

# First Wednesday

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A Monthly Discussion of Employment Law Issues and Other Hot Topics for Management

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## Employee Termination Meetings — Doing it Right

The proper handling of employee terminations is a recurring topic. Company managers who are tasked to carry out a termination should take great care in planning for and conducting this final meeting with the employee. Delivering the right message and using a certain process will help to minimize the chances that post-termination claims will be filed.

This bulletin suggests a process and guidelines for use in most employment termination meetings. It can be used as a quick checklist for managers faced with the difficult job of telling someone he or she is being fired.

Some situations, including group layoffs, plant closings and handling employees with a propensity for violence, require special handling beyond these steps. These issues will be addressed in future bulletins. In all cases, though, good preparation is necessary for the best result.

### Scheduling the Meeting

Ideally, the meeting should not be scheduled until the employee's pending work projects are known, inventoried and reasonably under control. Consider the amount of lead time to give the employee before the meeting – too much lead time will cause gossip, workplace disruption and anticipatory questions. The “script” for the meeting (discussed below) should already be sketched out and the company's representatives should be well-prepared to deliver the message. The meeting should not necessarily be set for late on a Friday afternoon, when people tend to leave early.

### Who Should Participate?

At least two company representatives should attend the meeting, even if one is only there to listen and take notes. Typically, these will be the employee's supervisor and a Human Resources (HR) representative or, possibly, a respected senior officer or other executive who is trusted by the employee.

**The Script**

The “script” is simply a bullet-point list of the items you want to discuss. It will not be read to the employee. It should include the essential message to which you can keep returning if questions are raised or the decision challenged. All solid reasons for the termination should be mentioned but not necessarily debated (for example, bad performance, attendance problems, attitude, “bad fit”), plus the logistics of handling final paychecks, any severance pay, and return of keys and company property.

**Other Preparatory Steps**

Review the employee’s personnel file for any red flags. For example, if the past performance reviews are all “excellent,” and the grounds for termination are performance-related, you may want to re-examine the reasons for this termination. Or, if the employee has recently complained of sexual harassment or Labor Code violations, then the termination might appear “retaliatory,” giving the employee a potential public policy wrongful discharge claim.

Before carrying out the termination, the company representatives should consider the script and ask themselves this question – will the employee be surprised by what we’re saying? If “yes,” then the process and message need to be refined and discussed with counsel.

**Gathering the Necessary Documents**

These will usually include a termination letter *briefly* stating the effective date of, and reasons for, termination; the final paycheck, including payout of accrued vacation; COBRA notice; confidentiality and inventions agreement certifications; and, if severance pay is being offered, a settlement agreement/release of claims for the employee’s signature.

**Conducting the Actual Meeting**

Prepare for employee reactions of shock, disbelief, anger and denial. Explain this is not a personal decision, but a business decision, based on the business needs and circumstances. State the message and try to avoid debate or off-the-point discussion. The company’s decision and its resolve cannot waiver. Keep returning to your script.

Set out here is a generic checklist of “dos and don’ts” and some anticipated questions and possible responses:

Dos:	Don’ts
<ul style="list-style-type: none"> <li>• Do invite the employee to sit down</li> <li>• Do include at least two company representatives</li> <li>• Do use a private location – avoid embarrassing logistics</li> <li>• Do get right to the point</li> <li>• Do explain the actions taken and the reasons</li> <li>• Do listen to the employee and wait for a response</li> <li>• Do restate the message if necessary</li> <li>• Do be clear and firm that this is the only available option</li> <li>• Do stick to your prepared script</li> <li>• Do clarify the separation date</li> <li>• Do give an overview of the separation package, if any</li> <li>• Do explain the logistics for saying goodbyes and leaving the company</li> <li>• Do provide necessary written materials</li> <li>• Do wish the employee well and shake his/her hand</li> <li>• Do close the meeting within 5-15 minutes</li> <li>• Do escort the employee to the next appointment (HR), or make arrangements for the next meeting</li> <li>• Do be sure he has his final paycheck and accrued vacation pay. This can be done after the initial meeting, and limited to logistics of tendering the checks and signing the Exit Document</li> </ul>	<ul style="list-style-type: none"> <li>• Don't say "good to see you," or "how are you?"</li> <li>• Don't engage in small talk</li> <li>• Don't allow interruptions</li> <li>• Don't use humor</li> <li>• Don't be overly apologetic</li> <li>• Don't defend, justify or argue</li> <li>• Don't agree with any arguments</li> <li>• Don't threaten</li> <li>• Don't discuss other employee situations</li> <li>• Don't over-sympathize</li> <li>• Don't try to minimize the situation</li> <li>• Don't make promises</li> <li>• Don't personalize the anger</li> <li>• Don't agree that it is “unfair” or claim you did not want to do this</li> <li>• Don't use platitudes such as "I know how you feel," or "you will be just fine”</li> <li>• Don't debate or discuss the reasons ad nauseum</li> </ul>

Question:	Suggested Response:
<i>Why was I selected? Who made the final decision?</i>	The selection was based on a number of factors, including the company's situation and performance. We determined it is time for a change. These decisions are always difficult, but they were reviewed and approved by the Board.
<i>What recourse do I have?</i>	The Board has already carefully reviewed the decision; the outcome will not change. You may take your time to review and consider the Separation Agreement.
<i>Can I continue to work for a period of time?</i>	No. We feel it is in your best interest and the organization's that you utilize your time exploring employment opportunities outside the company.
<i>I can't understand why I can't be given another chance?</i>	Before this decision was made, we considered the history, the company's current position, and other options, and concluded this was the appropriate action to take at this time.
<i>How can you do this to me after so many years?</i>	The decision was necessary for business reasons involving the future direction and best interests of the company.
<i>What if I don't want to accept this severance?</i>	We have considered the entire situation, including the terms of your employment agreement and feel this is appropriate. You do not need to give us an answer today.
<i>I will sue you!</i>	We are sorry you feel that way. Please review the Separation Agreement and contact us with your decision.
<i>I don't want you to deduct that loan from my paycheck!</i>	If you do not want us to do that, we won't, but we'll need to make other arrangements for its repayment. You'll still receive your final paycheck and accrued vacation pay.

## Post-Meeting

Monitor the employee's actions and gathering of personal effects. Ensure that all company property is returned. Identify a company representative for the employee to contact for any questions or follow-up items. Try to avoid any further meetings. Walk the employee out the door to ensure minimal disruption. Consider alerting the security department and changing the facility locks, as well as computer access codes and passwords.

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