

Employee Terminations: Self-Auditing Tips from Hiring to Firing

By Nancy Byerly Jones

Would you rather walk over hot coals or have a root canal sans Novocain than terminate an employee? If so, you're in excellent company, for most of us dread even the thought of having to fire someone. For the purposes of this writing, I am addressing this issue from four perspectives:

- Minimizing the need to terminate in the first place;
- Steps to take before terminating;
- "How To Terminate" tips; and
- Preventive steps for minimizing dips in office morale after a firing.

First and foremost, this is a popular topic and this column can only barely touch upon some of the aspects of each of the subtopics listed above. Also, I am reviewing these issues with a self-auditing slant by offering readers various checklists and questions. ***Please keep in mind that the relevant laws, rules and regulations in your jurisdiction should always be reviewed before making any final decisions regarding employee termination.*** If you want a broader look at the subject matter, the resources are huge. Just run a simple Google, Bing or other internet search such as "employee terminations" and see how many hits you get showing the resources available to you on line. Of course, some Internet sites are far superior to others quality-wise, so you must pick and choose carefully which on-line resources to rely on.

Minimizing The Need To Terminate

Most of us dread the thought of having to terminate anyone, and yet we often fail to take all the steps available to us that would keep us from getting to that point. The 21 self-audit questions below are worth considering:

- How do we go about ***hiring*** employees?
- Do we have a well-thought out system and plan?
- Can our budget adequately support another employee?
- Is the right person in our office conducting the initial interviews?
- Are we well prepared for the actual interviews, or do we rush through haphazardly, bent on just finding a "good enough" warm body to fill a particular position?
- Besides the technical skills needed, do we give fair thought to the type of personality that would best fit the position in question and with the firm's overall dynamics?
- Where are we looking in our search for new employees and how are we getting the word out? Are our ads creative or just the "same old same old?"
- When interviewing, do we do a good job of explaining not only the position itself, but also about the firm's mission and practice areas?
- ***Once employees are on-board***, what is the quality of their orientation, on-going training and supervision?
- Are our employees kept well informed of firm activities via regular attorney-staff meetings, or is the grapevine of gossip allowed to do this job?
- Is each employee valued for the contributions he or she brings to the team and treated respectfully, or is there a tier system alive and well in your office which screams "some of us are better than others?"

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- Are firm rules and procedures followed by everyone, or do some employees get away with things that others don't (e.g. being late more often than not, taken longer lunches than technically allowed, making an excessive amount of personal calls during working hours, etc.)
- Do employees receive any criticism privately and constructively?
- Are they praised when it's earned and when appropriate in front of their co-workers?
- Do they receive regular and constructive feedback from their supervisors on their strengths and areas needing improvement?
- Are our employees offered continuing education opportunities from outside resources in addition to any in-house training?
- Are employees taught a good example by leadership of the need to respect and support one another? Or, do the firm's leaders teach by example that rudeness, childish-like conflicts and self-centered actions are acceptable behavior in our office?
- Is the right person with the **appropriate personality and training managing our employees**, or is management chaotic at best in our office?
- Are employees asked to give their input and suggestions regarding improving systems and procedures, client relations, work flow, production and quality?
- If you have any employees who seem to sport a chronically bad attitude, do you know how many good ex-employees resigned because these sourpusses were allowed to spread their poison day after day, year after year?
- **Would you want to work for someone like yourself?**

Steps To Take Before Terminating

You've decided it may be time to let someone go. Before proceeding, however, here are some questions (not intended in any particular order) to ask before proceeding further:

- Have you or another appropriate employee investigated all the facts of the situation?
- Does the employee have a clear vision of his/her job responsibilities? Is it in writing (e.g., current and realistic job descriptions)?
- If the employee must report to more than one supervisor, do any conflicts exist among the supervisors that may be part of the problem?
- Have the policies in your firm's policy and procedure manual (if any) been followed?
- What efforts have been made to correct the employee's bad performance or other problem?
- Have you considered if there's a more appropriate position for the employee elsewhere in the office?
- Assuming good faith efforts have been made to correct the situation, were they given a fair trial or started but never completed due to a lack of follow-through? Were they monitored regularly?
- Has the employee voiced any valid or possibly valid complaints against the firm (e.g., sexual harassment, unfair enforcement of firm policies, etc.)?
- Are you sure the firing is in no way being done for illegal retaliation reasons?
- Have all discussions with the employee regarding the issue been **properly documented?**
- Are all members of the management team in agreement on terminating the employee? Why or why not?
- Do you have someone ready and trained to assume the fired employee's work, to avoid as much costly downtime as possible between employees?

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- If you are in an at-will state, have you checked to see if there are any public policy exceptions that would apply in this situation?
- **Do you know the relevant state and federal laws about employee terminations, discrimination laws and the like** (keep in mind that some states allow fired employees to bring an assortment of claims from contract-based to tort to wrongful discharge and several in between, including seeking punitive damages and money for pain and suffering)?
- Have you reviewed the employee's personnel records carefully to ensure it is properly documented and all appropriate pre-firing steps have been taken (e.g., proper number of warnings, appropriate documentation)?

Termination How To's And Do Not's

Be prepared for the termination conference. If there is an employee contract involved, review it carefully before proceeding.

- Review your firm's policy and procedure manual carefully once again and follow it **before** the termination meeting.
- Consider if there are any special circumstances that should be addressed in regard to this employee (e.g., handicapped? other disability?)
- **Do not rush** through the meeting no matter how badly you want to get out of there.
- Be **clear and concise** about the reasons for letting someone go if you need to justify a for-cause termination. Even if it is an at will situation, share what you can and is proper about the reasons for letting the employee go.
- Avoid personal attacks.
- Be prepared for tears, anger and a possible range of other emotions and reactions, and be ready to handle them in a professional and thoughtful manner (**your compliance with all applicable laws and regulations and your fairness with a departing employee may help prevent a subsequent claim or lawsuit from being filed**).
- Have another partner or other appropriate witness present during the exit interview.
- Remind the employee that the firm's confidentiality rules apply post-employment just as they have during employment.
- Have the employee **re-sign a firm confidentiality policy** (meaning...I hope they signed one when they first came on board too).
- Clearly explain any severance pay, COBRA and other insurance details, benefit continuation forms or pension related issues, and offer such explanations in writing as well.
- Have a **checklist** ready for the departing employee of all firm property that is to be left with you or the appropriate person before he or she leaves (e.g., office keys, credit cards, any and all computer disks, etc.).
- Try to allow the employee to gather personal belongings at a time it is least embarrassing, if at all possible.
- Give him or her a fair and respectful amount of time to ask questions (including a time to talk with you at a later date when his/her emotions may be stronger and their thinking clearer).
- If appropriate, offer to write a letter of recommendation for employees who have good skills to offer another employer.
- Give departing employees a letter documenting the termination.

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- In many cases, it is better that the employee leave immediately, so plan your termination conference accordingly (e.g., on a Friday afternoon, for example).
- Immediately following the termination conference, **document your personnel records** appropriately about your discussions with the employee, his or her reactions, etc.
- Remind other employees that they should not discuss the situation outside of the firm so as not to hurt, embarrass or further agitate a former employee. It's also a good time to remind everyone about the **critical importance of confidentiality** in general regarding client and law firm business.
- Ensure with proper calendar reminders that all post-termination matters regarding the employee are handled in a **timely and proper matter** (e.g. COBRA, pension plans, etc.).
- **Notify clients** when appropriate that there has been a change in personnel and introduce them as soon as possible to the employee who will be working with them and replacing the former employee. If the former employee has been rude to certain clients or otherwise mishandled work, make sure you apologize to the client when appropriate and ensure them the problem has been corrected and will not happen again (and make sure it doesn't!).

Steps For Helping Office Morale

Employee morale may be greatly uplifted after a firing because a real whiner, troublemaker or lazy person has *finally* been asked to leave. On the other hand, any employee termination, no matter how overdue or warranted, can leave a cloud of sorts over the firm for a while. It's frightening to see others fired and causes some employees to fear for their own job security or to imagine things that aren't true (e.g., "The firm is having financial problems and I might be next.").

What can be done to protect office morale post-termination?

- First and foremost, don't be too closed-mouth about it. Of course, certain things are and should remain confidential, but try to be the first to tell your remaining employees that a co-worker will be leaving or has left the firm. Beating the grapevine of wild and creative gossip is always a better choice.
- Encourage employees to let their supervisors know if they want to discuss the matter privately; give them options as to how to have their questions answered.
- Think about what the experience has taught you about the firm, its policies and employees.
- Use the information learned to strengthen or upgrade the firm's systems, revise outdated policies, improve communications, etc., and get everyone possible involved in the self-audit and improvement process.
- Ensure everyone (if true, of course) that leadership is not planning on letting anyone else go, and look for frequent opportunities to show your appreciation for jobs well done and to let employees know you value their contributions to the firm.

In Closing!

There's so much more to be said on this subject, but it is hoped that the suggestions offered above will give your firm's management team a good running start in tackling these issues. The worst thing we can do for ourselves, our firms and our staff is to procrastinate when it is evident that such a change should be made. Likewise, ***impulsively or hurriedly making such a decision can be very costly to all concerned.***

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Please look hard again at some of the suggestions listed above that may help minimize your having to terminate employees in the first place. Your sanity, peace of mind and profit margin are well worth the time and effort to conduct at least a quick self-audit as to the "state of your firm" regarding the hiring, training, supervision and care of your employees. ***They are indeed our intellectual, marketing and technical capital - our team members who help us pull it all off day after day after day.***

One last question: Without our loyal and productive staffs, how long would we survive and how would we like practicing law? One more question: Would you rather have stable and productive employees, or be faced with firing folks on a somewhat regular basis?

The choice is ours, as with most things in life, but we may need to stop waiting for someone else to "take care of it" and start doing what each of us can to help build loyal, productive and enthusiastic legal teams for our firms. And when it just doesn't work out, we must have the courage, wisdom and professionalism to face the situation squarely and to make sure employee terminations are handled appropriately, fairly and in a timely way for all concerned.

And....before you take off, ***many thanks*** for sharing a part of your day reading one or more of my writings, posts or columns....also...

Please Note:

- Like the self-audit concept? Nancy has literally written a book on the subject (***Easy Self-Audits for the Busy Law Office***) published by the ABA...you can contact them to buy a copy of the original 1999 version, or ***contact Nancy to purchase*** some or all of her self-audits on a wide variety of law office management topics, policies and systems. Also, you may want to read Nancy's article: ***Consultants & the Small Law Office***, which gives you tips on how to select the right consultant for your office vs. self-auditing things yourself (a combination of the two works great too).
- A version of this article was also published in one of Nancy's columns for Lawyers USA as well as by several CLE sponsors and bar associations where Nancy has spoken