**Dealing with an Employee Termination**

By David L. Lawrence

Employee management constitutes one of the great challenges in managing a financial practice. Even when things are going well; it can be a challenge to keep and motivate employees. Keeping high levels of productivity in an office can also be a challenge. So, when there is a possibility of an employee termination, for whatever reasons, it only adds to this challenge. The question is, how do you handle an employee transition, regardless of the circumstances?

To answer this question, first is to determine what sort of termination is looming. There are essentially two types: **Voluntary** and **Involuntary**. Under the voluntary category, this could be a mutual decision by you and the employee to part company or it could mean that the employee has chosen to leave on their own. Either way, there is a procedure that should be followed.

Under the involuntary category, there is also a procedure, similar to the voluntary procedure, but with some needed extra steps. Let’s take a look at the voluntary procedure first.

You should consider developing a employment termination checklist. This would entail a number of items to be considered such as company property to be returned (keys, laptops, handbooks, badges, parking passes, etc.). Also, there should be a list of computer-related issues to address, such as removing information from any home computer related to the company, locking access (remote or otherwise) to the office computers/servers, review and change of any/all passwords that apply, cancellation of employees email account(s) and automatic notification to clients that the employee is no longer employed by the firm.

Other issues include a determination of any wages or other compensation that may be due and payable (vacation accrued, etc.), continuation of health insurance coverage (Cobra or otherwise) and other employee benefits that may apply. Removal of the employee’s information from the company website, removal of the employee’s voicemail message and removal of the employee as a contact in press releases, etc. is also necessary and should be on the checklist.

If the employee had a company issued credit card or signature authority for any banking or credit accounts, this should be addressed as well. Security issues include the possibility of changing locks on doors and/or changing entry codes on keypad locks. Relocating petty cash or access to the company’s checkbook may also be necessary. Don’t forget to change passwords for online banking if applicable. The completed checklist should be placed in the employee’s file.

And, while this seems like a lot to consider, it is only part of the steps needed to fully protect the firm. Some States have statutes that must be considered in employee termination cases. ‘Right to Work’ laws and ‘At-Will’ employment laws can have an impact on the viability and/or potential financial consequences of terminating an employee. For those States that have ‘At-Will’ employment laws, the definition of an employment relationship is one in which either party can break the relationship with no liability, provided there was no express contract for a definite term governing the employment relationship and that the employer does not belong to a collective bargaining group (i.e., has not recognized a union). Under this legal doctrine:

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|  | “…any hiring is presumed to be "at will"; that is, the employer is free to discharge individuals "for good cause, or bad cause, or no cause at all," and the employee is equally free to quit, strike, or otherwise cease work.” (*Source:* [***^***](http://en.wikipedia.org/wiki/At-will_employment#cite_ref-0)*Mark A. Rothstein, Andria S. Knapp & Lance Liebman, Cases and Materials on Employment Law (New York: Foundation Press, 1987), 738.*)  Most States observe at-will employment. Consequently, there may be no legal consequences to terminating an employee for cause or no cause. However, there still may be financial consequences, particularly in the area of unemployment compensation and impact on the firm’s Federal and State unemployment tax rate. For this reason, it is critical for the firm to document the reasons for the termination in the event that it must defend its position in light of an unemployment claim. |

The aforementioned checklist is part of this process of defending the firm. An additional step that is strongly encouraged is an exit interview in which the terms of the termination are fully discussed. The exit interview should contain the following sections:

Employee Name  Termination Date

Employee ID #  Eligible for Rehire [ ] Yes [ ] No

Job Title Job Code

Reason for Termination

Voluntary Involuntary

[ ] Another Position [ ] Attendance

[ ] Personal Reasons [ ] Violation of Company Policy

[ ] Relocation [ ] Lay Off

[ ] Retirement [ ] Reorganization

[ ] Return to School [ ] Position Eliminated

[ ] Other  [ ] Other

Additionally, the exit interview form should contain sections that record the comments of the interviewer and a section for the departing employee to fill out stating their side of the story along with a place for them to sign acknowledging that they understand the reasons. The purpose is to offer the opportunity for fair access to the employment record. The employee may feel unjustly terminated and without being given the chance to state their side of the story, could walk away with a bad feeling about the company that could result in negative publicity or legal action for the firm. While it is likely with involuntary terminations that bad feelings will result, the purpose of the exit interview is to, as much as can be possible, mitigate those feelings and permit the employee to, at the very least, fully understand the circumstances surrounding the decision to terminate their employment.

In cases where the termination is due to circumstances outside of the employee’s control (such as the elimination of a position); it may be prudent to offer to help in the placement of that employee with another firm. This help may be predicated on the longevity of the employee with the firm and the applicability of that person’s skill set to another firm’s needs. But, at the very least, it constitutes a best-efforts attempt to help that should leave that departing employee with a better feeling about the termination.

Certainly, the financial considerations are also a way to leave a departing employee with a more favorable impression. Calculating what is fair and just in compensating the terminated employee is a key issue. In cases where the termination is for cause, the financial compensation should be limited to what is actually owed to the employee (such as accrued vacation time, unpaid compensation, etc.). With the employee who is terminated due to other reasons (such as the position being eliminated), consideration should be made for some forward compensation in addition to the accrued benefits. This forward compensation may be calculated based on longevity (more than 5 years on the job qualifies for x weeks’ severance, etc.). But, it is critical to pre-document this scale in an employment manual with all the qualifiers.

In the end, the goal of a termination is to leave the firm in a better place and to, as much as possible, leave the departing employee with a good feeling after the termination. Obviously, there are times when this may not be possible, but that is the goal. Fully documenting the reasons for termination and taking all the necessary steps can prevent future issues or security problems and protect the firm going forward.

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