

Building a Winning Team—Part 3

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This is Part 3 in our three part series on professional and progressive personnel practices. In Part 1, we explored recruitment, screening and the selection process for building a winning team. Part 2 focused on retaining and motivating quality employees.

Although your need to sever employment will predictably occur less frequently when you follow our guidelines, inevitably, the need to terminate an employee will come up. Here in Part 3, we address terminating staff when work performance is not meeting your expectations.

When considering termination, it is important to remember that while “At-Will” employment policies provide a foundation for termination, there are some conditions that can undermine your “At-Will” prerogatives.

You cannot terminate an employee when it is considered a violation of:

- An employee’s civil rights
- The public interest (jury/witness duty or military duty)
- An employee's right against retaliation
- A breach of covenant of good faith and fair dealing.

A cardinal rule with regard to termination is that the decision to end employment should never come as a surprise to the employee. In other words, the employee should be aware of the deficient or poor work performance that led to your decision. In previous articles we have referred to our Performance Appraisal Form (#205 or #400). These should be used periodically to ensure each employee is objectively informed of the strengths and weaknesses in his/her work performance.

When the Appraisals have been insufficient to correct work deficiencies or a problem arises that warrants immediate action, use our Employee Counseling Memo (Form #418). This will outline the unsatisfactory work performance, describe the employer’s expectations, and establish the consequences if improvement does not occur. Remember that termination is an event that can trigger substantial employer liability. Even under the best of circumstances making a decision to discharge an employee is difficult and calls for the best possible judgment and objectivity.

As noted, base every decision to terminate on clearly defined and attainable job-related standards that have been previously communicated with the employee. Make a final review to assure that your decision is justified.

Consider such questions as:

1. Were the policies, expectations, or requests reasonably related to the orderly, efficient and safe operation of the business?
2. Have you verified whether the employee has, in fact, violated or disobeyed a policy or request?
3. Have you reviewed the issue(s) objectively and fairly?
4. Do you have adequate evidence of lack of performance to substantiate your claim?
5. Is termination reasonably related to the seriousness of the employee’s work record?

6. Has the employee had forewarning or foreknowledge of the possible or probable disciplinary consequences of the behavior?
7. Are you being fair, equitable, and consistent? (Look for disparate treatment of individuals and past decisions which could make the discharge appear to be discriminatory).

To insure that a termination goes as smoothly as possible have available records of prior infractions that led up to your decision for dismissal. Write down what you plan to say at the meeting (if you are unable to write it out, you are probably not adequately prepared). Consider the possible reaction of the dismissed employee. Although you may not succeed totally in anticipating what the employee will say or do, it may eliminate any possible statement you may make unwisely.

Although the emotional impact of being fired varies with the individual, studies show that the trauma associated with termination may be so great that it can be compared in intensity to divorce or the death of a loved one. Shock, depression, anger, self-pity, confusion, and loss of identity are some common reactions. For the most part, no matter how often the employee has been forewarned, the individual is still shocked when discharged. This is no time for the employer to display anger or to be vindictive but rather a time to be concerned about the emotional trauma the dismissal may cause.

Here are some additional recommendations:

1. Do not break the news near an employee's birthday, anniversary, or a holiday.
2. Conduct discharge interviews in private. If possible, include a witness, to prevent possible charges of harassment.
3. Discharge early in the week, not on Friday.
4. Discharge as diplomatically as possible.
5. Make the meeting as brief as possible.
6. State the reason for the discharge clearly and explicitly.
7. Do not become involved in a prolonged discussion of "why".
8. Do not be defensive or apologetic.
9. Pay the employee what is due.
10. Explain final compensation and benefits.
11. Ask for office key(s) and other office property and use our Checkout Record (Form #301). Consider whether security may be compromised if locks are not re-keyed after the termination.
12. Be prepared to provide the employee our Termination of Employment Letter (Form #306).
13. Do not have the employee train a new assistant or other staff member.
14. If severance pay is indicated use our Severance Pay Agreement (Form #302).
15. Answer any questions succinctly.

Because circumstances involving a discharge may have to be recalled later, documentation is essential and therefore:

1. Record what was discussed and the employee's reaction during the meeting.
2. Record any other background information relevant to the termination that was not discussed at the meeting.
3. Retain all records that led up to the dismissal.

The primary goal of this 3 part series has been to assist you in building and managing a Winning Team.

IN REVIEW:

Before you hire

1. Emphasize that employment is At-Will and consistently apply policies governing this status of the employment relationship.
2. Include in your Personnel Manual several statements in their proper places that employment is At-Will, and delete all statements that imply that you have limited rights to discharge.
3. State that Employment is “At Will” on the Employment Application (Form #102).
4. Warn all management personnel not to give assurances of job security to applicants or employees.
5. Check that “12 Foundation Essentials For Building a Winning Team” are in place and working for you (Reference Spring, 2004, Newsletter).
6. Do not use such terms as “long term”, “career”, “probationary,” “tenure” or “permanent” in job advertisements or anywhere else, either orally or in writing.
7. Have a clear and detailed job description. Make sure the job description covers all essential duties the employee will be expected to perform.
8. Establish an effective selection process to match applicants to the job description (Reference Fall, 2003, Newsletter).
9. Know the “actual” skill level vs. the “expected” skill level of an applicant.
10. Determine your commitment regarding paid training and seminars, hours of employment, salary, benefits, etc. Be prepared to follow through on any promises you make.

When you hire

1. Communicate clearly your terms, conditions and personal commitment. Use an Employment Agreement (Form #200), that is signed by both parties.
2. Get a clear commitment to the welfare of the practice.
3. Make a job offer only after the above steps have been taken.

After you hire

1. Create a Personnel File and have the new employee complete the proper documents.
2. Use a New Employee Orientation Checklist (Form #201).
3. Follow through with your commitments in a timely fashion.
4. Provide the new staff member with a written copy of their job description.
5. Have the staff member read the Staff Policy Manual and sign a copy of the Employee Acknowledgement (Form #203). Place the copy in the employee’s Personnel File.
6. Keep employees informed about the quality of their performance, giving reasonable opportunities to improve. (See New Employee Progress Report, (Form #205) and Performance Appraisal, (Form #400).
7. Administer discipline fairly and consistently to all employees who violate rules.
- 8. Document Unsatisfactory Performance**
9. Use our Employee Counseling Memo (Form #418) as needed.
10. Don’t play favorites: Deal with all employees who violate rules of conduct in a fair and consistent manner.
11. Give Reasonable Opportunities to Improve:

- If another violation occurs, unless the work deficiency is egregious, repeat the counseling process again and state clearly that the next time the employee will be terminated.
- If unsatisfactory job performance persists, the staff member has, in essence, made the choice not to work there.
- Place a record of all details and conversations in the person's personnel file. If you have determined that the staff member is incapable of learning or doing a satisfactory job then proceed with dismissal.