


## Following is an excerpt from *Hire Slow, Fire Fast: A Lawyer's Guide to Building a High Performance Team* by Mark Powers & Shawn McNalis

### The Termination Process

Even though the title *Hire Slow, Fire Fast* may imply that you should terminate people quickly; we don't recommend that you fire anyone when you are angry or enraged (even though it might be the most emotionally satisfying thing you could do). If you are faced with a situation that requires you to take immediate action, such as an associate caught using illegal drugs in the office, suspend the individual to give yourself a cooling off period and plan the termination correctly. Even in a state that affirms employment at will, individuals may be extremely vindictive, they may belong to a legally protected class (race, religion, sex, pregnancy, sexual orientation, age, and physical and mental disability) or they may have other grounds for legal action. When faced with potentially libelous situations, a suspension buys you time to contact an employment attorney to discuss the circumstances and plan the proper approach. 

If, however, you are not facing a potentially libelous situation, swiftly terminating a problem individual is best for you and your team. Here's why: it can be deadly for the team's morale if you allow a problem employee to linger in their position. Aware of their offenses, the rest of the team may begin to question your leadership abilities and their respect for you may become seriously eroded. If a sub-par performer remains employed, the rest of the team may downgrade their performance, concluding that you, or firm management, won't take remedial action. If the individual is missing a great deal of work or showing up late, despite attempts at intervention, it can lead other employees to wonder why they're held to a higher standard. Toxic employees, even when they are good performers, can damage morale by sabotaging your initiatives, undermining performance standards and creating an atmosphere of contention or negativity.

### A Paper Trail

Keep in mind; it's easiest to defend your decision to terminate individuals for quantifiable, observable behaviors instead of hard-to-prove, rumored activities. If, for example, you suspect someone is an alcoholic and their addiction is negatively affecting their performance, terminate them based on the fact that they've been producing sloppy work and missing important deadlines. Problems like these are easier to prove than the rumored alcoholism. It's imperative that the employee's file provides a clear and meaningful history of the incidents that preceded the termination so you can defend your decision, should you be accused of improper motives.

### The Termination Conversation

If well-planned, a termination can be considered successful if the conversation is brief (don't linger on small talk), to the point (deliver your main message within the first 5 minutes) and does not become argumentative. Resist the urge to soften the blow by saying overly complimentary

things that may contradict your reason for letting the person go. There have been cases where these white lies have been used by vindictive individuals as reasons they should not have been let go.

It's best if you have an observer present in order to take notes and be a witness to the proceeding – most preferably the person's direct supervisor. If you, or your designated terminator, go it alone, immediately document the process in writing after the meeting.

## Set the Right Tone

During the meeting, keep your tone of voice: calm, neutral and respectful. Avoid creating a situation that will embarrass or humiliate the individual. When you've delivered the news, give the person an opportunity to respond, ask questions or express their emotions. Resist being pulled into a conversation that escalates to an argument. Your defensiveness will intensify their emotions further, so strive to be caring, but brief and not argumentative. Attempt to stay in control of your own emotions so you remain in control of the conversation.

What follows are a couple of phrases you can use to terminate an individual. These phrases emphasize the fact that the *job* or *position* is not appropriate for the individual's particular skills and/or experience, instead of the other way around. This is a diplomatic, but still truthful approach, which you may want to use to slightly soften the blow. Feel free to use these phrases as they are or make up your own variations:

## 90 Day Termination Script:

*Susan, after assessing your performance in the last 90 days, we've concluded that this job is not a good fit for your skills and experience.*

*We think you'd be happier if you were in a position that was better suited to you, so we're going to have to let you go.*

## Lack of Performance Termination Script:

*John, based on your performance in the last year, we've decided that this position is not well-suited to your skill set (and/or your personality, your experience, your talents).*

*We think you'd have a lot to offer, in the right position, but we're going to have to let you go.*

A prepared written statement should be placed in the employee's personnel file that mirrors the verbal statement and contains a general statement of the reason for termination. Hand the individual a copy of the letter at the end of the conversation. **ii**

Once you've uttered one of the termination phrases, the most nerve-racking part of this process is over for you. But be prepared, the individual will have follow-up questions which you should be able to answer immediately, in the interest of keeping this process brief. We outline them here so you can be prepared with the right answers:

***Can you tell me what I did wrong?***

Be prepared to answer this question by being armed with brief, specific examples. If you don't want to be that specific, emphasize that the job fit was all wrong. Limit what you say if you believe the terminated person is vindictive and will bring suit. Your words may be used against you.

***Will you give me a reference?***

Most employers will agree to confirm employment but will not go into more detail. If the employee is leaving on good terms and due to factors outside their control, such as a budgetary change or a dramatic change in the scope of their responsibilities, you may agree to provide them with a positive reference.

***What will you tell the rest of the team?***

If the situation that precipitated the termination was a poor job fit, you can state that the rest of the team will be told just that. Or you may offer that the team will be told the individual left for "personal reasons." If the situation involved possible theft, fraud, sexual harassment or similar issues – it is best to limit the discussion – especially if there is an ongoing investigation or possible suit.

***Do I get any severance?***

Say the employee will be paid for time worked, sick leave and outstanding vacation days. If you do offer severance, mention it at this time, but only after consideration. If you're dealing with a difficult situation, the severance could ease the transition and reduce the individual's animosity, which could reduce their urge to file a suit. If, however, you offer severance contingent on the individual signing a release of claims against the firm, the terminated employee may regard it as an acknowledgement that the firm was in the wrong. We urge you to discuss severance strategies with your employment attorney and follow their advice closely.

Note: If this is an uncomplicated situation, you can hand the employee their final paycheck and the severance amount dictated by your policies and procedures manual at the time of the termination.

***Can I file for unemployment?***

The answer to this question varies from state to state. Check your state employment office for the rules governing your location before you broach this subject in the termination conversation.

## After the Termination Conversation

After you've answered the individual's questions, the employee should be told to return to their office, gather personal belongings and leave the premises (some attorneys plan this conversation at the end of the day to ensure that the employee doesn't have to clean out their office and do the "walk of shame" in front of the rest of the team). In larger organizations, the person is typically escorted to ensure that they don't say or do anything reckless along the way. You can also provide an escort during this process – one of the people who sat in on the conversation as a witness will do. When the employee arrives at their office, they should be asked to provide a list of their current access codes and passwords. Immediately after this, block their access to the firm's computer system. If they keep their access codes and passwords on paper, not on the computer, block their computer access during the termination conversation. Do this for several reasons:

1. To deter them, in the unlikely event they decide to sabotage your computer system in some way.
2. To keep them from downloading client files and contact information in case they want to take clients (if an associate is being terminated, the process of communicating with clients should be mentioned, but handled separately – follow the rules of conduct when dividing up the pool of clients).

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## Conclusion

Without your guidance, your employees won't become a championship team and won't deliver the higher levels of client service and production you desire. It's our hope that we've given you the tools you need to act as a coach to your team and intelligently review their workplace performance. With the tips, techniques and scripts we've also given you we hope you can navigate the challenging conversations required of you when some individuals prove to be a poor fit for your team.

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<sup>i</sup> Chauncey M. DePree, Jr. and Rebecca K. Jude, (2007) *Ten Practical Suggestions for Terminating an Employee*, The CPA Journal, retrieved at <http://www.nysscpa.org/cpajournal/2007/807/essentials/p62.htm>

<sup>ii</sup> Ibid.