

10 Dos and 10 Don'ts of the Terminating Process



The Dos

1. **DO** coordinate all steps in the process with your company's Human Resources Department. They are there to help you fire underperforming employees legally and ethically, so that your decisions will stick and won't be overturned in the courts after a wrongful termination lawsuit.
2. **DO** give underperforming employees a second chance. There may not be any law that says you have to do this, but juries don't look kindly on companies that don't give employees a chance to improve after a warning.
3. **DO** use a Performance Improvement Plan (PIP) when appropriate to spell out exactly what the employee needs to do to keep his or her job and in what time frame as a final step before termination.
4. **DO** be careful with anyone in a protected class to make sure you can't be accused of firing an employee for illegal reasons.
5. **DO** start the disciplinary process with coaching and training sessions in which you adopt a helpful, not a punitive, tone or attitude.

6. **DO** review all documentation in the company's file showing good and bad comments about the employee's performance or attitude. Pay particular attention to positive or neutral performance reviews or "smoking gun" emails showing a manager's predisposition toward letting the employee go for any illegal discriminatory reason. You may have to go back to the drawing board.

7. **DO** set up a meeting with the employee at a specific time in a closed-door conference room for the termination session, with only an HR representative and possibly the employee's direct supervisor in attendance.

8. **DO** treat the employee being terminated with respect at all times. Try to ease his or her transition into a new job outside your company.

9. **DO** let the employee collect personal belongings and say goodbye to colleagues without hovering over the person – unless there is a compelling reason to suspect less than honorable behavior.

10. **DO** have a plan ready on how to distribute the terminated employee's tasks to others and how to announce the departure to the rest of the staff.

The Don'ts

1. **DON'T** show any revenge at any time during the process – any expression, in words or body language, showing that you're glad to be finally rid of the person, is misplaced at this time and may well come back to haunt you.
2. **DON'T** rashly fire a whistleblower. People who have complained about not being paid overtime correctly or about alleged safety shortcomings may irk you, but it's their right to do and you should welcome their comments as an opportunity to correct any deficiencies. Firing them can be very bad business. A retaliation lawsuit is the easiest to win, according to plaintiffs' attorneys.
3. **DON'T** badmouth departed employees to the rest of the staff after they're gone. They're sure to hear about it and even though they can't question the termination, they may file a defamation lawsuit against you. It's best not to speak ill of the departed.
4. **DON'T** ever put in an employee's performance review that his or her performance is "average" as a way to avoid confrontation with the employee. It will make it that much harder to get rid of the employee if you would ever want to.
5. **DON'T** fire anyone without the input from the Human Resources Department. They'll make sure it's all done legally.

6. **DON'T** fire anyone without offering some severance pay in return for a promise not to sue. It's probably money well spent, unless the offense for which the employee is being fired is so heinous that no one will blame you for putting him or her out on the street without a penny.

7. **DON'T** let them collect severance pay without signing a waiver promising not to sue. You don't want to be paying them with money they'll use to hire a lawyer to sue you.

8. **DON'T** insist that they sign a separation agreement including severance pay on the spot. You have to allow them time to take it home, think about it, and even consult a lawyer.

9. **DON'T** forget to have the IT department delete the terminated employee's access to the company's computer systems as of the time of the termination.

10. **DON'T** have the employee escorted out of the building in an undignified manner, as if the employee was a thief in a store caught shoplifting – unless the employee showed signs of violent or disruptive behavior.