



# When It's Time to Say Good-bye



## How to Discharge Workers without Legal Hassles

By Ratapol Teratanavat & Brian Kleiner

To handle termination and layoff, you need to understand how they differ. Doing so will help you prevent lawsuits, develop clear communication with employees, and improve your organization's productivity. Let's start with the legal definitions and then see how you can create effective policies.

### Layoff and Termination: What's the Difference?

The chief difference between termination and layoff is the cause of discharge. Layoff is a temporary interruption of the employment relationship at the direction of the employer because of lack of work. Termination is the unilateral severance of the employment relationship by the employer for cause.<sup>1</sup>

When dealing with termination, the first thing you need to understand is the cause. There are three grounds for termination:

**1. Substandard performance.** The main reason employees are terminated is that they don't meet performance standards. The failure may be due to incompetence, negligence, or dishonesty.

**2. Violation of rules.** Rule violations are of two types: *Minor infractions* include ignoring attendance policies, taking advantage of organizational privileges, and making personal phone calls during working hours. Discharge may be the final punishment if warnings aren't effective or less severe punishments

**Avoid legal nightmares by following these rules.**

don't solve the problem. **Major violations** include fraud, robbery, extortion, and sexual harassment, as well as alcohol and other drug use. These serious violations don't call for prior warnings since employees are simply expected not to perform such actions. Major violations may lead to fines and prison sentences as well as dismissal.

**3. Interpersonal incompetence.** Sometimes the cause of dismissal is simply that a person can't get along with coworkers, clients, or others. A common cause is immaturity, defined as the inability to accept one's strengths and shortcomings, to admit criticism, and to take responsibility for one's own actions.

### How to Develop a Termination Strategy

Employees who commit harm to the workforce, such as assault or murder, may be terminated immediately, without probation. However, for less severe violations, such as job incompetence, negligence, or misconduct, you should follow these steps:

**1. Create a policy.** To avoid legal problems, be sure to set up a policy related to termination. The policy might state, for instance, that employees will be terminated if they have three consecutive below-average performance appraisals or three missed performance objectives. Make it clear that during the hours of employment, employees must follow the organization's rules and their supervisor's instructions. If they don't follow these rules, they will assume the risk of discipline, which may lead to termination.

**2. Counsel violators.** When employees violate the policy for the first time, their direct supervisor should counsel them. The supervisor should point out the problem, give guidance, and explain how to avoid making the same mistake in the future. Document each counseling session in memo form, and keep this record in the employee's file.

**3. Write a reprimand.** If counseling doesn't correct the problem, send the employee a written reprimand,

## A common cause of dismissal is immaturity.

with a copy in the employee's file. The reprimand should describe the infraction, emphasize its importance, and specify the expected standard of performance. Also, identify the period of time to correct the deficiencies and the consequence of failure to do so.

**4. Give a final warning.** After writing up a specified number of reprimands, usually no more than three, the supervisor should inform the employee that if the infraction happens again, the employee will be terminated for cause. The final warning should contain these elements:

- a copy of the memorandum of the original counseling session

- copies of all reprimands
- specific area the employee should improve
- a specified period of time within which the infraction or unsatisfactory performance needs to be corrected
- a statement that this is the final opportunity to improve performance and that failure to do so will result in termination.

**5. Dismiss the violator.** Before taking this last step, the supervisor should verify that the employee doesn't meet the minimum performance standard and that the employee is fully aware of the reprimand and final warning. When these steps are covered and documented, the supervisor should inform the employee of the termination action, including any severance package or economic assistance provided while terminated employees are looking for a job. It's

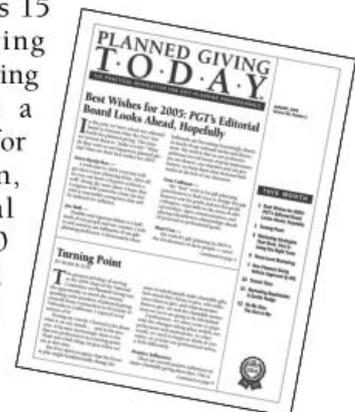
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up to the department head to decide on the amount of severance.

### How to Develop a Layoff Strategy

Layoffs usually occur when an organization is in financial trouble and its leaders hope to cut costs by downsizing. Downsizing, however, usually has more costs—both psychological and monetary—than benefits.<sup>2</sup> Therefore, you should use downsizing only as a last resort.

Before laying off employees, exhaust all possible alternatives, such as shortening work weeks, cutting pay, using relocation programs, encouraging employees to take unpaid vacations, or asking for voluntary resignations. When layoffs are the only option, follow these steps:

**1. Craft a credible vision.** Once you've decided you must downsize, integrate the decision into your organization's vision. Specify how downsizing will serve your mission and vision in the long term.

**2. Form a team** to plan the layoff strategy. Include people from all levels and functions of the organization, including human resources, finance, public relations, and legal affairs. By consulting as many groups as possible in the planning, you will demonstrate your concern for employees' interests.

**3. Identify stakeholders,** including laid-off employees, survivors, employees' families, members of the community, funders, and government agencies. Recognizing these stakeholders' needs and estimating potential risks and problems will help prevent bad publicity and a negative image for your organization.

**4. Provide training to managers.** Managers responsible for firing employees always feel guilt and stress. They need to be trained in communicating bad news with empathy. It may help them to role-play with a trusted colleague. Be sure they understand that the layoff is not their fault, nor is it the employees' or executives' fault. It's just the way it is.

**If counseling doesn't correct the problem, send the employee a written reprimand.**

**5. Announce the layoffs.** The 1988 WARN Act requires that you give employees 60 days' notice when closing a facility or laying off workers. It's best to make the announcement at the beginning of the week, in the morning. Making an announcement on Friday or toward the end of the day is inappropriate, because the laid-off employees won't have time to get answers to their questions. Likewise, it's better to deliver the message in a face-to-face meeting than by fax, e-mail, phone, memo, or newsletter. Be prepared to answer questions and explain the rationale for the layoffs clearly and completely. Once you've spoken to all employees, deliver the news to other stakeholders.

**6. Provide career counseling** and other assistance. Both internal and external counselors can be helpful in finding new jobs for laid-off workers. If possible, provide training for additional skills to help laid-off employees meet the demand in the current marketplace.

**7. Don't forget the survivors.** You need to provide training for your surviving employees, since they will take on the laid-off workers' tasks. Training will develop teamwork and improve survivors' morale, confidence, and competence to work in the new environment.

Along with training, hold frequent meetings to improve survivors' perception of your organization. In the wake of layoffs, they're likely to feel distrustful, insecure, and demoralized. As a result, they may resist the change and avoid innovation, which will decrease your organization's productivity. To boost morale and commitment, be direct and honest about your long-term plan and vision.

**8. Use experts to smooth the transition.** Dealing with outside experts, such as counseling or outplacement firms, will help you preserve employees' feeling of empowerment and trust. These consultants know how to handle the reactions of laid-off employees, gain the support of surviving employees, and keep spirits up. They can also help you bolster your organization's reputation and minimize the potential for lawsuits in the wake of layoffs. ■

### Footnotes

<sup>1</sup> The Employment Standard Act, 1997.

<sup>2</sup> See Beylerian in "Resources" below. Also see "Preserving Employee Morale During Downsizing," *Sloan Management Review*, [http://web4.searchbank.com/info-traction/647/695/25969055w3/22!xrn\\_100](http://web4.searchbank.com/info-traction/647/695/25969055w3/22!xrn_100)

### Resources

\*Beylerian, Marc & Brian Kleiner, "The Downsized Workplace," *Nonprofit World*, Vol. 20, No. 3.

\*Conroy, Charles, "Sexual Harassment: Don't Let It Destroy Your Organization," *Nonprofit World*, Vol. 10, No. 2.

\*Rosenberg, DeAnne, "Eliminating Resistance to Change: The Magic Formula," *Nonprofit World*, Vol. 10, No. 5

Wiggins, Dave, "Firing: When and How to Do It," *Journal of Environmental Health*, [http://web1.searchbank.com/infotrac/session/652/852/1962699w5/11!xrn\\_1](http://web1.searchbank.com/infotrac/session/652/852/1962699w5/11!xrn_1).

\*Starred resources are available from the Society's Resource Center. The articles from Volumes 14-23 are available free on-line at [www.snpo.org/members](http://www.snpo.org/members), and articles prior to Volume 14 are available on CD-ROM at [www.snpo.org/publications/articles.php](http://www.snpo.org/publications/articles.php).

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