

# The Right Way to Fire Someone

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Firing an employee--looking someone straight in the eye and telling them they no longer have a source of income--is one of the toughest things you'll ever have to do as a business owner. It's often as hard on the person giving the bad news as it is on the person receiving it. And yet it still needs to be done, especially if you have someone who's "poisoning the well" and bringing the entire business down with them.

Assuming this person is an "at will" employee--someone who doesn't have an employment contract that guarantees employment for a specified time period--here are ten tips to help you remove the bad apple cancer from your business with a "zero to low" risk of being sued for wrongful termination.

**1. Check your past feedback.** If you've been giving this employee glowing performance reviews and a raise each year, they'll understandably be shocked when you call them into your office and give them the boot. Look back at your relationship with this employee, and if you've been sending them overly positive signals, don't fire the employee immediately! Instead, start changing the signals and let them know in no uncertain terms that they're not "living in Kansas anymore."

**2. Give them a warning.** Sit the employee down in your office, explain that you're unhappy with their performance, and give them a limited period of time (I would suggest 30 days) to turn things around. Make it very clear that if they continue to "fill in the blank with their bad behavior," you'll have no choice but to terminate them immediately. Prepare a "memo to the file" detailing what you told the employee.

**3. Focus on specific behavior goals.** Give the employee a list of behaviors you find unacceptable, and tell them exactly what they need to do to get back into your good graces. Do not allow the employee to drag you into a discussion that focuses on anything other than what you've just covered.

**4. Fire early in the week and never on a Friday.** Assuming the employee doesn't turn things around for the better, fire them early in the work week. Never fire someone on a Friday, because then they can "stew about it" over the weekend and come into work the following Monday ready for a fight, or even worse.

**5. Make it short, sweet and to the point.** Do not get caught up in the employee's emotions--have a box of Kleenex handy on your desk. Have a witness present during the meeting in case the employee threatens retaliation. Then proceed with the following steps:

- Tell the employee that they're being terminated and when they'll be expected to leave the office.
- Explain that the firing is "for cause," but avoid going into detail about the grounds for termination. You don't want to start an argument. Just point out that the employee did not attain the goals you wanted them to reach in their latest "performance review." If the employee objects or becomes defensive, say simply "I'm sorry, but my mind is made up."
- Explain how much severance pay (if any) you'll be providing and what other benefits they'll be entitled to after they leave your employment.
- Explain to them what you'll say should anyone call and ask you for a job reference. Be sure you've spoken with an employment law attorney first and have agreed on the exact wording.

**6. Do not let the employee linger.** Unless there's an urgent reason to keep the employee around for a few days, tell them that they're to leave the business premises immediately, after a short stop at their desk to pick up any personal items. Escort the employee to the door, so the employee doesn't have the chance to steal any company files, trash any computer data or change any computer passwords without your knowledge. Better yet, have another employee change these while the other employee is in your office, so

they can't go back to their desk and wreak havoc with your computer system. Collect any office keys and company credit cards this employee might have.

**7. Ask for a release, and give the employee an incentive to sign it.** If the employee is a minority, a female or is over the age of 40, I would recommend asking them to sign a release of liability. Do not draft this yourself--there is very specific language a release form must contain in order to hold up in court, especially if the employee is likely to claim "age discrimination." Have your employment law attorney draft the necessary release before the "exit interview"--it should take only about an hour of the attorney's time.

Offer the employee something in exchange for signing the release, along the following lines: "You'll be entitled to one week's severance pay, Mary, but if you sign this release form, I'll be happy to extend that to three weeks. Talk it over with your attorney if you like, and let me know what you decide to do." You cannot force an employee to sign a release, but you can give them a strong incentive to do so. Also, giving the employee the chance to talk to their attorney demonstrates that you're not worried about being sued.

**8. Reassign the terminated employee's job duties promptly.** As soon as the employee leaves the premises, call your other employees together, tell them that the employee is no longer working for the company (but avoid giving details), and reassign their duties to other employees. That will prevent a "rumor mill" from starting and will inoculate the employees against any negative phone calls or e-mails they may receive from the terminated employee.

**9. Do not fight the employee's claim for unemployment benefits.** If you do, there's likely to be a hearing, which will be transcribed by a court stenographer. No matter what you say during the hearing, your ex-employee is likely to be awarded benefits anyway, and if you say one thing out of line, you've just given your ex-employee "Exhibit A" in their lawsuit for wrongful termination.

And the most important tip . . .

**10. Get the job done.** There's only one thing worse than firing an employee who's likely to get emotional, angry or violent, and that's not firing them. Holding onto an employee who's not performing or wreaking havoc with your business poisons your workplace in two ways: It allows the harmful behavior to continue, and it sends signals to other employees that they can get away with similar behavior.

Firing an employee is tough, and there's no guarantee you won't be sued no matter what you do, but if it has to be done, you do both yourself and your business a great disservice by putting off the inevitable.