

What are some best practices for conducting terminations?

Answer from Marisa, SPHR:



While all terminations carry some inherent risk, there are some best practices that can reduce risk significantly:

Documentation

Good, ongoing documentation is your best defense to any challenge, whether from the employee in the termination meeting, the state unemployment insurance department, the labor department, or opposing counsel in court. Be sure to document behavior and performance issues when they happen, conversations you have, disciplinary actions you take, and warnings to the employee about the consequences if they fail to improve. While there is no exact amount of documentation that will eliminate risk, more is generally better. We recommend that you have enough documentation to show a pattern, as well as your good faith effort to help the employee improve.

Not relying on at-will employment status

Employers (particularly when short on documentation) often rely on the concept of at-will employment, which means that employees can be terminated at any time, with or without notice, and with or without cause. However, there are many exceptions to employment at-will, such as when the termination is unlawful (related to the employee's disability, race, sex, national origin, religion, age, or other protected characteristic, or when it is retaliatory because they exercised some right). If you don't tell an employee why they are being terminated, they will likely come to their own conclusions, and those conclusions may lead them to call an attorney. Employers should also consider how similar performance or behavior issues have been dealt with in the past, since the different treatment of employees can lead to discrimination claims, regardless of at-will employment status.

Timeliness

Terminations should come as quickly as possible following the performance or behavioral issue that was the "final straw." Taking prompt action reduces the likelihood that the decision will appear arbitrary to a third party and limit the opportunity for the employee to do something that would make the termination appear retaliatory. For example, if you decide to terminate an employee for fudging their time card one too many times, but wait three weeks because it's the busy season, in that three weeks the employee might request FMLA leave, make a harassment complaint about a manager, or disclose that they have a disability. Your motive for termination would then appear suspect, even if that is not your intention.

Marisa has experience working in a wide variety of HR areas, including payroll, staffing, and training. Having supported HR functions in various industries, Marisa is able to apply her knowledge to each client's particular situation. Marisa earned her B.S. in Business Administration and Communications from the University of Oregon. She loves watching sports, volunteering and spending time with her two dogs.