

IN CHAPTER NINE:

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9

■ When It's Time to Part

Throughout the handbook we have been discussing the very positive aspects of employment, working with employees, developing them and assisting them to build a career. As all owners and managers know, there comes a time when we must take action to terminate employees. In this section we will focus on situations where we must terminate employees for cause. We will not deal with normal retirements, resignations, etc.

Of course, when we hire employees we should strive to select the best, most qualified persons available for the job. Use of the selection techniques mentioned earlier and pre-employment testing can reduce the amount of turnover on a job. It is important to remember the time and effort we invest in employing new people and those who are with us for years. The cost of turnover is high.

In Table 9-1 that is listed the appendix handbook, we provide a rule of thumb calculation of turnover costs and also detailed worksheets for estimating the turnover costs for below manager as well as at and above manager level. These estimates are based upon the sum of base pay plus direct turnover costs, plus indirect turnover costs. As a rule of thumb, for personnel below manager level, the potential cost of turnover can be as

high as 1-1 1/2 times the employee's total pay. For selected managers and those above the manager level, potential turnover costs can be as high as 2 1/2 times total pay.

Direct and indirect turnover costs affect the business's bottom line, as well as other workers. A key consideration is that morale is negatively impacted by turnover. Since Table 9-1 is an electronic spreadsheet, owners and managers are able to enter their own actual costs, item-by-item, to more accurately estimate their location's cost of turnover. The worksheets emphasize the high cost of turnover.

On the other hand, there is value to turnover. New employees bring new ideas and different skills. Vacancies can mean promotions for other employees. We will be examining when an employee's behavior, work or other factors warrant discipline that eventually leads to discharge.

FIGURING OUT WHEN IT'S TIME TO TERMINATE

New and long-term employees sometimes have difficulties in organizations and positions. These difficulties may be noted immediately or may occur over time. Circumstances and people change, and management must be vigilant to performance that begins to

deteriorate. Owners and managers should first take considered action to mold and correct the behavior of employees with unsatisfactory behavior and/or performance. Often employees truly may not understand what is expected of them or work assignments may be beyond their abilities.

When it is time to take action to mold and correct the behavior of workers, use a three-step approach:

- 1. COACHING.** This is a future-oriented action. The supervisor establishes a partnership to plan and get the desired performance. The employee is encouraged to contribute and participate in changing behavior. The supervisor sets the expectations, gives guidance, trains, advises and leads the employee in reaching the expectations.
- 2. COUNSELING.** Here the supervisor and employee focus on what went wrong and what is needed to improve. The supervisor must question and find out what are the problems and barriers to expected performance. The employee is given the primary responsibility for change.
- 3. DISCIPLINE.** At this stage, the supervisor describes clearly what performance or behavior cannot

continue. In Table 9-2, we summarize a number of inappropriate behaviors. The consequences of the employee not changing are described (in writing when appropriate). We have included examples of a completed discipline slip (Table 9-3) and a blank form in the Appendix for owner or manager use. The supervisor gives the employee choices within limits of the desired behavior.

When using this or a similar discipline form, it is good procedure to review the worker's prior disciplinary history with the person.

You may include a formal "action plan."

- Make sure the worker understands the rule, infraction and required action.
- Review the policy, rule or practice violated (if separate from slip).
- Steps the employee agrees to follow.
- To correct the problem.
- To meet the desired level of performance.
- Assistance/support commitments supervisor made.
- Time frame to be followed in achieving improvement goal.
- Consequences if performance, attendance or behavior is not improved within the specified time frame.
- Explain the worker's signature indicates receipt of the slip and not agreement with the action.

The purpose of discipline is to correct the behavior or performance and not to punish the person. Effective discipline begins with active listening and proper identification of the problem. Discipline cannot be effective if we do not demonstrate to the employee the benefit of changing the unwanted behavior. Discipline should always be noted, indicating relevant facts, and appropriately kept for future reference. Include both sides of the issue.

Successful discipline focuses upon improving future performance rather than punishment for past actions. Our approach should be problem-solving rather than fault-finding. Discipline is most effective when the employee understands the consequences of his or her actions and the options available to him/her. Ultimately, the employee must be given the responsibility to make a change.

An effective course of action to mold and correct employee behavior is progressive discipline. By this we mean taking more severe disciplinary action if the worker does not change behavior. However, owners and managers should guard against establishing a perceived or concrete promise or process of following a set, step-by-step disciplinary action sequence. Management should reserve its right to give what discipline it deems appropriate. Accordingly, owners and managers should consider a discipline policy which is similar to the following:

Company policies and rules violations may result in disciplinary action. Types of discipline the company may use include verbal warnings, written warnings, final written warnings, suspensions with or without pay and termination. The sequence of giving discipline is not formal.

At its sole and absolute discretion, the company may deviate from any order of progressive disciplinary actions and utilize whatever form of discipline it deems appropriate for the circumstances, up to and including immediate termination. The company's discipline policy in no way limits or alters the at-will employment relationship.

Our responsibility as managers is to assist and lead our employees to perform the best work they can. We should give reasonable opportunity for re-instruction, correction and improved performance.

When sincere effort to improve performance or behavior fails, successive discipline normally follows this course:

1. Verbal caution or warning for first offense
2. Written reprimand for second offense
3. Suspension for third offense
4. Dismissal for fourth offense

Some circumstances warrant immediate discharge without use of progressive discipline. These may include:

- Drug or alcohol use at work
- Falsifying employment information
- Fighting on work premises
- Possessing weapons at work
- Theft
- Working while intoxicated

The owner or manager determines the appropriate discipline to deal with such situations.

LEGAL ISSUES ON TERMINATION

Whether the person is a new or long-service employee, employers should follow a practice of ensuring there is just cause for termination. Check and verify that the following steps are followed in the discipline process leading to discharge:

1. Management conducted an effective investigation before disciplining.
2. Rules and penalties were applied on a fair basis.
3. The employee was warned of the consequences of the conduct.

4. The employer's rule was reasonable.
5. The investigation was impartial.
6. The penalty was reasonable for the offense.
7. There was clear evidence of guilt.
8. Determine if the person is in a protected group and determine how similarly situated employees or applicants outside the protected group have been treated in similar situations.

Employers can ensure that disciplinary action is effective by using the following fundamentals:

1. Consistent discipline
2. Impersonal discipline
3. Prompt discipline
4. Supervisory training for handling disciplinary actions
5. Written record of discipline

PROTECTING YOURSELF FROM LAWSUITS

In business today, many people are inclined to take legal action if discipline and/or termination occur(s). A wrongful discharge, discrimination or harassment charge can wind up in court. Following are concise steps to take to ensure proper handling of disciplinary action or an effective termination process. These steps will assist in avoiding wrongful discharge of employees and protect employers in the event of legal action.

1. Conduct effective performance evaluations — ensure evaluation gives an accurate picture of the employee's performance.
2. Keep written records —

document behaviors leading to dismissal.

3. Use written warnings — before dismissal, warn employees in writing. It is advisable to use phrases such as "including but not limited to" and "among other things."
4. Have group involvement in dismissal decision — more than one person should be involved in the dismissal decision to assure fairness, accuracy, concurrence and that all alternatives to discharge are explored.
5. Grounds for dismissal are clear — put grounds for dismissal in writing.
6. A final warning should make it clear that the employee's job is in jeopardy.
7. When appropriate, employers can use a "suspension pending further investigation" approach to allow more time for consideration.

Normally, it is not a requirement that a termination letter be written and tendered to the terminated employee. Employers should confirm what is necessary in accordance with legal and regulatory requirements. If a termination letter is required, written language should be brief, factual and to the point.

EMOTIONAL ISSUES ON TERMINATION

Our emotions should not be allowed to enter into disciplinary action. We must be fair and firm. And we must be objective and consistent in our handling of discipline for all employees. Failure to follow these guidelines can lead to legal mishandling of the situation as well as erode the morale of employees and their confidence in us as managers.

Still there is subjectivity that enters into discipline decisions, especially when termination is involved. This can be in the areas of:

- **COMPANY SERVICE.** Long-term company service can be a heavy factor when deciding to terminate.
- **DURATION.** Has there been a long period of time since prior infractions? Overcoming a long history of routine absences is admirable but when it does happen, it is still a rule violation and it causes business disruption.
- **INDIVIDUAL CONSIDERATION.** Special factors such as personal issues and family considerations, for example, may have a bearing on termination.
- **PRECEDENT.** Was handling of a prior situation different? Many factors may affect a discipline decision. Employees will often remind management of handling in a prior case. Employers should strive to be as consistent as possible.
- **PRIOR RECORD.** A clean record weighs heavily against severe initial discipline or discharge, particularly with a long-service employee.
- **SEVERITY.** Does the employee's action warrant discharge? Theft of a light bulb in terms of cost is difficult to put on par with termination. But it is still a clear violation of rules.
- **TIMING.** Often discharge decisions crop up during peak seasons or when special skills are needed.

In each discipline case, and especially termination situations, employers should be mindful of these considerations when deciding the final outcome.

Discharged employees, whether new or long-service, should be treated with dignity, courtesy and

SAMPLE RECORD OF VIOLATION OF CONDUCT RULES AND/OR REGULATIONS		
Johnny B. Good	Slacker	Outback Warehouse
Worker's Full Name	Title	Department
00000	December 17, 2007	0700Hours, 7-3 shift
Worker Identification Number	Infraction date	Incident time/shift
My Territory	Rule #1.1	1Day suspension no pay (Code 3)
Facility/Location	Policy Violated (Code#)	Discipline Issued (Code#)
CONCISE EXPLANATION OF INFRACTION		
<p>On December 17, 2007, during the 7-3 shift, you reported to work late by 47 minutes without permission. Your action is in violation of Rule 1.1. As a result you are hereby issued discipline of one day's suspension (8.0 hours) without pay to take place December 18, 2007.</p> <p>Further infraction of rules and/or regulations may result in more severe disciplinary action.</p>		
<i>Time Keeper, Sr.</i>	<i>17Dc07</i>	
Signature of Worker's Supervisor	Date	
<i>U. Net Head</i>	<i>17Dc07</i>	
Signature of Superior	Date	
** Jon B. Good 21Mr06		
Signature of Worker	Date	
<p>**Worker's signature acknowledges issue of discipline. Signature does not indicate agreement with facts presented or company actions taken.</p>		

professionalism. Again, there is no place for emotional outbursts or any action directed at the person. Follow these steps to ensure dignity and professionalism in termination situations:

1. Make arrangements for a dignified exit from the premises.
2. Allow employees to collect personal items.
- Arrange to do so with the least disruption to other employees.
- Do so with a member of management alert to the employee's actions.

- If the employee is to leave immediately, have a management person and a witness inventory the employee's items, sign the inventory, seal them in a container and have it shipped to the employee.
 - Avoid touching the employee during their departure or as they are escorted from the premises.
 - Arrange transportation for employees unable to make their own way from the organization. As appropriate, request the assistance of authorities and/or professionals for removal of employees.
3. Consider if an appropriate statement to co-workers or oth-

ers about the employee is required. Avoid letting rumors spread among employees.

4. Consider and take action for the potential for repercussions while the employee is still at work and after the person leaves.
5. After the termination, promptly consolidate all related materials and employee records for proper handling.
6. Be prepared to deal with people who may break down into crying, become angry, show hostility, become completely silent and unresponsive, etc. A key consideration is to not hold any employee against his

ITEMS TO INCLUDE IN A WRITTEN WARNING

- The purpose of the warning
- The problem or violation (very briefly include who, what, where, when, why, how as appropriate)
- A statement of how the employee's action or performance had a negative effect on the business
- The policy or customary practice regarding the incident
- Reference to prior warnings about the same or related problems
- Summary of the agreement reached for corrective action or notation of no agreement reached
- Statement of the action management will take
- Warning of what the consequences will be if there is no improvement

or her will. Prepare to and/or contact authorities if this is considered. For example, if a person is apprehended stealing material and refuses to remain on premises for investigation, contact the authorities for assistance and guidance. Here again, competent legal counsel may be appropriate. Prepare also for actions where males and females may be alone during discussion of discipline or termination. Prudent employers have an appropriate member of the opposite sex present during the meeting if the employee is not the same sex as the person disciplining or terminating. Seek advice and counsel from competent legal counsel as required.

EXIT INTERVIEWS

Exit interviews are an opportunity for an employee to meet with a manager or responsible person representing the business to discuss the employment experience and to identify good and bad points in the mind of the person leaving. Employees should be encouraged but not forced to have exit interviews. The person's immediate supervisor should not conduct the interview.

There is not a fixed time when an exit

interview should be conducted. It may be convenient upon departing; however, at that time the employee often is not as forthright as s/he may be two to three weeks afterward when they are in a new position and/or after tension of a discharge has passed. Even after discharge, the interview is valuable because:

- It is another opportunity to meet with the former employee to discuss such things as COBRA, collecting business items, final pay, etc.
- The opportunity to "blow off steam" may be sufficient to settle the employee and avert a legal action.
- The prior employee may disclose that there is an impending legal action.
- Undisclosed problems or issues may be admitted.

Exit interviews can be in person, on the phone or via mail-in response. No matter the medium, they can provide owners and managers with valuable information about the business. Their content should not be taken lightly.

A sample exit interview form is included in the Appendix.

During a personal interview, items to cover include:

- Are there enough people in the company who were the same job classification as you?
- How do you feel about the adequacy of the equipment we gave you to do your job?
- What do you feel about the maintenance on the equipment you used?
- How did management help you when you had personal as well as job challenges?
- How did the number of people in your same job affect your success on your job?
- How do you feel about "pay for performance" as a way to reward people?
- How do you feel about the benefits program?
- How do you feel about the fairness of pay for the work you did?
- How do you feel about the safety practiced on the job?
- How do you feel about the training given for your job?

EXAMPLES OF INAPPROPRIATE BEHAVIOR**ATTENDANCE**

- Absences, including failure to comply with procedures for notifying management of and receiving permission for time off
- Tardiness
- Quitting early, including leaving the work area or facility without a supervisor's knowledge
- Taking excessive breaks or extended leaves

ATTENTION TO WORK

- Conducting personal business on the job (doing personal work or receiving personal mail, telephone calls, or visitors while working)
- Disturbing co-workers by "visiting" during work hours, talking excessively, or whistling or singing
- Sleeping, loafing, or loitering

QUALITY/QUANTITY OF WORK

- Carelessness or negligence
- Defective work
- Inefficiency or incompetence
- Low productivity

HEALTH AND SAFETY

- Endangering one's own or others' safety through horseplay or carelessness
- Failing to use personal protective equipment
- Improperly using safety devices
- Not complying with accident and injury reporting procedures
- Not practicing good housekeeping or sanitation
- Not wearing required safety garments

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|---|--|
| • How do you feel about the way we measured your performance? | supervisor and management helped you? |
| • How do you feel about the way you were supervised? | • What do you think are five reasons employees leave the company, in priority order? |
| • How do you feel about the way you were treated? | • What are your feelings about the way we recruit at the company? |
| • How do you feel about the work hours per day and per week? | • What do you feel about the way we scheduled work? |
| • In one word, how do you feel about the company? | • What is it that made you want to be a (subject position, e.g. driver)? |
| • Prioritize five bad things about the business. | This is a detailed listing. Using or selecting from these items can be very helpful in identifying areas to concentrate on to attract, retain and motivate future employees. ■ |
| • Prioritize five good things about the business. | |
| • What are examples of how your | |

PERSONAL CONDUCT

- Discourtesy toward customers and co-workers,
- Dishonesty, including falsifying employment applications or work records, punching a co-worker's time card, and theft
- Disloyalty to the employer, including moonlighting among competitors
- Fighting with and displaying other abusive behavior toward co-workers
- Financially burdening the employer through wage attachments or garnishments
- Insubordination
- Misuse of or damage to company property
- Off-duty misconduct that is immoral or leads to arrest and conviction
- Refusing to comply with standards of dress or grooming codes
- Sexual harassment
- Substance abuse
- Worksite gambling or loan sharking

POLITICAL/ORGANIZATIONAL ACTIVITY

- Distributing written political materials on company time and property
- Engaging in violence on a picket line
- Instigating or participating in work slowdowns or unauthorized stoppages
- Posting items without permission or defacing company property
- Soliciting on company time or property, including making unauthorized speeches or wearing political buttons or other campaign material

SECURITY/PRIVACY

- Accepting or offering bribes
- Carrying unauthorized or concealed weapons
- Disclosing confidential information, such as trade secrets, or taking unauthorized photographs
- Misusing identification badges or passes
- Violating posted speed limits or parking rules on company property.

SAMPLE TERMINATION LETTER LANGUAGE

"As a result of violating company _____(Infraction)_____ regulations on _____(Date)_____, the employment of _____(Employee Name)_____ is terminated effective _____(Date)_____."

PROPER TERMINATION PROCEDURES

When the decision has been made to terminate an employee, the supervisor who will perform the termination should take the following steps.

STEP 1

Carefully review each of the following items and resolve any issues or uncertainties:

- *A jury hearing the case would come to the conclusion that the treatment of the employee was just and proper.*
- *A minimum of one warning of possible termination was given to the employee.*
- *All facts and actions are documented.*
- *All mitigating and/or special circumstances have been considered.*
- *An exit interview is planned and alternate means are set up.*
- *Any records of special actions are assembled and reviewed.*
- *Attendance records are assembled and reviewed.*
- *All facts are accurately recorded.*
- *Final pay is prepared and can be explained in detail to the employee by the terminating supervisor.*
- *Higher management has been part of the termination decision and discussion of all facts.*
- *Notice to the employee will be done in private.*
- *Restricted statements to be made to other employees are decided.*
- *Samples of unsatisfactory work, performance records and/or production records are assembled and reviewed.*
- *The employee fully understood standards for behavior and responsibilities of the job.*
- *The employee understands fully his or her shortfalls in the work or behavior.*
- *The employee understood prior warnings and the consequences of continued activity.*
- *The employee was given a full hearing of his or her side of the matter.*
- *The employee will not be surprised by the termination.*
- *The employee's evaluations are assembled and reviewed.*
- *The employee's group insurance is understood by the person terminating and s/he can explain it in detail to the employee.*

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- The employee's point of view was considered.
- The termination decision is based upon facts and not hearsay, inferences, emotion or merely suspicion.
- The termination is consistent with handling of prior similar situations.
- The termination meeting is scheduled when there will be little contact with other employees upon leaving the work-place.
- The termination will be handled objectively and professionally.
- The treatment of the employee will be justified even if s/he brings claims of unjust termination or discrimination.
- There was ample time for the employee to correct the action bringing on the discipline.
- Warning and disciplinary records are assembled and reviewed.
- Where appropriate, consideration was given to transferring the employee.

STEP 2

Gather all the documentation concerning the problem employee and ensure that all the progressive discipline steps have been taken. In the event of criminal conduct, this will not be necessary.

STEP 3

Set up a time to meet with the problem employee. The termination should take place at the end of the workday. Notify the problem employee as soon as you have set up the time and place and simply ask him or her to meet with you at the end of the day.

STEP 4

Select a witness to be in attendance. Preferably, this should be a management employee. The witness should not be someone within the same department and should never be a peer of the problem employee. Management should have a witness present who is of the same gender as the worker receiving discipline.

STEP 5

It is helpful to have the final paycheck cut and available to give to the employee at the time of termination.

STEP 6

Make a list of all the items to be collected from the terminated employee, i.e.: keys, credit cards, time card, tools, etc.

STEP 7

Terminate the employee. The actual termination should not take more than two or three minutes. Do not labor over past mistakes made by the employee. This may escalate the temper of the problem employee. Choosing the best words can be difficult. The following may be typical of the short conversation.

SAMPLE TERMINATION MEETING SCRIPT

"_____(Name)_____ you are aware we have had several discussions about your _____ (Infraction, e.g.: attendance)_____ problem. None of the actions we have taken seem to have worked. We had to make a decision. This was a difficult decision, but it is a final decision. As a result of your _____(Infraction)_____ we are terminating your service with the company effective immediately (or the date selected).

At this time I want to collect from you your _____(keys, credit cards, tools, other company items)_____. You are to leave the premises immediately and you are not to return without appropriate authorization."