

HERE'S YOUR **EXIT**

A GUIDE TO FIRING, LAYOFFS, AND RESIGNATIONS



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Introduction

Parting is such sweet sorrow—except, of course, when it's a relief!

Nobody hires a new employee thinking that one day they'll leave, but turnover is an inevitable part of the entrepreneurial experience.

Every end invites a new beginning, and each employee farewell presents an opportunity to make sure your next hire is even better than the last!



Every Exit Is Different

Every separation is as unique as each one of your employees. Whether it's a termination or a resignation, no separation is without risk.

With preparation and forward thinking, you can build protections for your business—minimizing your potential legal liability when it's time for an employee to leave.

Be better prepared when you find yourself saying “so long” to someone at your business using the tips and tools inside this guide.

“Keeping the wrong employee in the wrong position is not doing them—or you, for that matter—any favors.”

Paul Edwards
Founder & CEO
CEDR HR Solutions



The Basics

Whether it's a voluntary resignation, layoff or termination, there are a few boxes you need to check in order to make sure that you're following the letter of the law. This will protect your business from potential litigation before and after that employee is gone.

Here are some important considerations when it comes to any employee separation:

The Final Paycheck:

The rules regarding final paychecks change state-to-state and depend on whether the employee quits or gets fired. Check your state laws to find out how long you have to deliver the check, if you need to pay vacation time and if you can deduct certain expenses from that paycheck.

Bottom line: know the laws in your state and never withhold someone's paycheck for any reason, including for reasons related to returning company property.

It's best to deliver that paycheck and pay stub in person on the employee's last day which could mean during your actual termination meeting.

Termination of Health Benefits:

If the employee was part of a company-sponsored health plan, there may be COBRA laws in place regarding how you notify the employee about the termination of their benefits.

Reach out to your insurance provider for COBRA guidance when a separation is about to take place. You may need to provide COBRA notice on the employee's last day, or the insurance provider may need to mail it directly to the employee.

Is your departing employee also a patient?

If so, you will need to address their treatment moving forward, including whether or not you intend to cease patient care.

The rules that apply to employee separation are very different from those that apply to patient separation. Don't assume because the employee relationship ends, the patient relationship automatically ends too.

Just like any other patient, make sure you do not violate the rules in your state related to patient abandonment.

If you can and want to terminate the patient relationship, address it in the employment separation letter. Let the employee know that you will provide emergency coverage at your regular fees for 30 days after which you will no longer consider them a patient.

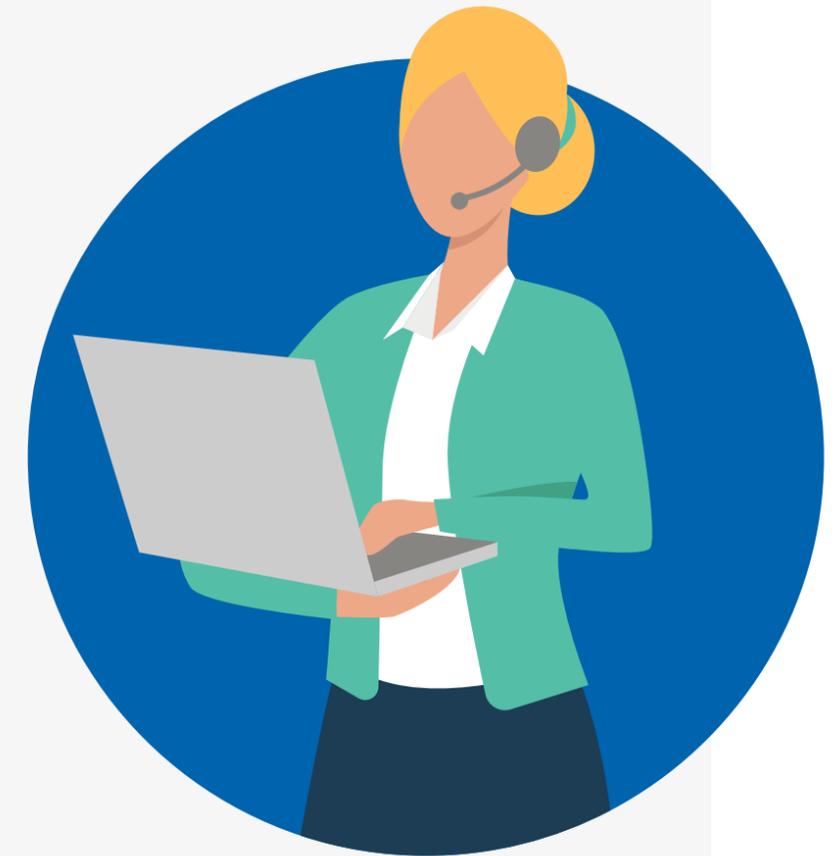
Confidentiality Agreements:

Remind the departing employee of their ongoing responsibility to maintain the confidentiality of patient Protected Health Information as well as any other protected trade secrets they may have been privy to.

Exit Interview:

Each and every departing employee should be given the chance to complete an exit interview. Departing employees are more open about issues they've seen than current employees which makes exit interview forms a great way to learn about your business.

Learn more about how to handle your exit interview including why we do not recommend an in-person meeting [later in this guide](#).



CEDR MEMBERS:

The Solution Center's HR and employment law experts can help you put protections in place and prepare for any employee separation.

[SUBMIT A REQUEST](#)



Click here to submit an HR Request and someone from the team will be in touch!

Resignations

Resignations may be the most straight-forward and least-risky type of separation. Still, an employee resigning voluntarily does not mean that your business is “home free” liability wise.

In cases where an employee is forced out or feels like they had no option but to quit due to things like harassment or unsafe working conditions, resignations can be just as risky as terminations. This is one reason why even employees who quit of their own accord should be [given the chance to complete an exit interview](#). The information you glean from the exit interview may forewarn you of potential litigation and allow you to address any issues in the meantime.

Get Documentation

Make sure you have documentation to show that the resignation was in fact voluntary. In some cases, the employee will submit a letter that indicates why they are leaving and when their last day will be. In abrupt situations, you may just want to keep a screenshot of their resignation text or simply make a note in their file that they said they quit and walked out of the office.

No matter how the employee submits their resignation, answer it with your own “confirmation of resignation” letter. Along with the employee’s resignation, keep a copy of your own letter which can serve in your defense should any legal or unemployment claims arise.

Include any important information related to the employee’s departure, such as information about termination of health benefits and the final paycheck in the letter. If you are a CEDR Member, [contact the Solution Center](#) for help drafting your “confirmation of resignation” letter.

If the employee resigns verbally, give them a voluntary resignation form on the next page of this document.

The Two-Weeks’ Notice

If an employee gives two-weeks notice, you have three choices:

- Let them work the two weeks
- Send them home without pay
- Send them home with pay

What you decide will depend on the laws in your state and your relationship with that employee. An employee who resigns may be unproductive as their final day approaches, but you may want to keep them as you find and train a replacement. Read more about your options when an employee gives two-weeks notice [on our blog](#).



[Read: What Options Do You Have When an Employee Gives Two Weeks’ Notice?](#)



VOLUNTARY RESIGNATION FORM

I have decided to voluntarily resign from my employment. I would like my last day to be: _____.

I have tendered my resignation due to the following reason(s):

- Returning to School
- Other employment
- Moving out of the area
- Retirement
- Other _____

Please initial the following statements if they are true. If they are not true, please detail in writing on an additional paper the reasons why they are not true:

_____ I have returned all company equipment, keys, uniforms, and any other company-owned items.

_____ I understand that my obligations of confidentiality with regard to the Company and its proprietary and/or confidential information remain ongoing after my employment ends.

END OF YEAR TAX INFORMATION

Social Security Number: _____

Address to which W-2 should be sent:

Street City State Zip Code

Employee Name Employee Signature Date

Manager Name Manager Signature Date



[Download the Voluntary Resignation Form](#)





Layoffs

Layoffs and terminations are not the same thing. Don't try to soften the blow of a termination by calling it a layoff when it is really a termination.

That point is so important, it bears repeating:

It is never a good idea to try to soften the blow of a termination by calling it a layoff!

What's the Difference?

A termination is usually the result of compounding disciplinary action related to poor behavior or performance, or as a result of some sort of egregious behavior like theft or violence.

A layoff, on the other hand, takes place when a certain position at a business is eliminated, or financial hardship prevents the business from keeping one or more employees on staff.

Why Does It Matter?

When you lay someone off, it implies that there was no way for you to keep that employee at your business, and their position is being eliminated completely.

If you turn around and hire a replacement for the employee you claimed to have “laid off,” it gives the former employee an opening to claim that the so-called “layoff” was actually a pretext for something illegal—that you were discriminating or retaliating against them for some protected reason.

Because your documentation for the “layoff” will not include reference to any of the actual behavioral or performance-related reasons that you let them go, you will have a hard time winning such a case in a court of law.

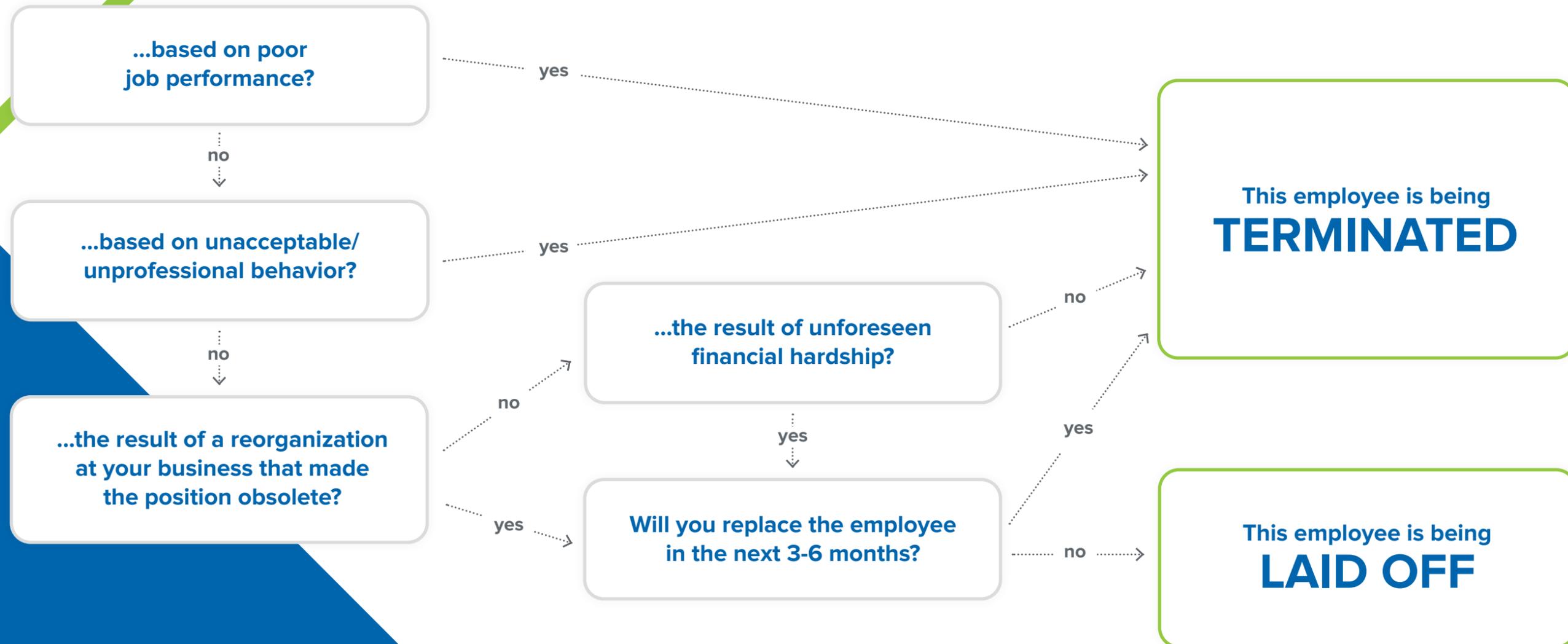
In short, if you are terminating an employee for performance reasons, be honest. *Don't call a disciplinary termination a layoff, especially if you plan to turn around and hire someone else within 3 to 6 months.*

For more on this subject, check out our blog, [Can't I Just Call It a Layoff?](#)



TERMINATION OR LAYOFF?

IS THE REASON FOR THE SEPARATION...

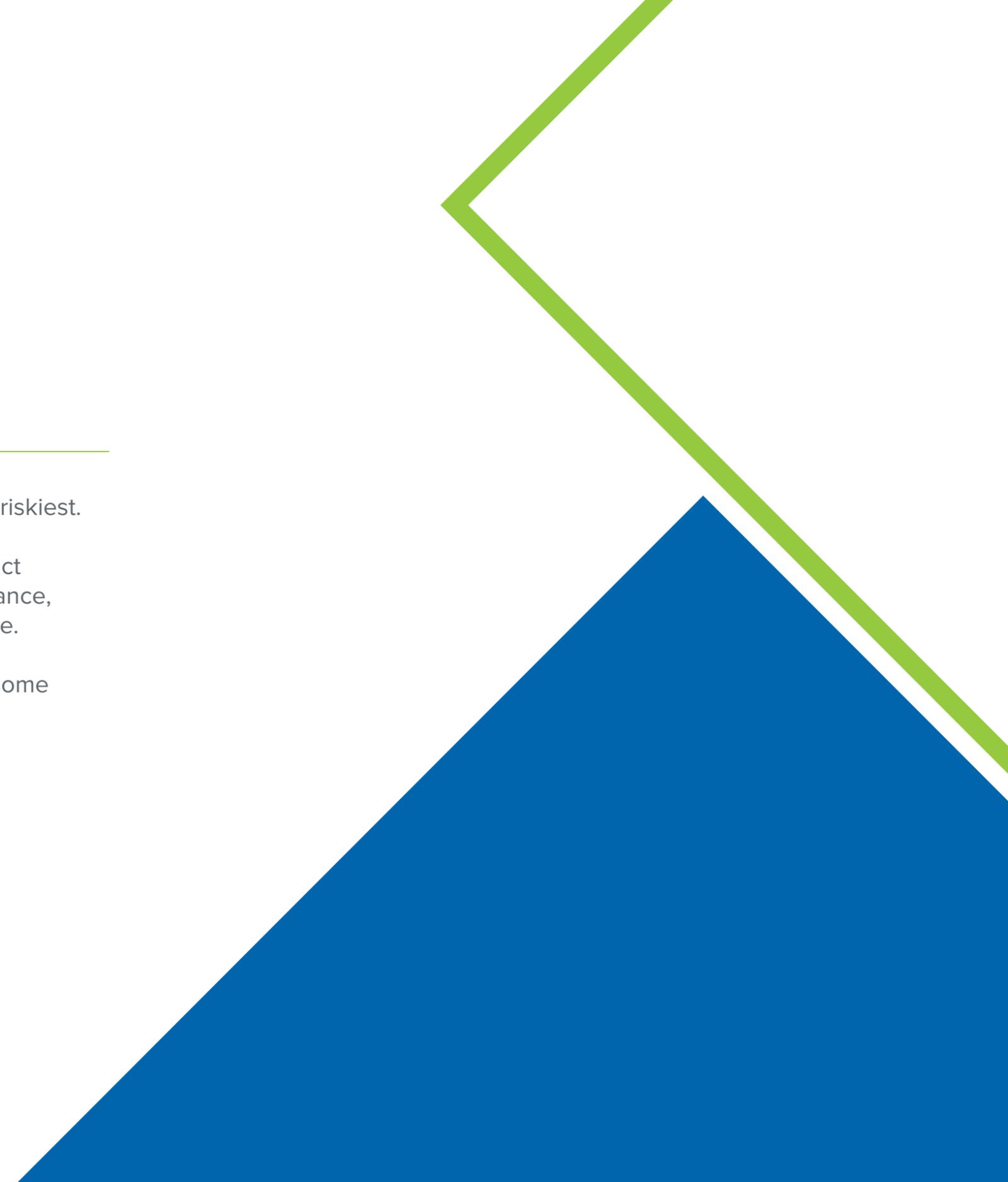


Terminations

Of all the actions that you can take with an employee, firing is by far the riskiest.

It's an emotional experience to be let go. As a result, employees can react hyper-emotionally to the news. Still, by preparing for the meeting in advance, you can minimize your risk of facing backlash from your former employee.

If done correctly, the employee will know this day has been coming for some time, and it won't be a surprise when you break the news.



Evaluate Your Risk. Protect Your Business.

Perform a full risk assessment before making a decision to terminate. Is the employee in any protected classes? Have they participated in any protected activity or taken legally protected time off in the recent past? If so, termination may not be your safest option.

If you have documented the problem(s) that led to the termination, your risk is greatly reduced. While it is not always possible to document the exact issue that caused you to separate from an employee before you fire them, the advantages that proper documentation can offer you as an employer are numerous.

Having an experienced, qualified HR expert guide you through the process and gut check your decision to terminate can be priceless. If you're a CEDR Member, [contact the Solution Center for help with this process.](#)

Every termination results in a story.

Your job as an employer or manager is to document your side of the termination narrative.

Clearly communicate the employee's job duties through job descriptions.

Document conversations about how their behavior or performance needs to improve so you can recreate your story reliably should the need arise.

Timeclock records that show the employee clocking in or out outside of working hours or unauthorized overtime can be used to protect your business!

Make sure that your reasons for terminating are legal and supported by well-written documentation.

This is where having HR Experts to help you can save you thousands of dollars. Remember if you fail to document and don't have anything to support your story, your ex-employee gets to fill in the gaps.

Them: "They fired me because I am different than they are and the firing was discriminatory."

You: "Actually, I fired them for being consistently late, for poor performance, and for failing to carry out the key requirements of their position. Here is my documentation, including time records and a signed corrective action by the employee acknowledging that being late again could result in termination."

Without proper documentation, the terminated employee will set the narrative. Like the example above, you can protect yourself and your business from false claims by building a chain of documentation that supports your reasons for termination.

Avoid falling into the at-will employment trap.

Sometimes, employers get bad advice that you should not give an employee a reason for their termination because being an at-will employer gives you the right to fire someone for no reason.

The bad advice goes something like this: Providing a reason for the firing gives an employee leverage to argue against that reason. So, it's safer to give no reason.

This is completely removed from reality.

When you fail to document and give a legitimate, supportable reason for terminating an employee, the employee gets to make up their own story.

This results in a narrative in which you, the employer, were the one who did something wrong—not them.

To make matters worse, it is very hard to convince an investigator, judge, or jury to believe that you fired an employee for "no reason."

If you keep in mind that the vast majority of employment lawsuits and demand letters get handed out in the 49 so-called "at-will states" across the U.S., it's easy to see why taking time to document is so important.

Maintaining your at-will status in policies and in practice is very important, but it is not a shield in and of itself, nor is it bulletproof.



To Summarize...

Firing an employee is risky. No set of tools and tips will ever make the process of letting someone go “easy.”

Still, sometimes letting someone go is the best option, and we’ve got some ideas about how you can make terminations as safe as possible.

Here are some basic dos and don’ts when it comes to terminations:



WHAT TO DO

- Work to end the matter in under ten minutes.
- Stick to a predetermined process so there won’t be any defending of your decisions, arguing, or back pedaling on your part.
- Plan a private setting for the termination and include a witness.
- Terminate at the end of the day or at the very beginning before patients show up.
- Have the employee’s last check ready for them at time of termination, as well as an Exit Interview Form with a self-addressed stamped envelope. (Check with CEDR regarding payment of accrued vacation which may be required in your state.)
- Tell the employee, in as few words as possible, why you are terminating him or her and hand them a Termination Letter and an Exit Interview Form.
- Consider the matter closed and not open for discussion as far as rebuttal is concerned.
- Listen to the employee as they vent or comment, but DO NOT answer or defend.
- Ask the employee to clean out their desk and turn in company property. Then escort them out of the building.
- Make notes of any accusations he or she makes, including threats.
- Lock down your computer systems. No kidding! The last thing you want is an irate employee to start deleting appointments on their way out the door, and you to be faced with having to physically stop them.

WHAT NOT TO DO

- Don’t make comments like, “you have done a good job up to this point, but....” or, “it’s not your fault.”
- Don’t agree to reconsider.
- Don’t allow yourself to get caught up in the emotion of the termination process. If the employee begins to vent, respond with, “I am sorry you feel this way. My decision is final. Now please clean out your desk and turn in the company property.” (if applicable)
- Never lay your hands on the employee.
- Don’t hesitate to dial 911 or inform the employee that you are considering calling the police, if you feel you’re in danger.
- Don’t make any statements based in opinion. Only the facts will support you in the future.
- Don’t give a letter of recommendation to soften the blow. It will be used against you.



TERMINATION CHECKLIST

Make sure you are fully prepared before firing an employee—both for the termination itself, and for any demands or complaints the employee may make. Follow these guidelines to make this process safer and smoother for all concerned.

REVIEW YOUR SEPARATION DECISION

- Review their file to see if you have documentation that supports your reason for separating
- Assess whether there is anything you can do in lieu of separation—has the employee had an opportunity to understand their mistakes and make changes
- Do a risk assessment on this decision. Is there any reason for this employee to believe, or make a claim about, this separation being a result of discrimination, in response to protected activity, etc. Contact CEDR for help.

PREPARE FOR THE SEPARATION

- Prepare separation paperwork for the employee**
 - Termination letter/confirmation of resignation letter
 - Exit Interview form
 - Work with an attorney on a severance agreement (if applicable)
- Prepare the final paycheck**
 - Confirm state law about timing of the final paycheck, as well as requirements to cash out unused paid time off
 - Decide if you are providing any pay in lieu of notice
 - Contact your payroll company with the information
 - Verify the check they provide includes the accurate amount of pay for hours worked (including pay for the last day), pay in lieu of notice, any bonuses and commissions, and any cashed out paid time off
 - Make a copy of the final check and pay stub and place in the employee's personnel file
- Plan the separation meeting**
 - Decide who will be in the meeting and who will say what
 - Plan where the meeting will take place, and how the room will be set up so that it is private and the employee feels as comfortable as possible
 - Identify any company property the employee has that needs to be returned
 - Plan how the employee can collect their personal belongings
- Make sure you have a plan for what happens after you separate the employee**
 - Determine how you will communicate this separation to the rest of the team
 - Identify this employee's job duties and how those will be handled



[Download the Termination Checklist](#)





The Exit Interview

Exit interviews are a potentially valuable way to gain insight into the inner workings of your business which you may not be able to get from employees still on your payroll.

The exit interview is not like a traditional interview, however.

It should not be completed in person, as the employee is less likely to be honest face-to-face.

Instead, give your departing employee an exit interview form in a self addressed, stamped envelope.

You can either give this form to your employee during your final meeting, on their last day or mail it to them after they are gone.

Many former employees will choose to eschew the exit interview altogether. However, when completed, your exit interview form could help provide you with [valuable information](#) or even [evidence to support your reasons for terminating the employee](#) in the first place.

For more on the purpose of conducting an exit interview, check out our blog, [This Way to the Exit: Using the Exit Interview to Support Terminations](#).

On the following page, you can download an Exit Interview Form you can use when separating from employees at your business, as well as instructions on how to properly use that form.



EXIT INTERVIEW INSTRUCTIONS

How to Use the Exit Interview Form and Why You Should

Whenever employment is terminated, either due to involuntary dismissal or voluntary resignation, we suggest you use a written Exit Interview Form.

WHY IS AN EXIT INTERVIEW IMPORTANT?

Feedback from employees can be helpful whenever you receive it, but it may be especially valuable coming from a departing employee. The employee who is leaving might be willing to offer more candid answers to questions, as long as they feel the information will be kept confidential. More importantly, exit interview feedback serves as the employee's "story" at the time of their departure. It is essentially a snapshot of their perception of what happened at the time of termination. This is their opportunity to explain what they view as problems in your office. It also serves as a written record in their words, which is highly useful if in the future they file a complaint containing a new or conflicting story.

PROCEDURE FOR USING THE EXIT INTERVIEW FORM

Place a copy of the Exit Interview Form in a self-addressed, stamped envelope and include it as you hand the employee their final paycheck and termination letter during the termination meeting. If you are mailing the termination letter, include the Exit Interview Form and send them both together, preferably with the final paycheck, via certified mail, return receipt requested. You can simply tell the employee that the practice would appreciate it if they would fill out the form and return it. You do not have to go over the form with the employee in person, or have them sit and fill it out in the office.

Cautionary Note about Final Paychecks: With no exceptions, **an employer should never withhold an employee's paycheck for any reason**, and especially not to get them to comply with a request. Each state has specific deadlines for the provision of paychecks for terminated employees, with stiff penalties for not complying. CEDR recommends that all wages due be paid at the time of termination whenever possible. If you need information for your state, call the Solution Center at (866) 414-6056.

WHEN THE EXIT INTERVIEW FORM IS RETURNED

Most ex-employees either do not return the Exit Interview Form, or simply provide brief or generic comments. This is fine. However, a departing employee may allude to improprieties or make direct accusations against the practice or another employee. **TAKE THIS VERY SERIOUSLY.** At the very least, you need to investigate the accusation internally. Be sure you make a record of the actions you took to investigate, as well as any responsive actions you took to address or correct any issues you uncovered.

CALL THE SOLUTION CENTER FOR GUIDANCE

Members of the CEDR Solution Center are encouraged to contact us for a review of the contents of any completed Exit Interview Form. An advisor will help you determine if anything within the former employee's response is substantial enough to merit an investigation or response.

You can contact the Solution Center Advisors by calling (866) 414-6056 or emailing solutioncenter@cedrsolutions.com.

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[Download the Exit Interview Instructions](#)



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