be transparent about their concerns and provide employees with an opportunity to improve whenever appropriate. If the termination is based on performance, documentation should support the decision. If the termination results from downsizing or restructuring, employers should be prepared to explain the business reasons behind the decision. When circumstances permit, providing advance notice of a termination may help reduce tension and allow the employee to begin planning for future employment opportunities.

2. Document Performance Issues and Review the Decision Carefully

Consistent documentation is one of the most important tools employers have when making employment decisions. Performance evaluations, disciplinary records, attendance issues, and prior warnings can help demonstrate that a termination decision was based on legitimate business reasons. Before proceeding with a termination, consider having another manager, human resources professional, or legal counsel review the decision. A second review can help identify potential legal concerns and ensure that the action is being applied consistently across the workforce. Employers should also remain mindful of federal, state, and local laws that protect employees from discrimination and retaliation.

3. Avoid Debating the Decision During the Termination Meeting

Once the decision to terminate employment has been made, the termination meeting should remain professional, respectful, and concise. Attempting to persuade an employee that the termination was

justified often serves little purpose and may unnecessarily escalate emotions. Instead, clearly communicate the decision, explain the reason for the action, and provide any relevant information regarding benefits, final pay, or next steps.

4. Document the Termination Meeting and Include a Witness

Employers should maintain written records of what occurred during the termination meeting. Notes should be prepared promptly, dated, and retained in accordance with company recordkeeping practices. Whenever possible, another management representative or human resources professional should attend the meeting as a witness. That individual should also prepare separate documentation of the discussion. Having contemporaneous records may prove valuable if questions arise regarding what was said during the meeting.

5. Understand Final Pay and Personnel Record Requirements

The rules governing final paychecks, accrued benefits, and access to personnel records vary significantly from state to state. Before conducting a termination, employers should ensure they understand their obligations under applicable law, including deadlines for issuing final wages and responding to requests for employment records. Failure to comply with these requirements can create additional legal exposure, even when the termination itself was lawful.

6. Maintain Confidentiality Throughout the Process

To the greatest extent possible, termination decisions should be handled confidentially. Information should be shared only with individuals who have a legitimate business need to know. Respecting employee privacy can help preserve workplace morale and reduce the risk of unnecessary conflict following a separation.

Need Guidance on Employment Decisions?

Employee terminations should be handled thoughtfully, consistently, and in accordance with applicable laws. Whether you are addressing performance concerns, conducting a reduction in force, or responding to workplace misconduct, proactive legal guidance can help reduce risk. Call a member of the [Employment Law Team](#) at Wilentz, Goldman & Spitzer, P.A. to discuss your employment law concerns and explore your options.

Practice

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