

Firing Squad Protocol

Discharging an employee is never easy, but it's vital to follow the do's and don't's.

BY LYNN HOMISAK, PRT

To Our Readers: *There are no foolish questions. Chances are that if you have a question or concern in your practice, others are experiencing a similar situation. We're here to help. PM [doctor and staff] readers are encouraged to submit questions to lynn@soshms.com which will be printed and answered in this column anonymously.*

Subject: Firing Squad Protocol

Dear Lynn,

We are thinking very seriously about letting one of our long-term employees go. She is just not meeting the expected outcomes of her job. What do we need to know before giving her marching orders?

Ouch! Marching orders? Whether you give her the axe or the boot; or you plan to eighty-six, terminate, dump, axe, let-go, sack, can, discharge, or give notice to your employee, there are no pretty words for the action you are about to take. Firing an employee is never easy, almost always awkward, and often mournful or combative for the terminated and the terminator. If this must be done, you might want to run through the following checklist. These guidelines could help develop a proper plan, and may offer some preparation on what to expect from such an emotional event.

Number one rule: A major element of any dismissal is to avoid any kind of wrongful termination lawsuit. While most states remain "at-will", individual employment laws vary, so it is always recommended to check with a local attorney who specializes

in employment law prior to dismissing an employee.

Some "Dos and Don'ts" of Firing an Employee

DO:

- Be sure you have and continue to follow written company policy regarding your disciplinary process, including conducting written reviews and providing necessary counseling. Except in unique circumstances, your employee should never be surprised to learn of being fired if protocol has been followed.

in a private room and avoid interruptions. Be frank. Tell the employee the reason for being fired.

- Find an appropriate way to say only what is necessary and rehearse it.
- Listen, but DON'T become defensive or argumentative.
- Be brief—terminate in the first 7-10 minutes.
- Plan for time when the employee can gather personal things and minimize interaction with other employees.
- Issue final paycheck, collect all office-owned items (keys, manuals, uniforms, computers, phones, etc.), have paperwork ready, and discuss

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- Be sure you have adequate signed/dated documentation concerning poor work performance (including specific verbal warnings) and all conversations; secure a paper trail to back up/support your action.

- Ask yourself, is this our final option? Consider the alternative of improving employee performance first. Is poor performance the result of being placed in a position the employee could not handle? Would re-assignment make sense for this worker?

- Check to confirm that you have a "legal, non-retaliatory reason" to fire and be careful not to discriminate. (80% of our national work force is protected by some sort of discrimination.)

- Conduct the termination with a witness in the room, preferably an HR person or another manager. Meet

severance or continuation of benefits.

- Be prepared for emotional outbreaks (anger, crying, etc.) and keep your own feelings in check.
- Stay focused and repeat the main message.

DON'T:

- Chit-chat to kill time or postpone the inevitable.
- Attempt humor. It's not funny.
- Say you understand.
- Agree to "think about it" after your decision has been made. Make a clean break.
- Blame the employee—what's done is done. The employee's "lousy job" is not the focus any more.
- Offer to help. It contradicts your actions.

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- Make reference to age, gender, or race, even casually.
- Feel you need to explain or defend your actions to your other employees. Naturally, they will be curi-

Stop and think things through. 2) Then, based on valid reasons and solid documentation, Drop

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ous, but it is unprofessional to “tell-all”. Going into detail could potentially lead to a defamation lawsuit. Rather than pretend that nothing happened (and to avoid worrying if their jobs are in jeopardy), simply explain that you had given this employee repeated warnings and opportunities to improve before making this decision. Then say “out of respect for the employee’s privacy, there will be no further discussion” and leave it there.

- Hire another person to fill the terminated employee’s position if the reason for the firing is that you are eliminating the position.

If you are wondering when the best time is to break the news to the employee, consider these options:

- Make the conversation your last order of business on Friday. This allows the employee to collect personal belongings without facing co-workers, have adequate downtime (over the weekend) to gain perspective on what has happened, and put a new plan together.
- Have the conversation early in the day/early in the week, giving the employee the opportunity to get right back out there and seek new employment. Having this time during the week also eliminates weekend “downtime” which could potentially leave your employee in the dumps, fending off feelings of rejection and depression.

We’ve all been taught as children that good fire safety technique revolves around these three steps: STOP, DROP and ROLL. The same can also be said about “firing” safety:

1) First (except for an “at once” cause to terminate an employee),

(or terminate) this employee.

3) Finally, after the decision is made, Roll with it; stay focused and follow through.

No, firing an employee is never easy. However, it also never makes sense to keep an underperforming, negative, or defiant employee on board if s(he) is harmful to your practice or the morale of your team. Keep improving, keep moving forward!

Subject: Collecting Unemployment

Dear Lynn,

Admittedly, I have had to let several employees go this past year for various reasons. Each time, they filed to collect unemployment benefits and each time, they were successful. I’m pretty sick and tired of having my tax rate increased as a result of terminating poor employees. It’s not fair. Can I fight this?

Before I respond and in full disclosure: I am NOT an attorney. This advice is not about every state’s employment laws. Unemployment laws concerning, for example, payment amounts, severance restrictions, eligibility, minimum work requirements, and numbers determining your “experience rating” (your business’s UI tax rate based on your expected risk factor) vary from state to state. If you would like more information than provided here (and you should), it is always recommended that you check with your state for specifics.

Not too long ago, a doctor informed me that he fired his em-



ployee for continuously coming into work late each day. The employee turned around and filed for unemployment and subsequently arrived late to her interview with the State Unemployment agency. Not enough irony for you? Her claim was approved and she received her benefits. Imagine that.

Keep in mind that there are narrow guidelines why an employee cannot collect UI benefits. These include being fired for misconduct, leaving the job voluntarily without cause, filing a falsified claim, or if the employee is receiving workers’ compensation, social security, a private pension, or severance pay. If the employee could have done something to avoid being fired (but didn’t), it’s less likely he/she will collect benefits.

Sever your ties! You might consider offering your ex-employees a severance package to soften the blow of termination. You should also have them sign an adequate release of liability. Because this is deemed contractual, again, a lawyer should review it before presenting it to the fired employee. Author, K.A. Francis, in his article, *Can You Collect Unemployment and Receive Severance Pay*, writes, “Some states require unemployed workers to exhaust all severance pay before collecting unemployment. Other states allow unemployed workers to collect jobless benefits while receiving sev-

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erance pay but deduct the amount of severance from the benefit payment. Check with your state unemployment office to determine how severance pay affects unemployment compensation.”¹

You are already aware that one reason to prevent an employee you dismissed from collecting unemployment is because your tax rate will indeed be directly affected. Negatively. Of course, if you contest the claim and have substantial proof that the employee is ineligible to collect unemployment benefits, there is a possibility you can win the dispute. This may lower your tax rate over time. The percentage range is calculated on the prac-

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tice’s employment history and how often employees collect unemployment. Current state rates range from 1% to 8.2%. Oh, and the rate moves up more quickly than it moves down.

Each state determines employee eligibility for UI benefits, generally one year. One option to minimize a claim and potential tax rate increase is to limit employees from filing who only worked for a short period of time. You could define workers “training [or probationary] period”, typically 60-90 days, in your employee manual. This would fall short of the state’s eligibility period.

Whether or not you dispute an unemployment claim, you are always encouraged to document, document, document—facts, conversations, and any actions that support your reasons leading up to and including the final incident prompting dismissal. Also, you should count on being present at any (formal or informal) hearings with a lawyer and office manager/supervisor/witness to counter any false statements made by the ex-employee. Is it all worth your time, money, and effort? That is for you to decide.

After all is said and done, if this all sounds like a gigantic headache, it is. Here’s a thought. **Pay more attention to hiring...and you’ll do less worrying about firing!** PM



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Reference:

¹ <https://www.sapling.com/7759054/can-unemployment-receive-severance-pay>

Management’s Lifetime Achievement Award and was inducted into the PM Hall of Fame. She is also an Editorial Advisor for Podiatry Management Magazine and is recognized nationwide as a speaker, writer, and expert in staff and human resource management.