

## HR Department Toolkit



## Discipline & Termination

Employment terminations, discharges, firings, dismissals - whatever you want to call them - are a responsibility most managers do not look forward to (if you do like the feeling of power that goes with making these decisions, you are probably in the wrong vocation).

No leader or manager should view dismissals as fun; however, when terminations occur they should be looked on as potential progress for both the employee and the company or store. A terminated employee may not exactly thank you, but in the long run you may have performed a service for them by forcing them to re-evaluate what they do to earn a living. The employee may do better at a different job where he will ultimately feel better about himself. And your business should be better for it because you've eliminated an issue caused by that under-performing employee.

This chapter explains the "process" of termination, more commonly known as a potential result from "progressive discipline." Here are the major points that will be included:

- What are some major infractions that justify a reprimand or immediate termination and what are some of the minor ones that deserve only redirection?
- The progressive discipline system using oral and written warnings, with forms you can reproduce and use.
- The discipline checklist: a quick test to give yourself to verify that you have done what you should have done as a manager to ensure that discipline is necessary.
- The legal considerations of discipline and terminations.
- The termination interview: how to get ready for it and how to conduct it successfully.
- How to announce a termination to other employees.
- How to handle the issue of employment references.

## ***Progressive Discipline***

Most managers do not effectively use a progressive-discipline system. They avoid handling the problem and hope it will somehow magically go away. These problems rarely solve themselves! If you let a pattern of behavior get established it is hard to change and the longer you wait the more difficult it gets to even begin to start. When an employee does not perform up to the standard set for the job, it is the responsibility and duty of the supervisor to help that person improve performance. This is the core value of any job that requires supervision. The level of employees' productivity is infinitely more valued and important than managing tasks or things. Often, managers must redirect employees and when done successfully it should be a great source of job pride and accomplishment. Sometimes altering performance direction can be through coaching, counseling or retraining.

Threats do not usually change a poor performer into a good one. Managers and their employees, both, should know the quantity and quality of work expected. When the manager senses that job standards are not being met, he should point this out to the employee and develop a program to help him improve.

Every possible effort should be made to save the problem employee. You may have to give him what you see as “special attention.” All your special efforts on this employee’s behalf should be documented. If a legal issue arises, this will be very valuable in securing your image as an employer who made every effort. If you use a probationary system and you decide to extend the time of probation to give the employee more time to develop, you need to include this decision in your documentation. Remember that employment of poor performers past a “probationary period” can be more difficult to terminate. A jury in an employee lawsuit might conclude that your acceptance of their continued employment was an acceptance of the employee’s performance. When simple redirections, retraining efforts or coaching and counseling are not effective or not appropriate for more serious performance issues, it’s wise to initiate a progressive discipline process.

Progressive discipline (PD system) is a step-by-step approach to either correcting serious performance problems or the legally safe termination of the employee. Progressive discipline incorporates a plan and record of all redirections or reprimands given to the employee over a period. (Your intent, of course, is to get the employee performing to standards, which can be the result; but not in all cases.)

An effective PD system can help protect you in the case of a wrongful-termination lawsuit because PD documentation often stands up in court (and it may prevent a lawsuit because it is often sufficient to persuade a disgruntled employee’s legal counsel that legal action would be futile).

At first glance, it may seem using a PD process will take forever to get rid of a problem employee, but that is not necessarily so. From start to finish, the time involved can be quite reasonable. Here are seven steps that should be used or considered depending on the situation: (A serious infraction such as company theft could circumvent many if not all of these steps).

1. First verbal warning.
2. Second verbal warning. (Optional)
3. Written warning.
4. Supervisory review of the employee’s prior performance evaluations.
5. Final written warning. (Optional)
6. Suspension without pay used mostly in suspected theft or gross misconduct cases).
7. Termination.

### ***First Verbal Warning***

A minor offense requires behavior redirection. A first infraction does not necessitate nor justify a dramatic warning that attempts to scare or intimidate the employee. A key principle is that the punishment should fit the crime. Remember that your goal in PD is to correct performance, not destroy the employee’s self-esteem. Always—even in termination—attack the *behavior* to be corrected, not the person. Threatening or abusive actions taken by an employer at an earlier stage for minor infractions can also be the cause of something worse – employee resentment.

Verbal warnings should be given in private. Correcting someone in front of fellow employees or customers, regardless of how tactfully, will usually lead to resentment and the employee will

concentrate on the resentment rather than your corrective words.

When giving a warning, stick to the facts. Keep your personal prejudices and feelings out of it. (In fact, never give a verbal warning immediately after the employee makes an error if you sense that your emotions will become involved.) In addition to facts, use examples and let the employee know the consequences of both positive and negative performance.

Consider “sandwiching” a negative comment about performance between a couple of positive ones. The intent is not to be phony but to show the employee that you are aware of their positive performances as well as those that are inadequate. Be certain that both the negative and positive comments are real, not fictional.

In the early stages of PD, always include some positive comments with negative ones. But don't always attach negative comments to positive ones or the employee will start wondering, “where is the *but*” any time you give them a compliment. (Example: “I think you do an excellent job in helping customers, but...”). Verbal compliments are usually not given often enough and should not have strings attached. You can “sell” your message on the negative or correction areas by sandwiching them between other positives. End this session by asking if there is any specific help they need, such as additional training or clarification of job duties and expectations.

Here are some examples of minor offenses which should be discussed as soon as they occur:

- Failure to follow general store rules and practices
- Unauthorized use of telephones for personal calls or personal social media
- Conducting personal business during working hours
- Horseplay
- Use of insulting or abusive, language toward fellow employees
- Failure to cooperate with or assist other employees or customers
- Smoking if prohibited
- Unsatisfactory attendance
- Failure to return to assigned tasks immediately after breaks
- Careless, negligent, inaccurate or inefficient work
- Failure to follow instructions, whether verbal or written
- Stopping work before quitting time
- Swapping work time with other employees without notifying management

This first verbal warning and any subsequent verbal warning should be documented in the employee's performance file. This way you have a record of warnings both verbal and written and these records may be very useful for writing performance evaluations, determining performance evaluations and potentially for terminations. To facilitate this document recording process, you may want to consider the use of the Corrective Discipline Record as provided in this book.

## ***Second Verbal Warning***

The second oral warning should be more straightforward (never harsh) and should be recorded (do not trust your memory) in the employee's file. You should have a confidential file on every employee, full-time or part-time. At this stage, you are not giving the employee anything in writing, but are starting to create a paper trail in your files. This oral warning need not include the sandwich approach but, of course, should be based upon the facts. Be certain to remind the employee that this is the second time you have discussed this issue. End this meeting with the statement that your desire is to *help* them improve their performance. Tell them, "I am on your side, but *you* are going to have to correct this." Again, ask the question, "What can I do to help you?"

The word "reprimand" could be used instead of "second oral warning." With that in mind, there are several points you need to consider:

## ***Warnings***

- The key objective is to redirect unsatisfactory performance, not to play God by taking this opportunity and your authority to beat up some-body. Your responsibility as a leader or manager is to use your authority to help your employees and your store or company make progress.
- Never give a reprimand when you are angry. If you show anger, or because of it lose your composure, the employee will not listen to what you are saying. A boss who has lost his "cool" usually does not get respect. Also, when you're angry you are not an effective listener and you need to listen because the employee may have good reasons for the problem. These reasons, when properly considered, might change your decision of how to discipline the employee, if at all.
- Present the reprimand in private and as soon as possible. You'll not reinforce your message or change the behavior by waiting two weeks after the infraction. Privacy matters because you do not want to embarrass the employee or other employees.
- Start the session by stating the facts, not unsupported generalities such as "You're always late!" "Always" is too general. Better would be: "I have a concern and that is in the last week you have arrived at work late on three separate occasions. This is the second time that I have had to discuss this problem with you. If you will recall, three weeks ago I was concerned about the same issue. When you are late to work, it disrupts the store schedule and puts a strain on your fellow employees. Why is this issue still a problem and when can I expect it will end?" (Your tone of voice should be direct, but not sarcastic.) Asking the "why" will let you see if the employee is truly aware of what the problem is and if they have thought about what they're doing. The "when"

attempts to place a time table for change which also demands their decision to do so.

This method overall is factual and will probably be successful because of four reasons: First, it flatly states the problem: lateness in this case; second, it details the facts of the problem's history; third, it tells the employee how their behavior is affecting others; fourth, it places the burden of resolving it where it should be: on the employee.

- Earlier, I mentioned the importance of listening. Never assume you know everything about every situation. Good listening will help the employee see you're fair when there are extenuating circumstances for their behavior. As a good listener, you shouldn't interrupt the employee's explanations or anticipate what they are going to say. Stay away from sarcasm, which only causes resentment. Do not, however, be such a good listener that the employee's problems become yours. Ownership of the problem should solidly remain where it can be best resolved: with the employee!
- Encourage the employee to make suggestions for correcting the problem. If they are part of the solution, they are more apt to adhere to the plan for correction.
- End the reprimand on a positive note by reminding them that you are there to help and that you believe they can resolve the problem.

### ***Written Warning***

A third similar infraction requires a written notice accompanied by another conversation (never just hand the written warning to an employee; it looks like you are avoiding confrontation). The goal of a written warning is to let the employee know you are serious about the need for improvement. A sample of a warning form is included in this section. Note that the employee is required to sign the form. This only means that he knows of the warning (acknowledges it), not that he necessarily agrees with it. You need to tell him that you care about him doing well and again ask whether there is any specific help he needs to correct the problem.

### ***Performance Evaluations***

Performance evaluations are important documents in the PD paper trail (how to conduct performance evaluations is covered later in this book). You must be able to show consistency between your reasons for terminating an employee and what the evaluations say. In other words, you cannot tell them that they are great on an evaluation and then terminate them for performance issues 30 days later (unless, of course, the infraction is a major offense).

### ***Final Warning***

At this point, you have nicely and tactfully warned the individual three times. The third warning was both verbal and written. Now your management options are limited by the actions or performance issues of the employee. With the written final warning letter (a sample you can use is in this section), you are being most explicit that further similar infractions will lead to immediate termination of employment. Again, you state the facts and remind the employee of the previous warnings and obtain their signature confirming that they have had this final warning. The signature is important because it will prevent them from successfully arguing later they were not aware of the seriousness of the situation.

### ***Suspension Without Pay***

Suspension without pay is not always necessary or practical, but it can be used for a couple of different reasons. First, it will dramatically illustrate to the employee you are serious about resolving the issues. Second, it will give you time to investigate all of the particulars of the employee's performance without the employee's presence possibly becoming an issue. At this

stage, the employee is sent home for a few days, or even a shift, to think things over. This action may be the catalyst to finally wake the employee up to the fact that if his actions or attitudes do not change immediately, employment termination is possible. The termination can happen as soon as he returns from suspension, depending upon how the manager feels he has changed during his time to think things over or what the results are from any investigation concluded. In this section is a sample suspension-without-pay form you can reproduce and use. Suspension without pay is also used to allow management time to determine if more serious allegations of employee conduct are valid.

## **Termination Interview**

If after two verbal warnings, one initial written warning and one final written warning (and perhaps a period of suspension without pay), it is obvious to you (and probably the employee) that the employee cannot remain in your employ, it's time for a termination interview. To get ready for the termination interview:

1. Assemble two copies of all your documentation of the employee's performance issues, including all recorded verbal warnings, written warnings, suspension notices, performance evaluations and any other pertinent paperwork such as letters of complaint from customers or fellow employees. Don't forget this: Terminations must be the result of a process, not a single impulsive event. Your documentation should bear witness to this concept.
2. Read through the discipline checklist in this chapter as an objective test that you have done everything possible to inform the employee of the issues, have offered help to correct the problems and that you have tried to give positive encouragement. All of this will show that you did not impulsively dismiss someone because of personal or prejudicial reasons.
3. You need to have the right attitude. Do not go into this final stage thinking that you have failed. You have done everything possible and you should believe that the employee has set *himself* up for this action and you have been only the monitor of their performance or lack of performance progress. You are just the messenger of this decision. Also, look at this as a potentially positive experience for him because it forces them to re-evaluate how he earns his money. Problem employees often sense they are not performing up to the job requirements or to their own potential. Because of this, their morale is not usually the best and termination may be a new beginning as well as a relief.
4. Set the day, time and place that is best for your schedule. Always terminate at *your* convenience. If you have made the final decision, but there is a store inventory for the next two days, you may need this employee's help for that project, and you may not want this to be discussed during the inventory and distract the other employees' attention. Some states require a notice period if you employ many people and are discharging or laying off a certain minimum number of workers. Whenever possible, terminate on a Monday so it won't disrupt the hectic weekend and so the terminated employee has an entire week to do actively seek another position. Firing someone on Friday may set them up to sit and stew about it all weekend. Choose a totally private place for the termination, or where you won't be interrupted by outside company or store issues.
5. Discuss the termination with a third party—your boss or another manager—to see

whether they agree with everything you have done to reach this final stage. This other manager will always be more objective than you will be and may give you some points of view you have not considered. Probably, they will reinforce your decision and make you that much more confident in what you are going to do.

6. Be prepared to discuss severance pay. There are no federal or state laws requiring severance pay. If you have some company or store personnel policy manual, follow its guidelines. As a matter of courtesy, full-time employees should get paid in proportion to their time on the job; for example, one week's pay for each year in service. When you give them the check, have them sign a release-from-liability form like the example in this E-Book. However, as stated earlier in this paragraph, there is no legislation or employment laws that mandate that you pay any severance pay at all. It may be a legally practical step to take to ensure that the employee gives up any potential legal claims.
7. Whether you give the employee a letter of recommendation depends on the reason for the termination. If it is for a major infraction such as theft, obviously not. In other cases of termination for cause, give a letter of recommendation only if you feel one is necessary to secure the employee's cooperation. Be sure the letter's content does not conflict with the reason for termination. A complimentary letter could come back to haunt you in court. Be sure that any compliments are based in fact. Put a memo signed by the employee in the employee's personnel file, stating that a letter of recommendation not disclosing the reason for termination was given. One last thought. Handling letters of recommendation can be sticky, especially when you have many untrained, un-legally educated management personnel. Their handling of and authorizing of recommendation letters may become a problem. Because of that fact, it is usually best to adopt a non-issuance stance and not offer these letters.
8. Later, when a potential employer calls for references, you usually should give only the briefest details—especially in the case of an individual terminated for unsatisfactory work performance—when a potential employer of the person calls for references: dates of employment, last position held and whether they are eligible to be rehired. You may be tempted to share details of poor performance, but it is prudent not to do so. Comments or situations can be easily misunderstood and courts are full of cases of alleged employer slander or libel. The tone of your voice over the phone might be sufficient to warn a prospective employer about chronic performance problems.

You may want to require the employee to sign a release protecting you from any liability and allowing to you be open during reference calls. Keep good records of such releases.

If you are free and protected to discuss performance, be certain to make *only* objective statements such as, "He was disciplined twice in a year for coming to work late." If you are contacted by phone, use a callback system to verify the identity of the caller. Ask the caller for name, title, company and the nature and purpose of the call.

If you don't have a written, signed consent form from the former employee, get one. And then provide only dates of employment, job titles and time in each position, promotions, demotions, attendance records, salary and reason for termination. The reason for termination should avoid any details, just giving the formal reason.

The simplest and best way for any organization to handle reference calls is to have all of these inquiries routed to one central source to ensure that they are handled with consistency. It's

important to demonstrate that references are not responded to differently amount potentially discriminated classes.

### ***Conducting the Termination Interview***

1. Tell the employee you wish to speak with them now. Do not procrastinate to build your courage; it is only a growing discomfort for you, them and other employees who sense what is to happen. You should have already planned the place, date and time for this interview.
2. Do not have coffee, soft drinks or other refreshments in your private room. This is not a social occasion.
3. Open the discussion with a review of the various performance documentation (get to the point, do not try to make small talk). Stick to the facts and don't let your emotions enter it, regardless of how much you may personally dislike the individual. This is not a time to "get even". While reviewing each document, continue to state the issues at that time, what you or your company has done to help, that he acknowledges his understanding of the problem and that performance was not corrected. Seek agreement that none of this is a surprise, but do not debate with him. He may become increasingly defensive or very quiet as though stunned. Whatever the reaction, stay calm and stick to the facts. If the employee gets belligerent, call in a third person. This will often calm the situation. (Often, it's wise to have a female third person present if the termination is being conducted by a male supervisor on a female employee).
4. Do not try to attack the employee's self-esteem. Most terminated-employee lawsuits happen because the supervisor doing the firing was crude, harsh or attacked the person instead of the performance. Get the employee to see the situation as a mismatch between the job requirements and the person. Tell him that, in your opinion, this is not the right position for him and his talents, if it is a termination for purely competency reasons. However, if the termination is being conducted due to attitude, insubordination or consistent breaches of store or company policies, your approach should be different. In that case, tell the employee that because of their refusal to comply with the performance or attitudinal redirection required, their employment is being terminated. Be certain, however, that they know that the job, itself, is not incorrect. You do not want them to respond by saying or thinking that they could have succeeded had the job been corrected to fit them. Also, it does not hurt to make suggestions about the kind of job they should be seeking. You do this by stating a few of their assets as an employee. This soothes the self-esteem, a very important goal!
5. The conclusion of your review of the facts is to inform the employee his employment is immediately terminated. You do not want terminated employees hanging around, potentially poisoning other employees or customers. Accompany him to his workplace and let him to collect personal possessions. At the same time, be certain to collect any company property they may have such as keys, security cards, tapes or other company property.
6. When all of this is done, and if the termination has been amicable, tell the employee you will assist him, if necessary, with references and assistance if it does not compromise your legal position by misrepresenting the facts of his performance.

Here are some additional points about the termination interview:

- The example just given is for a clerk or entry-level employee. You may want to make alterations for management-level people. If the termination is amicable, you will probably want to provide severance pay and other assistance, such as hiring an outplacement company or paying employment-agency fees. This becomes negotiable when you are convinced that the employee agrees with their performance issues and will not seek some form of legal attack on you and your company. (Do not be the one to bring up the subject of potential legal action.)
- There should be an understanding of how you both will explain the termination to other employees. If the termination is amicable, it may be concluded with the employee's resignation (a sample is provided in this chapter). If so, it is best for everyone that others are told the employee chose to resign. If the termination is not amicable, it is best that the manager merely says the person is no longer employed and give no reason for discharge. Whatever the situation, it is important to inform other employees. Although you want to protect the terminated employee's self-esteem, you also want the remaining employees productive, not sitting around speculating about where someone has gone and why. Nor do you want the terminated employee to have the opportunity to take merchandise out of the store where other employees are not aware of their terminated status.
- To make things more official, you may want to use an employee discharge form like the example in this article. Again, have the employee sign it, which just says they acknowledge the termination, not that they necessarily agree with the reasons.
- If your company has a dismissal policy, be sure to follow it religiously. This is not a time to have your actions appear inconsistent and possibly be considered prejudicial. You will be judged legally on current dismissals by your past actions. Different situations will be compared if a disgruntled employee chooses to take legal action.
- All dismissals should first be reviewed with a company's senior figure of authority. This may be the company president, a personnel manager or a head of human resources. This doesn't mean that you won't make the dismissal; it just forces you to justify the action by presenting the facts to a "devil's advocate." This person will often be more objective about whether all the Ts are crossed.
- Be careful to be fair. What's demanded of one employee must be demanded of all in similar positions. Fairness also means that managers would ultimately not try to hinder, the terminated employee finding new employment.

## ***Handling Major Offenses***

### **Examples of Major Offenses**

The progressive discipline system applies to what can be called minor infractions or series of minor infractions. Many of its stages are not appropriate for major infractions. Some problems are so serious, discipline and possible termination must be hastened. Here are offenses that, when verified, call for quick action:

- Threatening, coercing, assaulting, or intimidating another person.
- Possession or use of alcohol or illegal drugs during working hours.
- Provoking or engaging in either a verbal or physical fight.
- Discriminatory behavior or harassment (sexual, racial, ethnic, religious, etc.).

- Restricting productivity or interfering with the performance of others.
- Unlawful or improper conduct off premises or during non-working hours (such as commission of a felony) that affects the employee's relationship to his job, fellow employees, supervisor, reputation, or the company's goodwill (be careful with this—seek the guidance of an attorney).
- Willful or negligent damage, destruction or misuse of property (company or another employee's).
- Chronic refusal to accept a job assignment or obey job-related instructions from management.
- Gross insubordination. Insubordination is defined as the employee's refusal to perform requested duties that are moral, legal and ethically correct. This could be seen in many examples such as insulting or threatening language toward superiors, flagrant disregard for company transaction and discount policies, or their stated refusal to perform certain tasks.
- Falsifying reports or records (e.g., employment application, absence reports, job time, sales results).
- Removing company property from premises; theft (petty, grand, or single dishonesty).
- Disclosure of confidential information to those outside of the store or company employment.
- Failure to report to work for a shift without authorized excuse. "No show" or "No show no call".
- Immoral conduct on premises.
- Making false or malicious statements about employees, company, store, products, etc.
- Chronic and continual alienation of customers, fellow employees and supervisors.

When dealing with these issues, the manager should consult with senior management because discipline at this stage could have serious repercussions if not handled properly. The manager may elect to immediately suspend the employee without pay. This action removes the employee from the workplace and gives time to investigate the facts and decide whether progressive discipline, immediate discharge or no action at all is warranted.

There are many nuances to the proper handling of several of the sample offenses listed, especially dishonesty. If you terminate the employee for a theft violation, avoid discussing the issue with other employees except for investigation purposes. When you believe dishonesty is at issue, it is best to stay with the facts and have as much documentation as possible (e.g., witnesses, computer cash receipt data, etc.). Don't accuse; just state the facts as you see them. When terminating for apparent but not admitted dishonesty, terminate under the heading of "failure to protect company assets". This does not imply an accusation but a "dereliction of duty".

Finally, when in doubt, always consult with higher management, security personnel and company legal counsel.

## ***Final Note***

An unsuccessful employee is an unhappy employee, regardless of your efforts to help. A professionally handled termination is a vitally important job of the effective manager. It can have positive or negative morale repercussions or legal side effects. Termination is not an easy skill to master. Your results will be in direct proportion to your efforts to learn, and your learning will be from study and doing. Unfortunately, most managers learn the best lessons from the doing. I hope your preparation will make terminations positive and with the least problems possible.