

The decision to terminate an employee is never an easy task; however, discharging an employee abruptly without having a reasonable and objective process in place can be risky for your business and can have legal ramifications. Although employment relationships in many states are presumed to be “at-will,” it is imperative that companies carefully consider all details surrounding a termination to avoid potential employment-related litigation. The list below is meant to provide guidance on planning for a successful termination and is not intended to be legal advice; employers should consult with HR prior to all termination actions being taken:

1. Why is the employee being terminated?

- Did the employee violate a policy?
- Is the termination due to unsatisfactory performance?

2. Do you have the documentation in place to justify your actions?

- Is there a policy in place that addresses the infraction or behavior?
- Is the employee aware of the policies and procedures being violated? Did they sign an acknowledgment for those policies or employee handbook?
- If performance related, was the employee given warning about their poor performance and provided with an opportunity to improve?
- Are there any written contracts in place? If so, carefully review before making a termination decision.

3. Is your decision fair?

- Consider alternatives to discharge. Could the employee be better suited in another position or department?
- If performance related, consider the employee’s history with the company. Is this the first occurrence of performance issues?
- Was the employee aware that termination would be the outcome of not meeting goals or violating a policy?
- Could this be construed as discrimination or retaliation against a protected class?
- Has the company handled similar circumstances in the same manner?
- Does the crime warrant the punishment?

4. Have you engaged with Human Resources?

- HR should always be consulted prior to termination action being taken to assess the level of risk which may avoid potential employment-related litigation or actions that could be considered discrimination or retaliation.
- HR can help ensure the necessary documents are in place. See tip #7 for examples.

5. Determine what compensation is owed to the employee and when it must be paid. Examples include:

- Final wages (including pay for last day worked), vacation, commissions, expense reimbursements

- State laws apply as to when wages must be paid. Many states require final pay to be provided at time of termination. See the [HR Knowledge final pay guide](#) to ensure you are compliant with final pay requirements in your state.
6. Determine what company property the employee will need to return upon termination. Examples include: Keys; ID badges; company equipment, such as cell phones, laptop, and IT system access.
 7. Do you have all the necessary paperwork to provide the separating employee? Examples include:
 - Unemployment insurance documents
 - COBRA information
 - Severance and Release agreement
 - Employee Assistance Program information
 - Outplacement services
 - 401k distribution information
 - Life Insurance Portability Application
 8. Logistics for termination meeting
 - The meeting should be held in a private place, if possible, behind closed doors and away from the employee's peers.
 - Have two people present during the meeting. Typically, this is the employee's manager and an HR representative.
 - Should security be available in case the situation becomes hostile?
 - Have a member of your HR team available if they are not in the meeting to answer any questions the employee may have such as benefits continuation or unemployment benefits.
 - Will someone help the employee clean out their work area? Will someone escort the employee out of the building?
 9. Preparing for the discussion
 - Termination is usually unexpected by the employee, and there is no way to inform an employee that they are being terminated without the risk of inflicting some emotional pain.
 - Be as direct as possible. The employee should be told immediately they are being terminated. The ultimate reason should not be delayed.
 - The notice should be brief and candid. Avoid messages that could be inconsistent with the decision.
 - Although apologies are not necessary, be mindful that the event may be traumatic.
 - Treat the employee with dignity and respect.
 10. Communication plan
 - Consider the message to employees. Prepare a brief explanation conveying that the employee is no longer with the company.

- Be available to employees for questions or concerns. Keep any communication objective.
- Determine what duties will need to be distributed among other staff to continue to meet the expectations of your organization or demands of your clients. You want to avoid as much as possible any disruption to other employees because of the termination.