

Letting Go

Terminating an employee is never easy. Don't make the task any harder than it has to be.

By Jerry Jensen

Because payroll costs account for the bulk of expenditures in most service organizations, cuts in staffing are often the only way to reduce costs and ensure survival.

Even organizations that don't face financial hardship should regularly review staffing levels and employee performance to make sure that resources are spent on delivering the best possible service to clients. If you are a responsible manager, you may find that the time has come when you must terminate a marginal employee who has contributed more problems than productivity over a period of months or even years.

For managers charged with the unpleasant task of cutting staff, proper policies and procedures are indispensable. The following suggestions are intended to help you act effectively and judiciously when those situations occur.

Follow Established Policies

Before sound decisions about terminations can be made, it is absolutely essential to develop written policies detailing the circumstances under which employees may be terminated. Employees must know what those policies are so that they understand the consequences of their own actions. When consistently interpreted, written policies also give managers the confidence that their decisions are fair, reasonable and legal.

Appropriate policies protect employees from arbitrary practices; they also protect the organization from low morale and from legal sanctions arising out of perceived or genuine discrimination.

It is important to remember that nonprofit organizations are not exempt from costly litigation just because they have lofty ideals or worthy missions. Today, nearly all groups of employees enjoy some protection under law or regulation – and women, minorities, the disabled and those over age 40 have special protections against discriminatory action. The federal Equal

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Opportunity Employment Commission and various state human rights agencies may press discrimination charges for dismissed employees, and the National Labor Relations Board could get involved if union activity is the basis of the discrimination charge.

In many jurisdictions courts have come to view job rights as virtually sacrosanct. Losing a legal case – and having to lay out attorneys' fees, back wages to time of dismissal, plus interest and punitive damages – is a very high price to pay for a poorly conceived, ad hoc decision. But it is not just the threat of legal action that should motivate the preparation of careful, well-documented termination policies. Involuntary termination, after all, is the most drastic disciplinary action that an agency can take, and it should never be taken lightly.

What Policies Should Cover

Justifications for termination should be formally defined in policy statements. The six basic reasons are:

- Resignation
- Mutual agreement
- Reduction in force
- Unsatisfactory performance
- Misconduct on the job
- Retirement

It is important that the reason for any termination be identified and documented. Leaving the record vague and subject to hazy recollection is unfair to the employee and risky for the organization. For example, agencies sometimes give unsatisfactory employees the option of resigning instead of firing them. That could lead to unintended consequences if the terminated employee seeks unemployment benefits and is declared ineligible because records show a voluntary departure.

Provisions for severance pay and termination notice must also be documented. Neither may be called for in cases of gross misconduct, on-the-job refusal to do work that is reasonably expected, wrongful use or taking of property, or a felony conviction. In other cases of involuntary termination, however, it is normal to give at least two weeks' notice or two weeks' pay. A more generous termination pay-and-notice schedule is appropriate for long-

time employees.

Sample Termination Policies

The sample provisions outlined here may be used as a point of departure for writing or updating your organization's policies. Keep in mind that they are only suggestions; your own policies should be tailored to fit the specific needs of your organization, and they should also be consistent with any state or local laws and regulations.

The end of an employment relationship with the agency will fall within one of the following categories, and the indicated policies will be applied to each.

1. Resignation - voluntary termination freely made by an employee for any reason that he or she chooses. A professional or administrative employee is expected to give a minimum of one month's notice. A support staff person should give two weeks' notice.

2. Mutual Agreement - both the employee and management decide to end the employment relationship for their mutual benefit.

Sometimes the decision to sever a relationship is arrived at together and both parties desire that the separation be amicable. Under such circumstances, the record can honestly reflect that there has been a mutual agreement that the individual's skills are not matched to job requirements.

In this situation, management gives no termination notice; instead, both parties agree upon a departure date that allows a reasonable period for the employee to seek other work. Mutual agreement should be recorded as the reason for termination only in these circumstances.

3. Reduction in Force - resulting from job elimination due to reorganization or financial requirement as determined by management. Any employee so affected will be given one month's notice plus one month's pay, with reasonable time off during the notice period for job interviews.

Individuals who are terminated because of force reduction (layoffs) should be eligible for re-employment (recall) if their same jobs open up again within a six-month period following termination. If another job becomes available in the agency during that same time period, and the terminated employee is qualified for it, he or she should be invited to apply and should be given

consideration with other candidates. Force reduction terminees remain eligible for reemployment for an indefinite period, but they need not be given special notification after six months from the date of their termination.

4. *Unsatisfactory Performance* - failure of an employee to meet performance standards; complete tasks in a timely, competent way; or maintain an adequate attendance record. Prior to termination for unsatisfactory performance, the immediate supervisor must make a reasonable effort to resolve the problem with the employee. He or she must be given written notification that continued employment is in jeopardy and be told what must be done to improve the situation. With this notice, the person will be placed on two-month probationary status. If performance has improved satisfactorily by the end of this period, he or she may receive advance termination notice. Supervisors may extend this two-month probationary period by one month if circumstances warrant. Uncooperative behavior or negative attitudes that affect the work or morale of others may result in a shortening of this two-month probationary period. Individuals who are terminated for unsatisfactory performance may receive, at the discretion of management, two weeks' pay at termination in lieu of notice.

5. *Misconduct* - gross misbehavior on the job, refusal to do work reasonably expected, wrongful use of or taking of agency property, or conviction of a felony. Termination for misconduct requires no prior notice or severance pay.

6. *Retirement* - at whatever age an employee begins to draw income benefits from the retirement plan provided by the agency.

Whatever the circumstances of termination, the value of all unused vacation time that has already been accrued will be paid to the individual. This payment is made at the time of termination in lieu of extending the termination date and running out accumulated vacation time in absentia.

Termination policies should, of course, be included in the personnel manual that is distributed to all employees. (Make sure that employees acknowledge in writing that they have received a copy.) The policies should also be explained as part of a new-employee orientation procedure. A fired employee should never be able to truthfully say, "No one ever told me about the circumstances under which I might lose my job." If the matter is ever litigated and an employee can substantiate that claim, it could be devastating to an employer's case.

The board of directors should make sure that management has prepared termination policies. It is not the board's responsibility to implement policy, and under no circumstances should the board be making individual termination decisions. That is management's job. The board may, however, play an active role in arbitrating disputes that management is unable to resolve satisfactorily. In cases where a grievance involves termination, the board may become involved if the grievance policy so stipulates.

Be Sure There is Just Cause

The legal requirement for "just cause" is another way of saying that you should have a very good reason for letting someone go – you should be able to verify it. That makes obvious sense, but too often the reason given for firing someone is "personality conflict," "bad chemistry" or "things just didn't work out." If a planned termination for a non-probationary employee can only be explained in such vague terms and without specifics to back them up, you are not yet ready to act. Test yourself by listing in your mind the reasons for the termination. Then ask whether an outsider with a legitimate need to know (such as your agency lawyer, a government investigator, an arbiter or a judge) would find your arguments persuasive. If not, you need to reconsider the matter or plan more carefully.

In other words, you should be ready to demonstrate "just cause" for your decision. Time spent carefully preparing for a termination is time saved if it can prevent a grievance, a complaint filed with a government agency, or, worse yet, a costly lawsuit. The hours and dollars consumed by such cases would be better spent on the real work of your agency.

Other members of your management or supervisory team should agree that your decision is reasonably grounded. If they don't, you will find yourself out on a limb. Co-workers of the terminated employee should also feel that the decision is justified. The morale of staff can plummet if they perceive that a co-worker has been treated unfairly, and conclude that unfair decisions might be made about their own futures.

To determine whether your reasons for a proposed termination have been adequately developed, ask yourself the following questions:

1. Does any documentation exist that mitigates against the termination?

Sometimes positive performance reviews or letters and memos of commendation contradict the conclusion that someone should be fired. If so, proceed with caution. You must initiate a record showing why the situation has changed for the worse – unless, of course, something drastic has already occurred, such as gross misconduct.

Be sure, too, that the written records of other employees who are not being fired are substantially better than that of the person who is. If other employees have comparably bad records of performance, attendance, attitude or productivity and they are not being terminated, you could have a hard time explaining why this individual was singled out.

2. Who, if anyone, will be surprised by this termination?

If you have followed a clear, straightforward policy for handling unsatisfactory performance, the fired employee should not be shocked by your action. He or she might be surprised that warnings have been acted upon, but in no case should someone be able to say that warnings weren't given. And don't depend on hints or spoken words. Get the warning notices on paper and make sure they are fully understood.

Nor should other employees be surprised by the decision. Peers usually know who is carrying his or her share of the load even before the boss does.

3. Was there adequate investigation of alleged misconduct before action was taken?

Never fire someone on the spot. No matter what the offense, it would be wrong to fire an employee in the heat of anger. Chances are that you will do it poorly. Instead, send the person home immediately. Then, in the presence of others or in writing, place him or her on a temporary leave.

Your investigation while the accused person is on leave should be focused on confirming facts. Say, for example, that being drunk on the job is the alleged offense. You must be sure that others observed what you did regarding the person's behavior. (Perhaps the person was not taking prescribed medication and was experiencing side effects similar to inebriation.) If the offense is on-the-job physical violence, find out what provoked it. Circumstances may lead to disciplinary action other than termination, and you need time to investigate those circumstances. You may even need time to consult with the

police or with a lawyer if the case involves such matters as illicit drug traffic or larceny. Many organizations write use of investigatory leave into their personnel policies to ensure that misconduct dismissals are handled competently.

4. Is the person's salary record consistent with that of an unsatisfactory employee?

Do not trap yourself into the inexplicable (but all-too-common) situation of having recently given the potential terminée a merit salary increase. If you have an automatic salary progression based on seniority, it may happen that a termination follows closely after a salary increase. That can be explained because pay is not linked to performance. If you administer salaries on a merit basis, however, the record of salary increases for the terminated employee should not be comparable to that of peers. You must freeze, skip or slow down salary increases as a logical first step in dealing with a marginal employee.

5. Have other employees been treated differently under similar circumstances?

Consistency of treatment is important in all employee relations matters, but particularly so in cases of termination. In planning a termination, be sure that there is no similar situation in which another person was not or will not be terminated. If, for example, poor attendance is the problem, be sure that it is not something you routinely tolerate from other employees. Perhaps someone is being fired because of a poor attendance and you do not consider the reasons for their absences to be legitimate. Perhaps someone else has an equally poor attendance record, but you sympathize with that person because you happen to face similar difficulties. (For example, you are a single parent with child-care problems, and so is he.) An appearance of bias can undermine your case for firing the problem employee.

Test your decision by discussing it with a trusted member of your management team, someone who can view the matter objectively and point out possible inconsistencies you may have overlooked.

Another common mistake is to create inconsistent documentation practices. Sometimes a record is so full that it appears contrived when compared to that which exists for other situations. It looks like an intentional "paper trail." The best defense against such an allegation is to be able to demonstrate that the nature of the documentation is not unique and that standard procedures have

been followed in this as well as other terminations.

Terminating a Longtime Employee

The need to terminate a veteran staffer for poor performance or misconduct can be especially painful. Usually that person has made some significant contributions in the past, but performance has slipped, perhaps because of declining health or family problems. It may be that the employee has not grown with the job, or that changing times require more sophisticated credentials.

Nearly all mature organizations carry such individuals, and often the situation deteriorates into a crisis for everyone involved. Although there are no hard-and-fast rules, the following guidelines should help:

Act on the problem as soon as it is recognized. This problem rarely solves itself with the passage of time. In fact, it usually gets worse; it undermines other workers' morale and the charade is degrading to the employee. Act sooner, not later, for the sake of both the individual and the organization. Once you conclude that a turnaround is impossible and that there is no other job in which the person could be successful, you should develop a termination plan.

Tell the person that there is a serious problem. Acting promptly does not mean firing the person abruptly and without compassion. It does mean setting a tentative date for the termination interview and taking interim steps to prepare the person for that date. The "no surprises" admonition mentioned earlier is particularly important in this kind of termination. Begin the negative feedback at least six months prior to the date you have chosen to tell him or her about the impending termination.

Provide longer termination notice or more termination pay. Notwithstanding the prevailing laws against age discrimination, older employees are apt to have a harder time finding a new job. Their re-employment problems may be exacerbated by the fact that their salaries may have risen through the years to the point that they are overpaid relative to the credentials they can offer other employers. Unfortunately, people are seldom hired at salaries lower than what they got on a previous job.

Therefore, give extra consideration for more bridge time to new employment. This can include pay or notice of up to six months, depending on how long the

person has been with the organization and what it can afford. Longer than six months is not advisable because it discourages a sense of urgency in looking for new work.

Whether you give pay or notice depends on the person's attitude and whether or not useful work is available for the person during the notice period. Keeping the person on payroll for a specified period beyond their departure date, or until he or she finds another job, facilitates better budgeting for the individual and the organization.

Make a concerted effort to help the veteran employee find new work. Unless the longtime staffer is clearly unemployable, he or she can probably contribute productively somewhere else, and you can honestly recommend him or her for another job. You can help by providing leads that will open doors to possible new jobs. This action is not unusual, but too often it is halfhearted and lacks effective follow-through. If you offer it, be genuine in your effort and keep at it until the person is placed. This, of course, assumes that the person is receptive to assistance and is willing to use the leads provided.

If your initial offer of assistance is rebuffed, you may want to try again. Time can alleviate anger or hurt, and if offered again, your help may be quite welcome.

General Reduction Force

Another troublesome set of termination decisions involves not poor performance, but good employees who must be asked to leave because of budgetary constraints or other organizational problems. Under these circumstances, management must grapple with tricky issues of fairness. It must also figure out how to maintain effectiveness with a reduced staff.

In dealing with questions of fairness, it is tempting to lay-off according to seniority. "Last hired, first fired" may sound good, but that policy may not leave the agency with the best possible workforce. In some cases, more recently hired employees perform better than veterans, and letting them go only makes continuing operations more difficult. Moreover, especially in relatively small agencies, critical jobs may be held by newer people, and these jobs might not be executed satisfactorily by anyone else in the organization.

In practice, relative performance and contribution to the organization are the best criteria for deciding who should be asked to leave in a general force reduction. Although seniority may come into play, it should not be the prime consideration. Such a policy, of course, assumes that your organization conducts regular performance reviews and acknowledges merit in its employment practices and procedures.

Distinctions are hard to make among satisfactory workers. If you have a documented performance evaluation system that provides comparative performance records over time, however, those distinctions can be made. If you do not have such a system, it is very important to establish a set of criteria for the specific purpose of force reduction. Such a list might include:

1. Nature of the job relative to overall success and survival of the organization. Key jobs must, of course, remain filled after a force reduction.

2. Relative performance of individual. This can be substantiated by documented evidence such as attendance records, disciplinary memos, job-well-done memos, or measured increase or decrease in output or workload.

3. Long-range outlook for continued or renewed funding of specified agency activities. If certain functions appear to be un-fundable for the indefinite future, then individuals performing that work cannot be retained, regardless of their performance.

4. Seniority of employment with the agency. For mature agencies, this is a reasonable criterion to include among others. If many older workers are on the rolls, and they have spent the major portion of their working lives with an organization, that should be acknowledged in termination policies and practice. On the other hand, a young agency with workers mostly under 40 need give little consideration to this criterion.

Whatever criteria you use, it is important to communicate them to all employees during periods of force reduction. People may disagree with the criteria you select, but they have a right to know what they are.

In planning a force reduction, it is important to take action as soon as possible, and within as short a time as possible. Prolonged uncertainty has an especially debilitating effect on employees. When possible, layoff notices should be given to all those affected, and then others should be told that no further actions are planned. This helps to avoid the suspense of wondering who is next. It may also reduce the number of people who must be dropped,

since prompt action conserves funds. Delaying the inevitable only prolongs anxiety and adds to the cost.

The Termination Interview

Once the groundwork has been laid, you are ready to begin planning the termination interview itself. Most managers and supervisor agree that this kind of conversation is one of their most difficult tasks. Even hard-nosed managers with reputations for having ice water in their veins have become paralyzed by the prospect of this unpleasant duty. They put it off as long as possible and then botch the task. Some are even tempted to shirk their responsibilities by calling in a consultant or by delegating the task to someone else in the organization.

Why is this? A supervisor in this position may feel like an executioner, cutting off the employee's life-sustaining income. Firing people in a nonprofit can be especially difficult, since it appears to run counter to the humanistic values represented by the group's very existence.

Examine your own feelings in this regard. Acknowledging these feelings of trepidation is a first step toward overcoming them and moving forward.

The best way to deal with any ambivalence is to project the consequences one year hence if you do not dismiss the problem employee. More than likely, the consequences of delay will be worse for both the employee and the organization. Indeed, the termination often proves to be beneficial to the person supposedly harmed by it. An unmotivated person, mismatched to his or her job, may well be better off starting anew, even if it rarely seems that way at the time.

Once you have accepted your dread of the termination interview, here are a few suggestions to help make it go as smoothly as possible:

- Schedule the conversation late in the workday so that the person can go home immediately and not have to face co-workers with feelings of embarrassment or tears of anger.
- Friday afternoon is usually the best time for the talk, so that the employee can gain some perspective on the situation over the weekend. An exception to this timing might be considered if he or she is away from family or friends with whom to discuss naturally negative feelings. Don't set someone up for a weekend binge.

- Terminate in the first 10 minutes of the conversation. A long build-up to soften the blow only obfuscates the message. If you ramble on for too long, the person may not even know that he or she has been fired.
- Be direct: "Joe, I've decided that your employment with us will end on March 15." Not, "Joe, you don't seem to be happy here. Maybe it would be a good idea for you to look for work somewhere else."
- Give a brief reason for the termination that is consistent with prior conversations. Remember, no surprises.
- Don't offer advice. It will fall on deaf ears.
- Listen respectfully to what he or she has to say, but do not become defensive or argumentative.
- Make no reference to age, sex, or race, even if baited to do so. These factors have no place in a decision to terminate, and even casual mention can be interpreted as evidence of discrimination.
- Anticipate questions such as "Why me?" Again, respond briefly and do not become defensive.
- Describe termination pay or notice arrangements in accord with your written policies, and offer to discuss the status of employee benefits. If the time is not right for that, plan this discussion for a follow-up session.
- Once the person understands the message, do not let the conversation go on for more than half an hour. Offer to meet again if necessary, but do not offer hope that the decision will change.
- Indicate that you will follow up with a brief confirmation memo that will include the termination date. Do so the next day without fail.

The Follow-Up Conversation

A second conversation is appropriate on the next working day, certainly within two days. Its purpose is to allow the person to raise questions not answered at the time of termination and to deal with the practical question of how others in the organization are to learn of the imminent departure. If mutually agreed upon, a brief memo from you to the work group may be appropriate.

The follow-up conversation will help you assess how well the person is handling the news psychologically. The initial reaction during the termination interview itself may not last long, and you should make an early effort to determine whether there will be special problems during the notice period.

The second talk is particularly important if the person reacted abnormally well to the bad news. Do not prematurely congratulate yourself on a job well done if the individual first appears relieved that the termination has finally come about after a long period of stress and uncertainty.

The individual who takes the news too calmly at first is apt to become distraught later, when bottled-up feelings erupt. You need to check on this more than once after the termination interview itself. Danger signals are prolonged withdrawal or silence, excessive crying or threats to harm oneself or others.

In these rare cases, professional psychological counsel should be sought at once. Above all, do not ignore or avoid the person between the time of the termination interview and actual departure. That will only prevent you from making a firsthand assessment of how the person is handling transition out of your organization and will likely intensify his or her feelings of rejection.

If You've Been Fired

This article is intended primarily for those who must make and carry out termination decisions. There are, however, resources available for the person on the receiving end of such action.

Much has been said and written about employment discrimination based on race, sex, age or disability. Laws and regulations are explicit that these factors cannot be the basis for asking someone to leave a job. If you are covered by such legislation, you have recourse through state or federal agencies and courts of law. Even so, these protections do not guarantee that you will have a job. You are only protected against arbitrary employer decisions. If your employer does not have enough funds, the law does not require your continued employment. And if it can be proved that your work record is poor, the law does not require your continued employment.

On the other hand, if you are convinced that discrimination played a part in your being fired, the first thing to do is to let your employer know that. This will usually lead to a review of your situation, because most employers are well aware of the legal consequences if discrimination can be proved.

If this doesn't work to your satisfaction, the next step is to call both federal and state agencies charged with enforcing legislation on discrimination. You will get advice there on what formal steps to take to get help in your case.

Unfortunately, you can't expect prompt action. Resolution can take months or even years. Therefore, it is often advisable to keep communication open directly with your employer. One way to do this is to review the policies and principles described in this article as good employee relations practice. Wherever you think your employer has failed to follow these guidelines, tell him or her, preferably in writing.

If you are both articulate and brave, a conversation or two might suffice to bring about reconsideration of your case. If your job can't be saved, you may at least be able to negotiate more favorable terms of separation, such as longer notice or more severance pay.

If you are unable to save your job, and if you can accept your employer's decision to terminate you, your thoughts and energies should be directed toward finding new employment. Don't hesitate to ask your employer to help you if relations are at all amicable. You may get good job leads and even a good reference from your former employer if you approach this matter positively yourself. The quickest recovery from job-loss depression is almost always achieved by focusing on the future.

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