

How to write and deliver a termination letter

Termination letters are a reality of HR life. At some point, you will have to draft one. Your options include skipping the employment termination letter entirely, providing extensive details or providing just the essential information. Like Goldilocks looking for the porridge that doesn't burn her, it's important to get the employment termination letter just right. Otherwise, you may inadvertently trigger a lawsuit.

The first rule of thumb for termination letters is to prepare ahead of time.

Termination letter sample

You should think about termination letters *before* you actually have to draft one. If your organization hasn't used one yet, create internal rules for what should and should not be included. There is no one right way. But it is important to be consistent. You shouldn't provide one terminated employee with a detailed termination letter while providing few details for another similarly situated worker. That said, you may end up with several termination letter samples for different circumstances. A reduction in force or mass layoff termination letter requires an entirely different approach than terminations for cause.

Termination for cause

There are two schools of thought on the kind of detail should be included in a termination for cause letter. One school says that the more details you include, the better. This approach assumes that the employee (and his attorney) will realize that the employer acted based on legitimate business reasons. The letter then essentially aims to persuade both that litigation is futile. Whether this approach works well is up for debate.

Here's how it could backfire. An attorney may file suit, alleging some form of discrimination or harassment and then wait for the employer's response. If the employer now includes additional information to support termination, she'll argue it's too late. Or worse yet, that the reasons are contradictory and show that the termination letter contained pretextual termination reasons. This simply looks sloppy. Plus, piling on reasons when the initial letter was pretty detailed looks suspicious.

The second approach avoids this problem. This termination letter would include just bare-bones information such as name, dates of employment and a simple statement that the employee is being let go. However – and this is crucial – you do need internal documentation to support the termination. If there's litigation, these contemporary notes will be of utmost importance to justify the move was for legitimate business reasons.

Your supporting documentation should also include enough detail to justify any apparent deviation from past discipline. For example, if you fired a worker for chronic absenteeism, be ready to explain. If you gave another worker a warning, explain why. Perhaps the fired worker had prior discipline for other reasons. Perhaps the worker who got a warning had a clear past disciplinary record. Those details in your records (not in the termination letter) make your case that you treated both fairly.

Warning: It's possible you operate in a state that requires you to provide a termination reason. If so, make sure you pass the proposed termination letter by counsel before it's delivered.

Termination for poor performance

Another common termination reason is poor overall performance. If your company has clearly defined goals, regular reviews and perhaps a performance improvement plan policy, providing details is fine. Include missed goals, poor work examples and the like in your termination letter.

Your supporting documentation should make it clear supervisors followed your internal performance policies. For example, explain that he or she was placed on a performance improvement plan under your rules. List the goals of that plan. Show that the employee failed to meet the goals. Include a quick comparison with other recent poor performance terminations. The goal for your documentation is to demonstrate fair and equitable treatment for all similarly situated workers.

Reduction in force and reorganization terminations

Before you prepare any employment termination letters for reductions in force, mass layoffs or reorganizations, consult counsel. Unlike terminations for cause/poor performance, these termination letters may require specific steps to comply with state and federal laws. These include the federal Worker Adjustment and Retraining Act (WARN), state Mini-WARNs and the Older Worker Benefit Protection Act (OWBPA). Each includes specific protections and some form of advance notice. Failing to follow specific steps may subject you to penalties, including blocking you from enforcing severance agreements waiving lawsuits.

Your attorneys should be able to provide you with sample termination letters that comply with both WARN and OWBPA rules.

What never to include in an employment termination letter

An employment termination letter must never include accusations you cannot prove. If you fired a cashier because you caught her stealing from the drawer, don't say so. Even if you have pressed criminal charges and are certain she'll be convicted - never a sure bet - don't. It may give her grounds for a winning defamation lawsuit. By putting it in writing, and circulating it to others, you "published" the allegation. If she can persuade a jury the statement was false and harmed her good name, she wins. It gets worse. Unlike dollar caps to Title VII awards, there are no limits to defamation verdicts. She may walk away with millions from a sympathetic jury.

What's a better approach? Her termination letter could state that the drawer was short.

Delivering the termination letter

Delivering bad news should happen in person, absent extraordinary circumstances. Email, voicemail or text terminations can quickly become a PR nightmare if the recipients share the communication on social media. Regular or express mail delivery may be acceptable under some circumstances where an in-person meeting isn't practical. But the default approach should be a well-planned meeting. Here's what should happen:

- Schedule the meeting after preparing the termination letter and other related documents like COBRA notices and severance agreements.
- Conduct the discharge meeting in a private setting, away from prying eyes.
- Treat the employee with dignity even if she's being discharged for cause. Making the worker angry may make a bad situation worse and send her into the arms of an employment lawyer.
- Always include at least one additional company representative in the meeting who had no direct involvement in the decision. He or she should ideally be skilled in de-escalation.
- Try to end the meeting on a positive note. For example, offer transition assistance like career counseling if the discharge isn't related to performance or offer a positive reference.
- If discharging a worker aged 40 or older, the OWBPA applies. Severance payments conditioned on waiving

the right to sue must meet OWBPA deadlines and language.

- Check to make sure you are complying with all state or local laws on last pay. Many states require you to pay fired workers immediately for any work already performed, regardless of paycheck due date.
- Make the meeting short and end it promptly. Don't engage in a debate over the underlying discharge reasons. Do emphasize that the decision is final. Let the employee leave on his own or have a manager accompany him. Being escorted by security should be a last resort reserved for the rare occasion when you suspect potential violence.