



Tips on Navigating the Employee Termination Process for Small Biz Owners

For most entrepreneurs, terminating an employee is one of the least enjoyable aspects of business ownership. Employment termination decisions typically arise on an individual, case-by-case basis. Here are a few suggestions for ending the employment relationship in an efficient manner (and in a way that should reduce your risk of liability).

1. **Follow a Process.** Employee terminations are often emotional, and to the greatest extent possible, you want to avoid making emotional decisions and statements. Approach the situation in a businesslike fashion. Develop a checklist to guide you through the process. Not only will this set the stage for a more efficient and professional transition, but it will also reduce your liability risk for possible claims of wrongful termination.
2. **Get Your Ducks in a Row.** Before terminating an employee, be sure to follow your own employee policies. Most employees are “at will” meaning they can be terminated at any time for any reason or no reason (with a few notable exceptions under federal and state law for things such as discrimination), but if you have written employment agreements with key employees, then you need to follow the terms of those written agreements.
3. **Document Everything.** From a compliance and risk management point of view, an employment relationship should be carefully documented from start to finish. In the termination setting, you are much better off if your employee records reflect a pattern of behavior that supports your decision to sever the employment relationship.
4. **Have an Exit Interview.** Once you have made the decision to terminate an employee, meet with your human resources manager (or whoever handles HR-related matters at your company) to prepare for the imminent announcement and transition. The two of you should then meet with the employee (having a witness at the meeting is important to minimize risk of controversy over what was or was not said during the exit interview).
5. **Make it Quick.** Once you have made the decision, it is best to move quickly. Only in rare situations where you absolutely need an employee to spend time transitioning current projects—and you trust the employee to act professionally--should there be any meaningful gap between the time an employee first learns of his termination and his permanent departure from company property.
6. **Secure Company Property.** Coordinate employee terminations with your IT department (or your outside IT consultant) to make sure that all company property and proprietary information (including client lists, pricing information, business plans, etc.) is secure and that all relevant issues concerning company computers, smart phones, Internet, etc., are properly and timely addressed as part of the transition.
7. **Consider a Severance and Release Combo.** Virginia employers are not legally required to offer severance, but in many situations, it will make sense to consider offering a terminated employee a severance package in exchange for signing a written release of claims against the employer. Reducing liability risk to the company while providing some economic cushion for the departing employee’s transition arguably makes good business sense.
8. **Consider the Difference Between a Resignation and a Termination.** Under certain circumstances, an employee may be sufficiently clairvoyant to see that the relationship is not working out as planned and conclude on his or her own—without such prodding as to be deemed a constructive termination—that it would be in his or her best interests to resign and seek employment elsewhere. Employment transitions can be negotiated and structured in creative ways that provide benefits to both sides.
9. **Don’t Forget COBRA and other HR Compliance Issues.** Don’t forget to address applicable notification and other transition requirements under applicable law when an employment relationship comes to an end.
10. **Be Firm, But Professional.** By acting professionally throughout the termination process and exhibiting empathy when appropriate, you will not only reduce risk of EEOC complaints and litigation, but you will send a positive message throughout your company and your local business community.

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