

## HOW TO TERMINATE AN EMPLOYEE

In these tough economic times, you may be forced to lay off some of your employees. While never a pleasant experience, if you are prepared, you can handle the task professionally and make the process easier for both you and the employee. Here are some suggestions to help you prepare for the task.

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### BE PREPARED BEFORE TERMINATING AN EMPLOYEE

- Determine if any contractual obligations are owed to or owed from the employee. Examine any applicable employment contract, collective bargaining, non-disclosure or non-competition agreement.
- Review the employee's compensation and benefit issues. Calculate what may be owed and identify which benefits may be continued. If possible, have the necessary notices and/or forms ready.
- Plan ahead for what steps you must take in the termination process:
  - identify the customers, files, projects and other responsibilities handled by the employee and determine an orderly transition for each;
  - investigate how will you secure the return of any company property - including laptops, files (physical & electronic and ask if any copies were made), credit cards, company cars, etc.;
  - make arrangements for the collection of the employee's personal belongings at the office, if any; and
  - assess how the employee may react to the termination and take appropriate measures.

### DELIVERING THE BAD NEWS

- When conducting the exit interview, have another person in the room to serve as a witness to the discussion.
- Be direct but as compassionate as possible. Quickly tell the employee the purpose of the meeting. Although the reason for termination should be stated, there is no need to go through a step-by-step analysis of the rationale supporting the decision. You may need to stress that the decision is final, emphasize that all relevant factors have already been reviewed, and if applicable, stress that those involved in management decisions agreed to the decision.
- Summarize what can be expected as final compensation and any benefits they have. If possible have all notices and forms ready (e.g., COBRA notices, IRA rollover forms). Discuss any severance and/or any agreement required, if applicable.
- Discuss customers, files, and projects that the employee is working on & ask if there are any issues that need attention.
- Verify their contact information
- End by wishing them good luck in their future endeavors.

## **FOLLOW-UP ON THE POST-TERMINATION ACTIONS**

- Notify all departments (HR, Payroll, IT, etc.) and all necessary staff, subordinates and/or co-workers of the termination. Be cautious as to what you say. You do not need to provide a reason for the termination. Assume that the former employee will contact your employees and will ask them about what they have been told.
- Inventory all of the customers, documents, files and property assigned to the employee and any other company property to which they had access.
- Immediately delegate any customers, files, or projects to the appropriate parties and assign new reporting lines (if applicable).
- Disable the employee's passwords/access to your networks and voicemail systems. However, you may want to keep email and voicemail accounts active (or forwarded) for awhile to field customer contacts.
- Notify your vendors of the employee's termination and remove them as an authorized user.
- Consider changing the locks.

## **HANDLING CUSTOMER RELATIONSHIPS**

- Assign the former employee's files and customer accounts to a new account representative.
- Have the new account representative call the customers to introduce themselves. If you fear the former employee may contact them, deal with it directly by advising the customer that the former employee may contact them and ask them to notify you if he/she contacts them.
- For those customers who inquire, only tell them the former employee is no longer with the company. Do not discuss the reasons for the separation, and do not state anything that may be considered derogatory or negative - e.g., that their performance was inadequate.
- Assign someone to monitor the former employee's email, voicemail (office & cell phone) accounts and notify the new account representative of the customers who leave messages.

## **FINALIZING THE COMPENSATION OWED & BENEFITS DUE**

- Assign someone to ensure all required notices are sent and to coordinate with the former employee on the completion of any election forms (e.g., COBRA election forms for the employee & any applicable dependents, and any profit-sharing/401K election forms, if any).
- Have a paycheck ready by the next regular payday. This check must include the final salary and any earned commissions up through the final day of work and payment for accrued benefits and vacation (if any). Any unearned but pending commissions can be paid on the next regularly scheduled pay date after they are earned (e.g., when the customer pays for the sale).
- Remember to ask the employee turn in any required final time sheets and/or expense reports.
- If the employee is older than 40, then there are certain laws that may impact your actions. If possible, address this issue before conducting the exit interview. Otherwise, be sure to address this issue before finalizing any compensation/ severance.

## **BE CAUTIOUS WHEN COMMUNICATING WITH FORMER EMPLOYEE**

- All communications should be brief and to the point. You do not need to review the reasons for the termination.
- Use special caution when communicating by phone. Assume all phone calls with the former employee are being illegally recorded - so be cautious in what you say. You should take calls on a speaker phone with an additional person in the room as a witness, and close your door before taking the call to ensure privacy. Make a written summary of the conversation and identify the date and name of the person who served as a witness.
- When contacted for a reference, be brief and never say anything negative. If you are uncomfortable providing a reference (or have nothing positive to say about the person), you should only verify the employment dates and indicate that the decision was made to go in a different direction. If pressed further, you may state what duties/responsibilities were assigned to the position held by the former employee.

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For more information or if you need a great business attorney in the Chicagoland area, contact Arie M. Flemenbaum at Griffith & Jacobson, LLC at 312-236-8110 or [amf@gjlaw.com](mailto:amf@gjlaw.com).

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