

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



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Jeff is a Shareholder of Thoits, Love, Hershberger & McLean, specializing in employment law and commercial litigation. He can be reached at (650) 327-4200 or jsnyder@thoits.com.

Planning For And Conducting Termination Meetings

The termination meeting is an inherently tense and anxious event. Company representatives who are tasked to terminate an employee should take great care in planning for and carrying out this final meeting. This article suggests a process and guidelines for use in most termination meetings. Certain situations, including mass layoffs, plant closings and handling employees with a propensity for violence, require special handling beyond these steps. In all cases, however, good preparation is necessary for the best result.

1. 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 written out and the company's representatives should be well-prepared to deliver the message. The meeting should be scheduled for late in the day mid-week and not on a Friday afternoon, when necessary participants might leave early.

2. Who Should Participate?

Two company representatives should participate in the meeting, even if one is only there to listen. Typically, these will be the employee's supervisor and an HR representative or, if there is no HR Department, a senior officer who is trusted by the employee.

3. The Script

The "script" is a bulletpoint list of the items you want to discuss, and will not be read to the employee. It will 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 discussed, as well as the logistics of final paychecks and return of keys and company property.

Companies often ask me whether an "at will" employee, who has performance deficiencies, should be told of the performance issues. The answer is usually "yes." While it might be more convenient to simply say "we're letting you go and we don't need to give you a reason," the issues should be discussed for many reasons. First, the person deserves an explanation. Most people don't expect to be fired for no reason, no matter what California law says about "at will" status. Second, you can expect that word will leak out, and company morale is better served if the company's reputation is not to terminate employees arbitrarily. Third, if the real reasons (e.g., performance, attendance, dishonesty, insubordination issues, etc.) are not explained, then any reasons given in a lawsuit or other proceeding, may be viewed skeptically and as mere pretext for some improper motive to terminate. For example, if a sixty-year old long-term employee is not given any reasons at the termination meeting, and then sues for age discrimination, it may be difficult to convince a judge and jury that he was truly a poor performer with attendance problems.

4. 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, the company should re-examine its reasons. If the employee has

recently alerted management to potential Labor Code violations, then the termination might appear “retaliatory,” such that this employee might assert a public policy wrongful discharge claim.

The company representatives who will deliver the message should discuss the script and ask themselves this question – will this employee be surprised? If “yes,” then the process and message needs to be re-examined and discussed with counsel.

5. Gathering the Necessary Documents

These will usually include a termination letter briefly outlining the reasons for termination; the final paycheck, including payment for all accrued but unused vacation; COBRA notice; confidentiality and inventions agreement certifications; and, if severance pay is being offered, a settlement agreement/release of claims.

6. Conducting the Meeting

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

Set out below is a generic checklist of “dos and don’ts” plus some anticipated questions and responses to consider, depending on the circumstances:

Dos:	Don’ts:
<ul style="list-style-type: none"> • Do invite the employee to sit down • Do have at least two company representatives present • Do use a private location – avoid embarrassing logistics • Do get right to the point • Do explain the actions taken and the reasons • Do listen to the employee and wait for a response • Do restate the message if necessary 	<ul style="list-style-type: none"> • Don't say "Good Morning, good to see you," or "How are you?" • Don't engage in small talk • Don't allow any interruptions • Don't use humor • Don't be apologetic • Don't defend, justify or argue • Don't agree with any arguments • Don't threaten

Dos:	Don'ts:
<ul style="list-style-type: none"> • Do be clear and firm that this is the only available option • Do stick to your prepared script • Do clarify the separation date • Do give an overview of the separation package, if any • Do explain the logistics for saying goodbyes and leaving the company • Do provide appropriate written materials • Do wish the employee well and shake his hand • Do close the meeting within 15-30 minutes • Do escort the employee to the next appointment, or make arrangements for the next meeting, if applicable • Do be sure he has his final paycheck and unused vacation pay. This can be done after the initial meeting, and limited to logistics of tendering the checks and signing the Exit Document 	<ul style="list-style-type: none"> • Don't discuss other employees • Don't over-sympathize • Don't try to minimize the situation • Don't make promises • Don't personalize the anger • Don't agree that it is "unfair" or claim you did not want to do this • Don't use platitudes like "I know how you feel," or "You will be just fine," etc. • Don't debate or discuss the reasons <i>ad nauseum</i>

Question:	Suggested Response:
<i>Why was I selected? Who made the final decision?</i>	The selection was based on a number of factors, including history of the company's performance under your leadership. 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.

Question:	Suggested Response:
<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 leadership 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. 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 unused vacation pay.

7. Post-Meeting

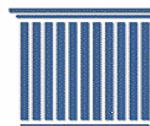
Monitor the employee's actions and gathering of personal effects. Ensure that all company property is returned. Identify a company representative for the employee to contact for any questions or follow-up items. Walk the employee out the door to ensure minimal disruption. Consider alerting the security department and changing the locks.

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Jeffrey A. Snyder
Thoits, Love, Hershberger & McLean
245 Lytton Avenue, Suite 300
Palo Alto, California 94301-1426
Telephone: (650) 327-4200
Facsimile: (650) 325-5572
E-mail: jsnyder@thoits.com

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LOVE
HERSHBERGER
& McLEAN
Attorneys at Law



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