

# Protect your company with a sound termination policy

Terminating employees, particularly involuntarily, is a part of the job that most business owners and HR managers dread. Firing or laying off staff members is a tough decision, but sometimes needs to be done due to misconduct or business changes. And when it does, it's vital to have a legally sound termination policy in place.

Regardless of whether the choice to terminate the employment relationship is the choice of the employee or the company, there are procedures that need to be set in place to make the process as smooth as possible for each party.

## Why have a termination policy?

It's a good idea to have all of your company policies and practices laid out clearly in writing. Written policies provide clearer expectations for employees and contribute to the consistent application of policies by the various managers, supervisors, and HR personnel within your organization. A termination policy is one of the most important policies to put in writing, due to the higher likelihood of disputes and legal action surrounding terminations compared to other employment actions or policies.

The most obvious concern is accusations of wrongful termination. If you haven't carefully documented issues in accordance with your discipline policy, set forth a clear termination policy, and applied your company policies consistently you may run into some legal trouble if an employee feels that their termination was unjust or discriminatory.

The other very common, but often overlooked, legal issue that can arise with terminations is not meeting compliance requirements with your termination process. Even if your decision to let an employee go was completely legal and justified, if you fail to meet your obligations in regards to handling final pay, vacation pay, or providing COBRA information, you may face fines or other consequences.

## What to include in your company's termination policy

Your termination policy should restate and reinforce your at-will employment policy if you are in an at-will state. This is important as at-will employment allows employers to terminate employees without cause or warning as long as there are no illegal underlying reasons such as discrimination or retaliation for protected whistleblowing or complaint filings.

A termination policy is also an excellent place to lay out your expectations for employees that quit. Of course, an at-will policy goes both ways, so employees don't have to give notice in voluntary terminations. However, most people will as a courtesy to the business and to remain in good standing for references or rehire.

It can also be helpful to include a sample list of offenses that may lead to termination. However, it's important to state in the policy that this list is not fully comprehensive. You may run into unique situations in the future that necessitate immediate dismissal that you will not have predicted or thought to add to the list. The



termination policy and disciplinary action policy will be somewhat connected and overlapping, so it can be helpful to position them close together in your employee handbook.

Some employers also list extra items such as the return of company property and processing of final payouts. These issues can also be addressed in separate company policies.

## **Sample termination policy**

Your employment at [Company] is considered “at-will”. As such, you or [Company] may terminate your employment at any time for any reason.

There are two ways to terminate employment: voluntary and involuntary. Voluntary terminations include:

- Resignations
- Retirement
- Failure to return from leave
- Failure to report to work for three consecutive days without notifying the company
- Completion of a contract

Involuntary terminations include layoffs and disciplinary termination. Employees who want to leave in good standing and remain eligible for rehire should provide the company with at least two weeks’ notice of their planned separation.

While the company aims to engage in progressive discipline, certain conduct is so unacceptable that it may lead to immediate discharge. Such conduct includes, but is not limited to:

- Reporting for work under the influence of alcohol or controlled substances
- Possession, use, sale, or distribution of controlled substances on XYZ property
- Theft
- Engaging in harassing conduct
- Fabrication of business documents, including résumés and expense reports
- Excessive absenteeism or tardiness



- Fighting on XYZ premises
- Abuse of equipment (including excessive personal use of office equipment)
- Insubordination
- Other illegal conduct on company premises

Upon separation, employees will receive their final compensation, information on COBRA election, and any other applicable balances due. Employees who are terminated voluntarily or involuntarily will be paid out their unused PTO balances in accordance with [Company's] PTO policies and applicable state laws. All company property must be returned to [Company] on the final date of employment.

## **Termination procedures to put in place**

In addition to having a written employee termination policy in your employee handbook, you'll also want to put some other procedures in place for processing terminations.

### **Exit interviews**

While exit interviews don't need to be included in your termination policy, it is a good procedure to put in place for voluntary terminations. These are typically meetings with human resources that are scheduled for an employee's last day or during their final week. The purpose is to solicit feedback about the employee's experience with the company. Exit interviews help employers understand why an employee has decided to leave. Understanding the driving forces behind turnover within your business can give you an opportunity to address these issues and improve future retention.

In addition to the basic procedure of scheduling and conducting an exit interview, many employers also have a set list of questions. This can be helpful for consistency and ensuring that the most pertinent information is gathered during each interview.

### **Information security measures**

It's also important to have procedures in place to protect company data when an employee departs. The IT department should have a process for deactivating employees' email accounts and any other company accounts that they may have. This prevents them from re-accessing it later and viewing information that they are no longer authorized to see or use.

That part should be more of a standard operating procedure for IT rather than a section of your termination policy in most cases. However, many companies include a section either in their company property or termination policy that details the timeline and expectations for returning company property upon termination of employment. This is particularly critical if your business provides employees with laptops or company phones which may hold proprietary or confidential information even after access to databases and communication channels has been terminated.

### **Final payments**

Another internal policy that you'll want to have clearly defined for the appropriate departments is final paychecks. This is an area where businesses can run into some compliance issues. Requirements also vary by



state so it can get complex if you have a remote work policy or many locations and employ people across several states.

It is a good idea to address PTO balances in your PTO or termination policy. Always check state laws regarding PTO balances, as you may be required to pay them out to employees in some states regardless of your nationwide company policy. There should also be clear guidelines in place for other payments such as quarterly bonuses, severance pay, and commission. If commission is usually paid out after a set amount of time from the sale, you'll need to determine how to address that.

## **Communication and security procedures**

Some businesses also have procedures in place for how to break the news regarding turnover or process written notices of resignation. Most often this relates to involuntary turnover as they tend to be more emotionally charged than voluntary terminations. A lot of companies have recently come under fire for how they chose to communicate layoffs, so it could be a good idea to give some thought to the appropriate way to communicate these delicate matters.

On the other hand, employers in high-security industries sometimes have additional procedures that they must put in place to manage the process. In some industries, it is common for employees to be released upon giving notice. This is not ideal for building trust with your staff and should be avoided if possible. If having exiting employees accessing customer data is a huge concern, consider offering severance pay to cover the standard notice period. How you handle these issues and communicate with your staff makes a difference. After all, that particular employee may be on their way out, but they may talk to current employees or other prospective talent in the industry. If they have a negative experience it can deter others from applying or trigger additional employee turnover. Accumulating harsh Glassdoor reviews due to an unpleasant exit experience can also make your company less competitive from a recruiting standpoint.

## **Create policies and procedures now to prevent issues later**

Building out all of these policies and procedures can seem like a headache, especially for small businesses with lower turnover. However, taking the time now to create clear policies and a solid set of termination procedures can save you from a lot of trouble down the road. Whether it be a wrongful termination suit or a breach of confidential information, a lot can go wrong in terminations. This is especially true in involuntary terminations where there may be some hard feelings. Save yourself the hassle and invest the effort now.