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AVOIDING LONG GOODBYES: SEVEN STEPS FOR CONDUCTING SUCCESSFUL TERMINATION MEETINGS

By: *H. Mark Adams*

Terminating an employee is never easy (unless you really dislike him), and the very fact it's such an uncomfortable situation may lead you to slip up and say something you'll later regret. Following these seven tried and tested steps for conducting termination meetings will help reduce your risk of being sued, increase your chances of winning if you are, lower your anxiety level in the process, and avoid long goodbyes.

Step 1: Figure Out What You're Going to Say Ahead of Time.

A question I'm often asked by employers is, "Do I have to give my employee a reason for firing him?" The answer is, "No," but the question you should be asking is, "Should I give a reason?" the answer to which is an unequivocal, "Yes! And it better be truthful." By that we mean the whole truth. Consider the alternative:

You terminate an employee without giving a reason or, worse, you give an inaccurate or incomplete reason. Maybe you "sugarcoat" the reason because you want to "let him down easy." It's still not the whole truth, and anything short of the whole truth is still inaccurate. So now you're in deep. A lawsuit is filed, the day of judgment arrives, and there you sit on the witness stand. It's the moment of truth, and winning or losing lies in the balance. The eyes of the jurors are fixed on you, the judge peers down from the bench, and your former employee's lawyer demands to know, "Why did you terminate Mr. Jones?" If you give a reason other than what you told Mr. Jones when you fired him, you're going to get nailed with another question for which there is no good answer: "If that's so, why did you tell Mr. Jones something different?" No matter what you say, it's going to look to the jury like you trumped up your reasons only after you got sued. Remember Mark Twain's admonition: "*Sometimes half the truth is the biggest lie of all.*" That's what it'll look like to the judge and jury. Of course, you see the point. The time to think about what you're going to say on the witness stand is not when your former employee's lawyer poses the question, but before you terminate the employee.

So Step 1 is to determine beforehand what you need to say and how you'll say it and to develop a contingency plan for any awkward situations (see Step 3) you anticipate may arise. Rehearse what you're going to say if you need to, but try not to memorize your lines so you won't sound like

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you're reading from a script.

Step 2: Pick the Best Time and Place. When selecting the time and place for your termination meeting, remember the advice of the last Crusader in *Indiana Jones and the Last Crusade*: "Choose wisely." As best you can, choose a time and place that will ease the employee's discomfort and reduce the likelihood of exposing her to embarrassment or humiliation with her coworkers. Think about it this way: If you were the one being fired, where and how would you want it done? Show the same type of consideration for your employee. Be discrete. Do it out of the sight lines and earshot of her coworkers. The end of the day when other employees aren't likely to be around or the beginning of the day before the employee goes to her work station or joins her colleagues on the production line are the best times. And if the employee needs to take her pictures off the wall or clean out her desk or locker, offer to let her come back after hours when she won't have to face her former coworkers and answer their nosy questions.

Step 3: Get a Witness. Always have at least one other management representative, such as the employee's supervisor or department head, present as a witness during the termination meeting. Your assistant might also be a good choice. Whoever it is, make sure he takes good notes. And whatever you do, don't ask one of the employee's coworkers to be **your** witness. If you do, you'll just add to the employee's embarrassment. But you need to be prepared if the employee tells you he wants a coworker to be present as **his** witness or representative.

A recent NLRB ruling gives all employees, even in a nonunion workplace, the right to have a coworker present as a witness or representative in any meeting with management which the employee reasonably believes may result in disciplinary action. You do not have to inform the employee of this right, but you cannot deny the employee's request if he asserts his right. If he does, you have two options: Grant the request, or decline to continue the meeting. The latter may be your best choice if you fear the employee's chosen representative may be disruptive or the meeting may turn unruly. In that case, politely decline the employee's request and hand him his separation notice or termination memo with your carefully worded and truthful statement setting forth the reasons for his discharge (which you should already have prepared).

If you don't have to deal with this contingency, move on to Step 4 and continue your interview.

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Step 4: Get to the Point. You don't have to smack the employee in the face, but don't beat around the bush, either. In as nonthreatening a way as you can, tell the employee your decision and why you made it. Explain your decision clearly and concisely. Give the basic facts, but avoid overdoing it with the details. The more detailed you try to be, the greater the chance you'll go overboard and say something trivial that could come back to haunt you and the more likely you are to put the employee on the defensive and provoke an argument, which may cause you to get sidetracked and leave out something really important. There's also the chance you may not relate the details quite right, which may prompt your employee to chime in with his own version of the details and provoke another argument. So, while you need to be thorough and to the point, keep it basic.

Also, stick with what you know and avoid making assumptions or drawing conclusions and subjective inferences from what you know. If you're terminating an employee because of a positive drug screen, don't accuse him of being an illegal drug user or an addict. There may be a number of reasons why the employee had a positive screen. So go with what the employee can't refute—that you received a confirmed positive drug screen from the testing laboratory—and leave it at that. Here's another example: If you're firing an employee because of a sexual harassment complaint, don't tell him its because he's a pervert. Don't even say what Kathleen Turner said to William Hurt in the movie *Body Heat*, "You're kind of stupid aren't you? I like that in a man." Tell him you've got pictures or a tape recording or copies of his inappropriate e-mails or three eyewitnesses who corroborated the complaint. See the difference? It's like what Mark Twain said about the difference between the right words and the almost right words: It's "*like the difference between a lightning bolt and a lightning bug.*" And just as bad as drawing conclusions or making assumptions is sugarcoating your reasons (see Step 1). You can't worry about hurting your employee's feelings. You've got to play it straight. So here's a simple tip for getting you through this difficult situation: **be straightforward and firm but courteous and sensitive.**

Step 5: Don't Argue. Step 5 is really more of a rule than a step. Whatever you do, don't argue with the employee or allow her to put you on the defensive or make you feel you have to justify your decision. If the employee wants to talk or tell her side of the story, by all means, give her the opportunity to vent her spleen. And as much as it tries your patience, listen courteously and attentively. When she's done, tell her firmly but courteously that you're not there to argue the decision. You understand she may disagree, but the decision was carefully made after due consideration of all the pertinent facts and circumstances, **and it's final.**

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Step 6: Show Your Employee the Money. If it's ready, give your employee his final paycheck, which should include any accrued, unused vacation pay. If it's not ready, tell him when and how he'll receive his final paycheck (e.g., by mail, direct deposit, etc.). Explain any deductions (and make sure they're both legitimate and lawful) as well as any extra benefits the employee will receive, such as COBRA and severance pay, if applicable. If you're offering the employee a separation agreement, particularly one that includes a waiver of claims, take this opportunity to explain the terms of your offer and any applicable deadlines. All this should also be explained in the employee's separation notice or termination memo, for which you should obtain the employee's signed acknowledgment of receipt.

Step 7: Document What Happened. In *Genesis* it says, "God rested on the seventh day," but in the seventh step, you don't get to. After the termination meeting, prepare a summary of what went on with as much detail as possible. The notes your witness took in the meeting will be helpful. That's one reason why you need a good note taker to witness the termination. And keep the notes, unless they say something stupid or inaccurate—in that case, you may need to counsel your witness on how to take better notes. When you complete your summary, you and your witness and any other management representatives who attended should read the interview summary and attest to its accuracy. Now you can rest, secure in the knowledge that you've done your job and done it well.

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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