

Terminating an Employee Without Damaging Your Company's Reputation

by Gary S. Young on August 23, 2013

Recently, the termination of an AOL employee made the news headlines. The controversy was occasioned when Chief Executive Officer Tim Armstrong fired a staff member during a conference call attended by over 1,000 other employees.

This incident understandably raises many questions about the proper way to end an employment relationship without creating unnecessary legal and reputational risks. While terminations are inevitably a part of doing business, there are steps employers should take to reduce the legal and reputational risks, including:

- Be sensitive to appearances. Conduct the exit interview in a private location at either the start or end of the workday. This will help alleviate the employee's potential embarrassment when retrieving personal belongings and exiting the office.
- Cover your bases. Arrange for at least one other member of management or human resources to attend the meeting as a witness. An HR member should be prepared to explain outstanding issues regarding final paychecks, severance payments, health insurance, etc.
- Stick to the facts. Clearly explain and document the reason(s) for the termination. Further, make sure that the reason(s) cited are not suppositional as you may be required to prove them at a later date. This is the best way to avoid (or defend) a potential lawsuit, particularly when the employee is being terminated due to misconduct or poor performance.
- Be respectful. Be mindful that the employee is a person who deserves proper consideration of his/her feelings. If the employee becomes emotional or confrontational, try to defuse the situation if possible.
- Think beyond the termination. Determine if the employee has any continuing obligations such as a covenant to not compete or a confidentiality agreement, and make sure that this is discussed constructively during the termination. Be sure to provide a copy of the agreement to the employee during the exit interview.
- Have an exit strategy in place. Once the meeting ends, direct the employee to collect his or her personal belongings and immediately leave the premises. Depending on the circumstances, you may wish to walk the employee back to his or her office and supervise the process. Unless clearly warranted, you should not treat the departing employee as though he or she is a criminal.
- Protect your property. Prepare a list of all company property that should be returned upon termination, including keys, credit cards, software, laptop computer, cell phone, etc. Make sure to arrange for these items to be returned, including any that the employee may have at home.

- Consider obtaining a release. If you have concerns about a possible lawsuit, you should consider whether to offer “new consideration” to support a release of all claims that complies with EEOC and state law guidelines.
- Get proper advice. In today’s world, any termination may result in claims and expensive litigation. Get the advice of an employment lawyer to make sure that you do it right without unnecessary exposure to litigation and damages.

If you have any questions about employee terminations or would like to discuss the legal issues involved, please contact me, Gary Young, or the Scarinci Hollenbeck attorney with whom you work.