

Avoid Termination Blunders: How to Fire an Employee Legally & Fairly

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Welcome!

Before we get started...

- Use the chat box on the left to ask questions
- Audio for today's webinar will come through your computer speakers. Please be sure your speakers are turned on and you have the volume turned up
- If you are signed on more than once, please locate the duplicate log-in and close it. This will create a better audio experience
- All attendees will receive a link to the presentation and slides in a follow up email

What You'll Learn

- Restrictions with at-will employment
- Federal laws that must be considered
- Steps to take before the termination
- Practical guidelines for avoiding legal pitfalls
- Tips to conduct a proper termination meeting
- Post-termination considerations

A Quick Poll

What is your biggest fear in firing an employee?

- Employee knowledge
- Legal repercussions
- No time to train new employees
- Don't know how to start the conversation
- Other
- Not sure

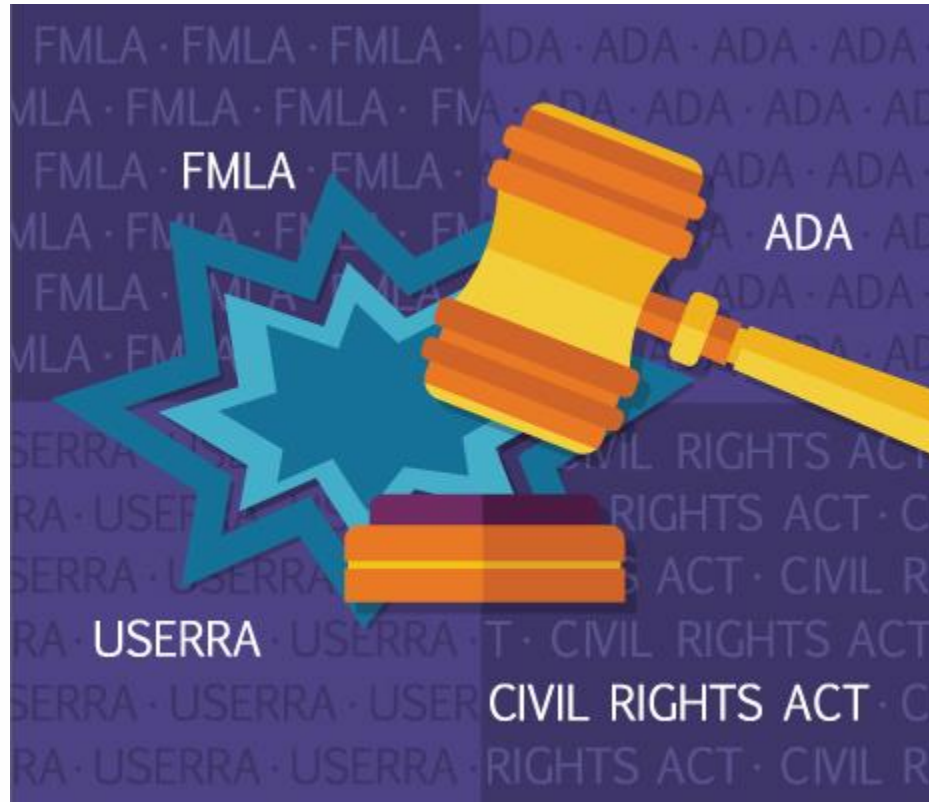
At-Will Employment



At-Will Employment

- Employment relationships generally fall into two categories:
 - Contractual – termination must be handled per terms of contract
 - “at-will” – employment may be terminated by employee or employer at any time and for any reason, except an illegal one

Federal Laws



Federal Laws – Having One or more Employees

- **Uniformed Services Employment and Reemployment Rights Act (USERRA):** Prohibits discrimination against employees based on membership in the uniformed services, application for membership or performance of military service.
- **National Labor Relations Act (NLRA):** Protects union and non-union employees from adverse employment decisions based on “protected” activity.

Federal Laws – Having One or more Employees

- **Occupational Safety and Health Act (OSH Act):** Makes it illegal to fire someone in retaliation for reporting safety/health violations or participating in an investigation.
- **Fair Labor Standards Act (FLSA):** Prohibits retaliation against employees who complain of FLSA violations or participate in investigations.
- **Whistleblower Laws:** Protects employees from retaliation for reporting certain hazards on the job or accusing the employer of unlawful activity.

Federal Laws – Having 15 or more Employees

- **Title VII of the Civil Rights Act of 1964 (Title VII):** Prohibits discrimination/harassment based on race, color, religion, genetic information, and national origin.
- **Americans with Disabilities Act (ADA):** Prohibits discrimination against qualified individuals with disabilities.
- **Pregnancy Discrimination Act (PDA):** Prohibits discrimination against employees based on pregnancy, childbirth or related medical conditions.

Federal Laws – Having 20 or more Employees

- **Age Discrimination in Employment Act (ADEA):**
Prohibits age discrimination against individuals 40 years of age or older.

Federal Laws – Having 50 or more Employees

- **Family and Medical Leave Act (FMLA):** Requires covered employers to provide up to 12 or 26 weeks of job-protected leave to eligible employees for certain kinds of absences, and prohibits retaliation against employees for exercising their rights.

Remember ...

State and local laws often provide more protection to employees than federal law. Even if some of these federal laws do not apply to your business, there may be additional local laws that do.

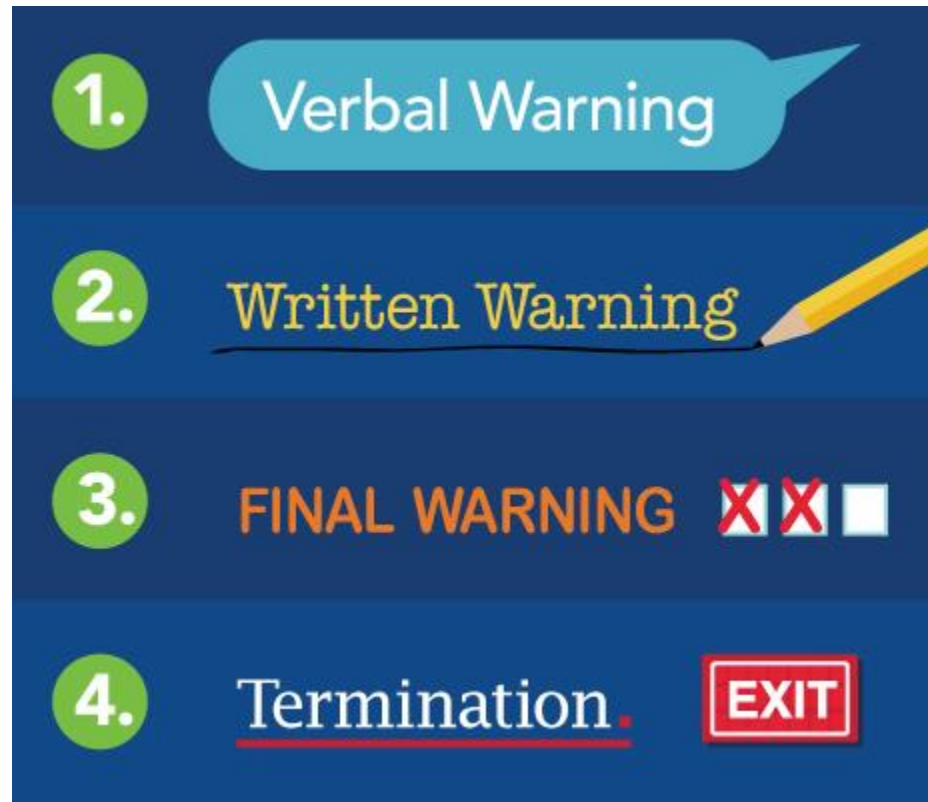
Legal Reasons for Terminating an Employee



Examples of Legitimate Reasons for Termination

- Poor performance
- Policy violation
- Failure to meet eligibility requirements
- Failure to meet job qualifications
- Layoff or elimination of position

Progressive Discipline & Documentation



Discipline & Documentation

- A discipline process:
 - lays the groundwork for fair and legal firings
 - puts the employee on notice of the problem and potential consequences
- Documentation:
 - Keeps record of the problem and actions taken, especially if termination is the last resort
 - Must be complete and thorough

Progressive Discipline Process

Most employers follow progressive discipline. For example, an employee may get:

- A verbal warning for first offense
- A written warning if the problem continues
- A final written warning
- Termination as a last step

How to Effectively Document Discipline

For complete and effective documentation, be sure to cover all the following elements:

- **The facts:** This includes details like the date, time and location of the problem.
- **The specific rule or standard violated:** Identify whether the employee has violated a rule or standard and specify what it is.
- **Objectives for improvement:** Indicate what you expect the employee to do to correct the problem.

How to Effectively Document Discipline Cont'd

- **Suggestions for meeting objectives:** What you agree to do to help the employee meet the objectives.
- **Disciplinary action being taken:** The specific action you're taking because of the employee's nonperformance or rule violation.
- **Consequences:** The action you will take later if the employee fails to meet the stated objective.
- **Signatures and dates:** You and the employee should both provide acknowledgment.

Thorough Documentation

- Cutting corners with documentation is the biggest mistake managers make
- Your company may have to explain a termination decision long after it occurs
- For example, that could mean having all performance reviews, notes from counseling sessions and written warnings leading to termination

A Quick Poll

Where do need the most help in the progressive discipline process?

- Having better conversations about issues
- Fair and consistent documentation
- Having witnesses available
- Not Sure

How to Prepare for a Termination and Avoid Legal Pitfalls



How to Prepare

- Carefully plan for the legalities and emotional pressures surrounding terminations:
 - Check that the firing is approved by management and conforms to written company policy
 - Make sure your documentation is in order before you meet with the employee
 - Create a termination notice in advance, that includes the last day of employment and the start/end day of any benefits

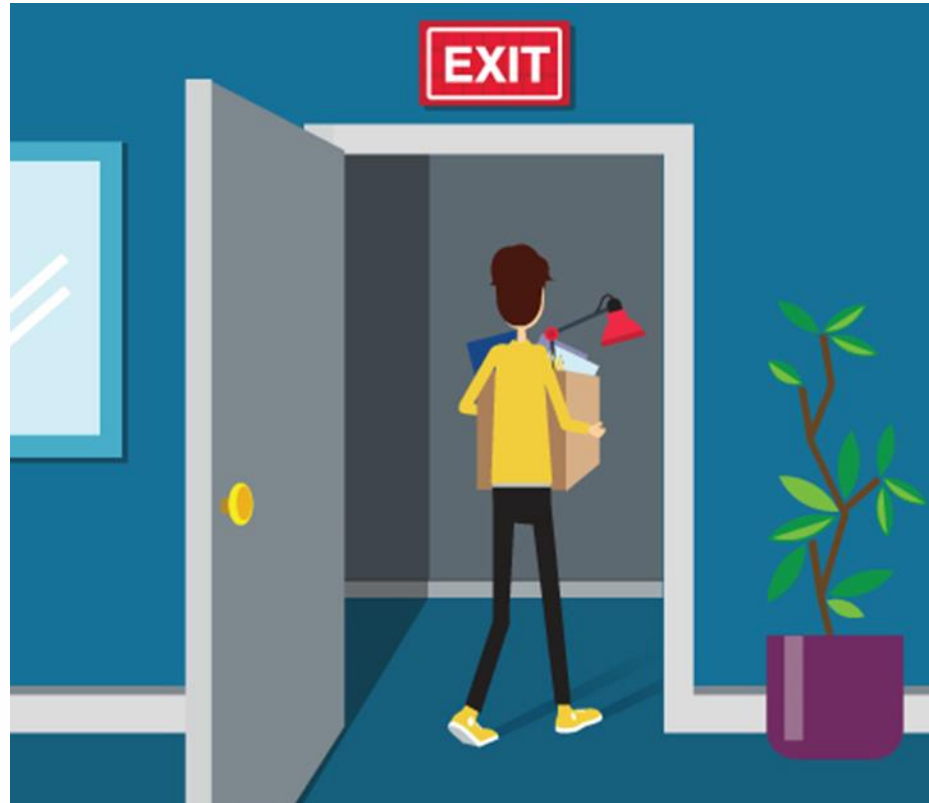
How to Prepare Cont'd

- Carefully plan for the legalities and emotional pressures surrounding terminations:
 - Decide who will handle the termination meeting and consider day of week and time of day – beginning or end of the day is best
 - Plan what to say to avoid saying something you may later regret and be prepared to answer employee questions

More Considerations for Preparing

- Consider a separation agreement or release in which the departing employee agrees to release legal claims in return for “consideration”
- Keep all discussions confidential, even if you’re frustrated
- Take appropriate precautions if you fear the employee may become violent

Tips for Conducting a Proper Termination Meeting



5 Important Guidelines for Conducting a Proper Termination Meeting

Here are some important guidelines for conducting a proper, pain-free termination meeting:

- 1. Choose a private setting:** Hold the termination meeting in the decision-maker's office or another neutral setting. Don't do it in the employee's office, cubicle or workspace.
- 2. Be clear and straightforward:** Always tell the truth about the reasons for firing, no matter how uncomfortable it makes you.

5 Important Guidelines for Conducting a Proper Termination Meeting Cont'd

- 3. Remove emotion:** Never argue with an employee to justify a termination decision. Be courteous, confident and firm.
- 4. Keep the meeting as brief as possible:** Don't allow the employee to engage in discussions of performance issues. Your decision isn't negotiable.
- 5. Have the employee sign a copy of the termination notice and other paperwork:** If the employee refuses to sign, have a witness do so.

A Few Final Tips ...

- Always treat the employee with respect
- Have documentation with you in case you need it
- Tell the employee how long he or she has to gather personal belongings and leave the premises
- Always bring a witness
- Consider offering to help the employee find another job, if appropriate

The Termination Meeting & Personnel Records

Regarding the employee's personnel records:

- Be prepared for employees to ask for copies of all your documentation concerning the termination decision as well as other records
- State laws often dictate whether employees have a legal right to their personnel records, the specific kinds of records they may access, whether requests must be in writing, whether employees may photocopy records and if there is an associated cost

The Termination Meeting & Mandatory Notices

Federal, state and local laws may require you to provide certain notices upon termination. For example:

- COBRA notices regarding continuing health coverage
- Certificates of “creditable coverage” to establish dates of group health coverage under HIPAA
- Notices required for mass layoffs under the WARN act
- State law notices explaining reasons for termination, unemployment compensation insurance and/or availability of health benefits

The Termination Meeting & Final Pay

- Federal law requires employers to pay terminated employees on their next regular payday
- State laws often impose more stringent requirements (e.g., final payment due upon termination)
- State laws also may dictate whether accrued vacation or sick pay must be paid upon termination

Considerations After the Termination



Communication About the Termination

When it comes to communication about terminated employees:

- Make sure someone is assigned to inform other employees and key customers or clients (if necessary) about the employee's separation
- Keep conversation about an employee's termination at a minimum

References for Terminated Employee

Regarding references for the terminated employee:

- Federal and state laws dictate what can and can't be revealed to a person's prospective employer
- Additionally, most companies have strict policies about providing employment references
- The best way to avoid legal complications is to centralize all references so only designated individuals may respond to requests

Personnel Records of Terminated Employee

Post-termination record retention guidelines:

- **1 year:** All termination-related paperwork, including discipline documentation and final termination notice
- **2 years:** Pay-related records, such as timesheets, schedules and pay rates
- **3 years:** Actual payroll records
- **5 years:** All information related to any workplace injury or illness, including a summary of details

HR Solutions



Progressive Discipline

- Web-based solution
- Easy-to-use and implement
- Affordable for small businesses
- Comes with FREE Employee Records App
- Provide manager permissions
- Link other discipline actions together

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For more info visit www.hrdirectapps.com

Questions



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