

Firing Squad: How to Give Someone the Boot Without Getting Kicked Back

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We've all done it . . . hired someone who looked great on paper—or at first glance—and then after a short time on the job discovered they weren't going to cut the mustard. Unfortunately, it's a lot easier to hire bad apples than it is to weed them out.

In fact, owing to a growing body of law and an increasingly litigious work force, firing employees has become a complicated—and sometimes risky—business. Each year companies spend millions of dollars defending lawsuits brought by former employees who feel they were fired unjustly.

If you think, "Ahhh, this kind of thing doesn't happen to superintendents," guess again. More than a few of your colleagues have been called on the carpet for their firing practices. (No, we won't name names.)

So to help you and your club stay out of harm's way when you have to send an employee packing, here's a look at the law and some pointers on procedure.

Firing by the Book

Your first legal consideration in firing an employee is to be sure that the dismissal in no way constitutes discrimination based on race, color, creed, religion, national origin, age, sex, union membership or activity, and physical or mental handicap.

Beyond that, and in the absence of either a union or private employment contract, common law deems that most employees without a formal contract ("employees at will") can be fired at any time for any reason, with no legal recourse.

Now, however, the right of an employer to fire at will is facing a

serious challenge. Under the concept of "wrongful discharge," the courts have established a new cause of action that permits lawsuits by employees who have not been discriminated against *per se* but feel they've been dumped unfairly.

Although the formal definition varies from state to state, many wrongful discharge cases are based on the presence of an "implied contract" between an employer and employee. That might include a lengthy term of employment, a record of regular raises or promotions, and even such casual verbal assurances as, "You know, Joe, you've got a great future here at the club."

Even when such claims can't be substantiated, they can become evidence. And labor lawyers will tell you that if the case goes to trial, a jury's sympathy will more likely rest with the employee than with the employer.

Your Line of Defense

The first step in protecting yourself from claims like these is to make sure that, before terminating an employee, you let him know there's a serious performance problem and give ample warnings. In fact, communication and documentation should begin the moment you foresee trouble so the employee has a fair shot correcting the problem. Many experts recommend what's called a "progressive discipline" approach. In short, here's how it works:

- **Begin with a frank discussion** of the performance or conduct problem. Describe the appropriate corrective measures, and outline your personal expectations of the employee.

Experts also advise that you

use this meeting to express confidence in the person's ability to improve.

- **If this heart-to-heart talk has little effect**, the next step would be to put your complaints in a memo that restates the original problem, the required solutions, and what you expect of the employee. It should also mention the previous conversation and when you expect to see results. This memo should make it clear that the employee's job is — or is about to be — on the line.

Labor attorneys also recommend that you have employees sign the memo, not to indicate agreement, but to prove that they've seen it so they can't deny it later. The same applies to any second or third "warning" memos you issue.

- **You should also be diligent about collecting or noting other evidence of incompetence.** For instance, if your assistant's record keeping is sloppy or error-laden, retain a copy for your files. In addition, you should note all relevant incidences of misconduct, lateness, absenteeism, and other behavioral problems in your calendar or employee file. Also record the dates, general content, and outcome of any meetings or conversations you have with the employee.

- **Be aware not only of the content, but also the tone and volatility of your documentation.** Though you're not legally obligated to show your documentation to the employee, you may be asked to open your files if you're dragged into court. Any notations that are less-than-professional will surely work against you.

- **If your club has an employee**

manual, pay close attention to procedures for employee terminations. If they're billed as "guidelines" or "recommendations," there are usually no legal ramifications if you decide not to follow them to the letter. But if the procedures can be construed as club policy, then employees who feel they haven't been fired "by the book" can turn around and claim wrongful discharge.

Exit Lines

In the end, the more grounded you are in the legal and ethical rules of the road, the less likely it is that the next time you give someone the boot, you'll get kicked around in the process.

Happy Endings

When you fire someone, it's easy to get so caught up in the substance that you forget all about form. But fine-tuning your approach can make the whole process more humane—and prevent the kind of bad blood that leads to litigation. Here are a few tips from a well-known executive recruiter, Robert Half, and his book *Robert Half on Hiring*.

● **Do it yourself and in private.** Delegating a dismissal to your assistant is unfair all around. Not only do you lose control of how it's handled, but you also set a bad example for others on your staff.

● **Be prepared.** Have all the relevant paperwork ready: Pink slip, owed pay, memos detailing the amount of pension plans accruing, etc.

● **Don't beat around the bush about why you're firing the person.** And don't try to soften the blow by offering false hope of later reinstatement. What you "promise" in a moment of weakness may come back to haunt you.

● **Start strong.** Try leading into the crusher with a positive evaluation: "You're great with the crew, Joe. I just don't think the job is

keyed to your strengths."

● **Be prepared for severe reactions.** Even though studies show that, except in rare cases, employees expect to be fired, the reality still hits hard. Be sympathetic; give the employee some time to accept the news; then focus on the next steps.

● **Be consistent.** Don't promise termination "fringes," like an extended stay in the club's employee quarters, unless you're prepared to offer the same to the next employee you fire.

● **Consider the ripple effect.** Handle other employees' questions and concerns with reasonable candor. And try passing out some reassuring positive feedback; others may be worried that they're next.

Worth noting

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One study showed that the majority of all firings are the employer's—not the employee's—fault. The prime offenders: bad hiring due to poor screening, interviewing, and reference checking; inadequate training; and shoddy supervision.

The source for this article was Learning International, Inc., a sales and service training company in Stamford, CT.

It's a Fact

A test conducted by the USGA proves that golf shoe spikes with recessed flanges cause far less damage to greens than normal spikes.

The average golf shoe has 12 spikes, and the USGA has computed that a player averages 28 paces per green; 28 paces times 24 spikes means 672 impressions; 672 impressions times 18 greens equals 12,096 impressions per round per player. Assuming the 200 rounds are played each day on a course, the greens receive 2,419,200 impressions daily, or more than 72 million holes each month.

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