

## **YOU'RE FIRED! TERMINATION IN TODAY'S WORKPLACE**

"You're fired!" It's a phrase that has received attention due to the popularity of 'The Apprentice.' In the real world of business, however, it is a phrase that is not often used. The fact is most supervisors are uncomfortable with termination. Rather than talking about the real reason for termination, a supervisor is more likely to tell an employee who is being terminated for inappropriate conduct or poor performance that "your job has been eliminated" or "you are being let go due to cost-cutting measures."

### **You're Fired ... Not Strategic**

Although employment-at-will (adopted in every state but Montana) states that an employment relationship may be terminated *by an employer or employee at any time for any reason or none at all with or without notice*, it is a legal doctrine that has been eroded by legislation, court decisions, union rules and public policy. Depending on a state's case laws, an organization may not terminate:

- In **violation of public policy** which prohibits termination for a reason that would violate a worker's basic social rights, duties or responsibilities.
- When there is an **implied employment contract**, even though there is no express, written document regarding the employment relationship. An implied contract can occur when an employer makes verbal or written statements regarding job security or procedures that will be followed when adverse employment actions are taken. Inadvertent comments from supervisors and wording in documents like employee handbooks and offer letters can undermine the at-will relationship.
- In conflict with the **covenant of good faith and fair dealing** which applies to every employment relationship and has been interpreted to mean either that termination decisions are subject to a 'just cause' standard or prohibits terminations made in bad faith or motivated by intent to do harm.
- For refusing to carry out an illegal activity, exercising a legal right, performing a legal duty, whistle blowing, etc., and for certain common law limitations.

### **Be Strategic ... Have a Process in Place**

Termination, even if warranted, can be costly and legally risky for employers, and hurt morale and productivity. It can create economic, social, emotional and physical stress for employees. Supervisors are more effective if they are trained to use a strategic termination process that protects the organization's reputation, property, operations, and critical information, does not create liability, and is fair, consistent and respectful.

### Strategic Termination - Action Steps for the Organization

- Hold supervisors accountable for coaching and discipline. Employees need to know what they need to improve and be given the opportunity to correct inappropriate behavior or poor performance, unless there is a serious violation. Even on 'The Apprentice' contestants were given feedback.

- Do not terminate in haste. Place the employee on administrative leave and investigate to verify the facts. Determine if there are any extenuating circumstances. An employee who unexpectedly fails to show up for work may be dealing with a family crisis.
- Train supervisors in proper documentation. They must cite specific facts and dates and note what actions were taken, not speculate on causes of employee behavior. The only reliable method of proof for termination is effective, factual documentation.
- Review all documentation, including policies and employee files, and past practices to ensure termination is supported and not restricted.
- Use a Pre-Termination Checklist to confirm that all appropriate options were considered and necessary actions taken. This can help ensure a fair and consistent process.
- Be clear on required forms and required approvals for termination.

### Strategic Termination - Action Steps for Supervisors

#### 1. Prepare

- Set a time and location for the termination meeting. A private location and early in the week and in the day are recommended.
- Take all appropriate security measures; notify all departments who have a 'need to know.'
- Prepare a script of what will be said to the employee including information about the final paycheck, benefits, severance, etc. A script keeps the supervisor focused during the meeting.
- Anticipate the employee's reaction and be prepared to deal with it.

#### 2. Conduct

- Meet in person.
- Have a witness present.
- Deliver the message.
  - No small talk – to the point, clear and brief. "Your employment is being terminated."
  - State why, what and when – be honest and firm.
  - Stress that the decision is final.
- Manage the employee's reaction.
  - Follow the script - do not defend, argue or justify. Do not say you "had no part in the decision."
  - Listen and use good eye contact.
  - Be sincerely understanding but firm – no promises.
- Discuss final paycheck, benefits, collecting personal items, etc. Have the employee return after hours for personal items.
- Collect company property – keys, pass card, credit cards, etc.

#### 3. After the termination

- Maintain confidentiality. Announce to remaining employees only that the terminated employee is "no longer with the organization."
- Complete and submit all required forms and documentation.
- Evaluate the process for continuous improvement.

Any termination can quickly evolve into a lawsuit, which can be extremely costly in time, money and resources. Organizations and supervisors must handle every termination in such a way as to limit liability:

- Do not fire in haste or anger.
- Be honest with employees about their conduct and performance.
- Do not let employee issues linger; address them early and immediately. Use the introductory employment period strategically.
- Document using facts and specifics, not speculation.
- Follow termination policies and procedures, whether written or unwritten, fairly and consistently. Make exceptions only if it's good business and document the business rationale.
- Protect confidentiality.
- Involve Human Resources and legal.

### **Conclusion**

An effective, strategic termination process respects the dignity and rights of all employees. A poorly handled termination can cause anxiety among remaining employees and loss of respect for supervisors and management. It can stimulate turnover, and affect productivity, sales, customer service, quality and – ultimately - profitability. Termination is a process that is most effective when applied strategically.

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