



Conducting an Employee Termination Meeting

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The Partnership's staff attorneys are often asked if there are some general rules to follow when advising an employee that s/he is being terminated. While it is difficult to give hard-and-fast rules because each situation is different and specific facts may warrant a different approach, here are some general tips.

1. **Documented, Legitimate Reasons for Termination:** Hopefully the employer has already:
 - a. Documented the legitimate reasons for terminating the employee and can point to prior warnings and performance counseling sessions with the employee. Unless the employer has promised to do so (e.g. in the employee handbook), prior warnings and counseling aren't necessarily required. Nonetheless, having provided prior warnings and counseling can be beneficial. In some situations, prior warnings and counseling might be inappropriate, such as when the employee engaged in workplace violence or a serious incident of harassment and immediate termination is deemed appropriate by the employer.
 - b. Made sure the employee is not being terminated in breach of an employment contract, for an illegal reason, or in retaliation for having been a whistleblower or complaining about alleged or actual misconduct (e.g., harassment) directed at him/her or others in the workplace.
2. **Golden Rule:** The manner in which an employee is terminated should be just as defensible as the reasons for the termination. Common sense and the golden rule go a long way in this area.
3. **When Not to Terminate:** Some employers avoid terminations on the last day of the workweek as that gives the employee at least a day to decompress before having to tell a significant other. Some employers also try to avoid terminations during holiday seasons. Of course, there are exceptions to these rules (e.g., firing someone for workplace violence or a serious incident of harassment and immediate termination is deemed appropriate by the employer).
4. **Deactivate Access:** The employer needs to be prepared to immediately deactivate the employee's access (including remote access) to the organization's building, databases, and e-mail and voice mail systems.

5. **Final Pay Check:** In New Jersey and New York, an employee who is terminated or quits is entitled to his/her final pay check by no later than the next regularly scheduled pay date. The same rule applies in Connecticut for an employee who quits; however, in Connecticut, an employee who is terminated is entitled to be paid by no later than the next business day. Some employers prefer to issue the final pay check on the date of termination.

6. **Two Managers Present at the Termination Meeting:** At least two managers should attend; one person should be designated as the spokesperson. After the meeting, write up a brief summary, which both managers should review for accuracy, clarity, and objectivity.

7. **Unionized Employees:** If the employee is represented by a union, s/he has the right to request that a union representative attend the termination meeting.

8. **Location and Security:** Pick a location and time to minimize disruptions, especially if the termination is expected to be contentious. If the employer expects the employee to be violent or disruptive, then some contingency planning is needed. Options include arranging for additional security and holding the termination meeting off-site at a public location where there is a suitable degree of privacy (e.g., a restaurant with spread-out seating).

9. **Reason for Termination:**
 - a. **Give the Reason:** In Connecticut, New Jersey, and New York, an employer is not required to give an employee a reason for terminating them, though giving a reason is usually the better practice as it may help diffuse the situation. Eventually, when the employee files a claim for unemployment compensation, or files a claim of discrimination with a fair employment practices agency (such as the U.S. Equal Employment Opportunity Commission), the employer will be required to provide the reason(s) for the termination.

 - b. **Be Sure It Is a True, Legitimate Reason:** If the employer is going to give a reason(s), it should give an honest, legitimate reason(s), briefly stated with no elaboration. Sugar-coating the reason, or giving a false reason (so as not to hurt feelings), often comes back to hurt an employer big time if the employee sues. If at trial the employer's representative give the real reason for the termination for the first time, s/he will surely be asked, "Are you lying now or where you lying then?"

- c. **Not Necessarily in Writing:** The employer is not required to give the reasons for termination in writing at the termination meeting. As noted above, the employer should document the reasons in writing in the personnel file.
- d. **If In Writing:** Whenever the employer gives a written statement of the reasons for termination, if the statement doesn't list all the reasons (e.g., because there are just too many to list and/or the ones listed are significantly more important than the ones not listed), then the listed reasons for termination should be preceded by language such as the following: "The employee was terminated because among other things s/he violated" Prior to giving the employee the written statement, review it for accuracy, clarity, and objectivity.

10. **Listen, But Don't Debate:** The employer should not engage in a debate with the employee over the reasons for the termination. The employer has already made the final decision. Nonetheless, it is generally a good idea to let the employee briefly say, in a professional manner, what's on his/her mind if s/he wants to. The employee may say something revealing.

If the employee complains that the termination is in retaliation for a complaint s/he made, or alleges the employer is engaging in illegal or unethical conduct, and these allegations were not known by the employer, the employer should (a) allow the employee to explain the circumstances and (b) ask lots of questions to get the details. If the employee's allegations appear to have some merit, it may be prudent for the employer to (a) instead suspend the employee with pay until the employer has had an opportunity to investigate and (b) advise the employee that the employer will investigate the allegations. The Partnership has an article about internal investigations on its website – "Internal Investigation Checklist". See <http://www.probonopartner.org/publications/Internal%20Investigations%20Checklist%20rev%20043009%20-%20protected.pdf>.

11. **Benefits Summary:** It is a good practice to give the employee a written summary of what benefits s/he will be receiving -- e.g., final paycheck, with any accrued vacation, will be mailed to him/her on x date; COBRA information; 401(k) or 403(b) pension plan information. Some employees don't listen past the point they have been told they are being let go. Their minds might start to focus on other things, such as "what do I tell my significant other?"

Describe severance benefits or pay-in-lieu-of-notice, if any. Normally such benefits and pay are not paid when a termination is for cause. If the receipt of such benefits and pay is conditioned on signing a release of claims, consult with a lawyer well in advance because special legal requirements apply to releases.

- 12. Unemployment Compensation:** The employer must give the terminated employee the applicable state unemployment compensation claim form, regardless of the reason for termination (including, e.g., a voluntary quit):
- a. In Connecticut, Form UC-61/62T, “Unemployment Notice”. See http://www.ctdol.state.ct.us/tic/sep_package.doc or [http://www.ctdol.state.ct.us/tic/sep_package\[1\].pdf](http://www.ctdol.state.ct.us/tic/sep_package[1].pdf).
 - b. In New Jersey, Form BC-10, “Instructions For Claiming Unemployment Benefits”. See http://lwd.dol.state.nj.us/labor/forms_pdfs/ui/BC10.pdf.
 - c. In New York, Form IA 12.3, “Record of Employment”. See <http://www.labor.state.ny.us/formsdocs/ui/ia%2012.3%20.pdf>.
- 13. Exit Interview Form:** If the employer has an exit interview form that departing employees are asked to fill out, there generally is no reason why the employee shouldn’t be asked to complete and mail it back to the employer. The employer may learn about serious issues within the organization that is unaware of.
- 14. Escorting Out of Building:** The employer should use caution if it plans to watch the employee pack up his/her belongings and then escort the employee out of the building. If it makes the employee look to co-workers like the employer thinks the employee is a crook, there is a potential for a defamation lawsuit.
- 15. Personal Belongings:** If the employer really doesn’t want the employee unattended in the building after being told of the termination, the employer should consider asking the employee to leave immediately and arrange a time after-hours for him/her to return to pick up personal belongings. The employer should have two people in the office when the employee returns.
- The employee might agree to have the employer ship personal belongings to the employee, in which case the employer should ship the belongings using a secure method of delivery, with adequate insurance and proof of delivery. If possible, lock-up the personal belongings until they can be shipped.
- 16. Return of Property:** The employer should request the employee to return all property of the organization and its clients, including computer disks, flash drives, and other peripherals. If possible, bring to the termination meeting a list of the property the employee is believed to have (e.g., cell phone, laptop, office keys) and review the list with the employee.

Withholding a final paycheck until the property is returned can create legal issues for employers.

17. **Questions From Third Parties:** The employer should be ready to address questions from co-workers and clients about the employee no longer being employed by the organization. A comment such as “we don’t discuss personnel issues” is often best.

18. **Reference Checks:** The employer should be ready to receive unsolicited requests for employment history verifications from prospective employers. The employer should have a policy on how to respond to them, covering issues such as how much information, if any, will be disclosed and whether the employer will require a former employee to sign a release before responding.

It is generally a good practice not to respond to phone calls requesting employment history verification. It is not beyond the realm of possibilities that the alleged prospective employer is really a relative calling on behalf of the former employee, trying to find out what the employer is saying about the employee.

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