

Employee Termination Primer

A Guide for U.S.-Based Small and Medium-Sized Companies

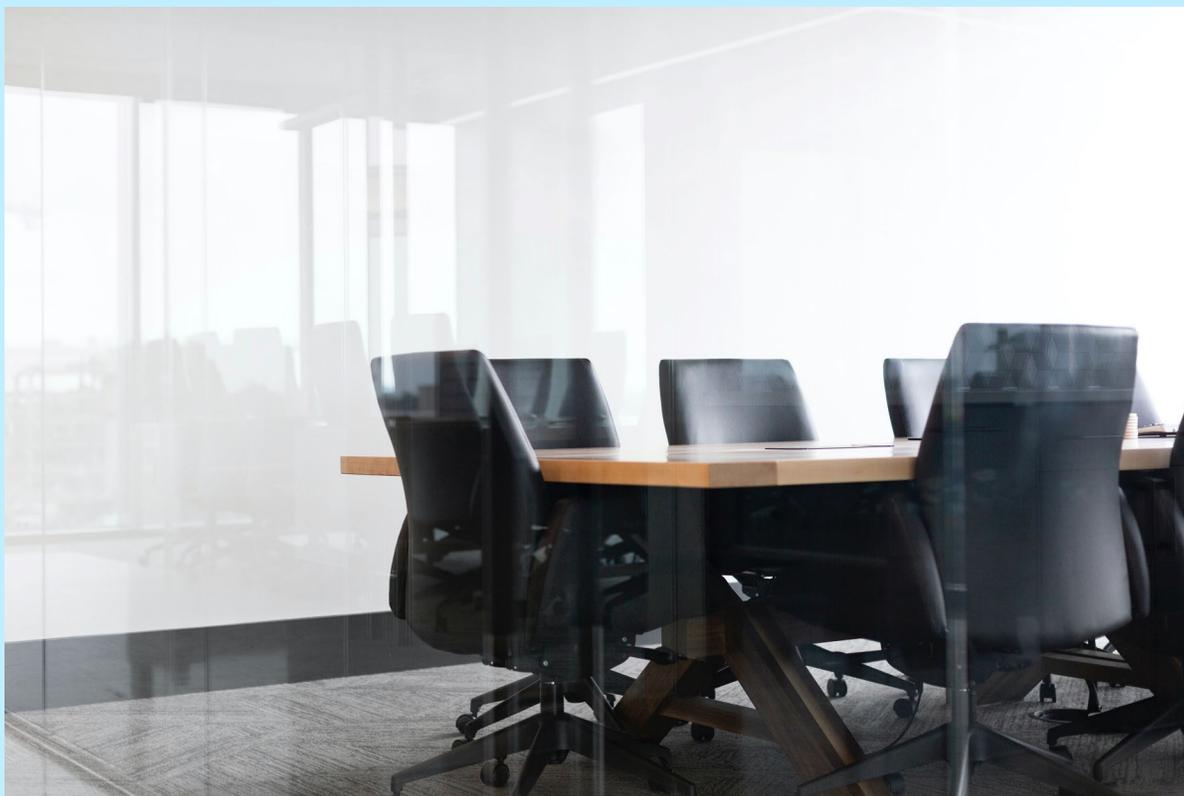
By the team at  suitless

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Introduction

Terminating an employee is never easy. It can be difficult for the individual being terminated and it can also be difficult for the person who is conducting the termination. We've put together some guidelines related to employee termination best practices in the hopes that we can make the process a little bit less frightening and cumbersome for everyone involved. Read through this document prior to conducting any employee termination(s) and reach out to your Suitless consultant if you have any questions.



Disclaimer: This e-Book is meant to provide you with practical and useful business guidance related to how one might address various business scenarios. This e-Book is not intended to be comprehensive and should not be used as legal advice or medical advice. The information contained in this e-Book is not a guarantee of insurance, insurance coverage, or benefits. No business relationship exists between you and the author or Suitless Inc. unless one has specifically been established in writing.

Part 1: Planning for Employee Termination

Timing

We often get asked about the best time of the day to conducting a termination. If you terminate an employee in the morning, consider offering them the rest of the day off (out of the office) to regroup and plan for next steps. If you terminate the employee in the afternoon/evening, remind them that they do not need to come in to work the next day.

Location and Setting

Plan to conduct the termination meeting away from the rest of your staff, either first thing in the morning or at the very end of the day. If you can conduct the termination off-site, that's even better. You want to spare the employee any embarrassment that they might experience as a result of the termination or being seen in a meeting of this nature.

Plan on having at least two people present (not including the employee being terminated) at the termination meeting. One person should be there to conduct and facilitate the meeting and the other should be there to act as a witness to the meeting.

The "Forced Resignation" Option

Prior to the meeting itself, determine whether you'd like to give the terminated employee the ability to resign. Some employees appreciate the opportunity to resign instead of being involuntarily terminated. This can be an important moment during the termination conversation, and may give you a better understanding of how the employee will act/react to the overall termination process from that point forward.

See if you can get the employee to agree to the idea of a resignation by the end of the meeting. Often times this will allow an employee to save face, retain their dignity, and feel less animosity towards the company for being "fired."

The "forced resignation" scenario above usually makes more sense if the employee is being terminated for poor performance, poor attendance, excessive tardiness, or not meeting job expectations. It is not advisable to offer the employee the opportunity to resign if they did something willful, egregious, or malicious (lying, cheating, stealing, endangering others, etc.).

Part 2: The Termination Meeting

Remember that the primary purpose of your meeting with the employee is to terminate their employment. Regardless of what happens during the meeting, the goal is for them to leave the meeting as a former employee of your company. Do not let the employee try to negotiate, downplay, refuse, or talk you out of the decision to terminate. Before you go into the termination meeting set your intentions by reminding yourself: **Your decision to terminate this employee is FINAL.**

At the beginning of the meeting, let the employee know that today is their last day with the company. Consider telling the employee that you'd like for this departure to be on **their** terms (as much as possible). If you have determined to give the employee the ability to resign effective immediately, inform them of this option as outlined in the previous section.

You may receive pushback from the employee during the termination meeting. It's possible that you'll hear various excuses or statements such as: "I can change", "I can do better" or "if you give me another chance, I will do XYZ differently." If this happens, reinforce with the employee that the decision to terminate their employment has already been made and is final.



Termination Meeting Best Practices

When terminating an employee one of the most important things to remember is to be confident in your decision and respectful in your delivery. Be firm, but also remember that your decision will impact someone's life – so conduct the termination in a humane way that allows the terminated employee to retain their dignity.

Begin by providing a general explanation of why the two of you (Company and Employee) are parting ways. For example, "You've had a negative impact on morale while you've worked here" or "you're not getting your work done" or "we've decided to eliminate/reorg your position." You may want to reference previous initiatives or efforts in order to address these issues or concerns.

It's common for employees to ask for specific examples. You can add a few points such as "We gave you X and you did not make the deadline" however, *do not let the discussion turn into an argument.*

You can always decline to provide examples of performance issues if the discussion becomes hostile or confrontational. A great response to an angry and/or venting employee is *I'm sorry you feel that way.*





DOs

If you do provide examples of why the employee is being terminated, try to make sure that you have documentation that can back up these examples. However, you do not need to provide the employee with this documentation at the time of termination.

Give the employee an opportunity to speak – you might learn something important about their role and/or the company. Listen carefully to what the employee says. Make a written note if the employee refers to any prior communications, interactions, or situations.

The employee may try to make excuses during the meeting. Be as polite as possible but consider responding with *I'm sorry that this didn't work out.*

Pay special attention if an employee says "You never did X for me" or "I asked for Y and you never did it" or "You're terminating me because of {UNRELATED PERSONAL ISSUE}", you can thank them for bringing this issue up and for telling you how they feel. You should also make a note of the comment and later determine if this could be a management issue or legal issue. It is common for terminated employees to lash out against their employers with all sorts of claims, demands, and excuses.

Make a note of any personal issues the employee brings up, but always try to reply by referencing that the termination was a business decision. The more you connect their termination with the business needs of the company, the better off you'll be.



DON'Ts

Never mention anything about the employee's personal characteristics, physical traits, or appearance during the meeting. Remember, the termination is about their actions, their productivity/performance, and/or the company's needs. Nothing else.

Try to avoid the common termination phrase: "You're not a fit here" or "You don't fit in" as employees can take "fit" to mean many different things. We don't want the employee to think: *Am I not a fit because everyone here is young and I'm old? Am I not a fit because everyone here is {AGE/RACE/GENDER/RELIGION} and I'm not?*

Try to avoid using the term "fired." Instead let the employee know that "we are parting ways" or that the employee will be "departing", "separating", or "will no longer be employed with the organization." The term "fired" can sting and can also be demoralizing.

Always try to avoid arguing with a departing employee. Your goal is for the employee to (1) leave with dignity, (2) not feel wronged by the company, and (3) ultimately sign a separation agreement. Often times, if the employee experiences #1) and #2, they'll be more inclined to do #3.

→ Meeting Wrap-Up

After the meeting is over, have the individual who is conducting the termination email the other individual (witness) who was present during the termination meeting with a summary of the termination meeting conversation. In the email the employee who conducted the termination meeting should ask the witness: "*Did I miss anything?*"

The termination meeting should last a maximum of 15 to 20 minutes. At the end of the meeting the employee should be escorted off of the company's premises. If the termination was conducted off-site, the employee should be told explicitly that they are not allowed to return to the company's premises.

Ask the employee if they have any items that they need immediately from the company's premises (coat, purse, wallet, phone, medicine). If so, obtain those urgent items for the employee and offer to ship any contents of theirs that are still at their office back to their terminated employees' home.

If you do ship back any property that the employee had at the office, it's a good practice to itemize the contents, take pictures of any expensive items, and ship the package insured and with signature confirmation.

If the termination is being conducted remotely, we recommend shutting down access to any company systems or programs immediately prior to, or during the termination meeting.



Part 3: Severance, Offboarding, & Post-Termination Considerations



Severance

Consider offering severance in exchange for the employee signing a separation agreement and release. If do offer severance, consider break any severance offering up in to two components. For example, if you advise the employee that their severance package will includes a total of ten weeks, two weeks of those weeks could be for their "two week notice" and eight of those weeks could be for them to figure out what they want to do next in their life. Presentation matters!

The two weeks comes into play in that you can use it to align with the narrative that they decided to leave the company on their own accord (assuming you decided to go this route). This may involve a bit of extra 'sales work' on your part.



Benefits & Equipment

During the meeting briefly explain any immediate offboarding questions related to COBRA or insurance coverage, final payouts for things such as PTO, earned bonuses, expense reimbursements, and equity or stock option offerings.

Remember to get any passwords or equipment back from the employee at the time of their departure. If you're not able to do this, try and include language in their separation agreement requiring the return of company property.



Notice

Some states require companies to provide terminated employees with written notice of their termination. Check to see if you are subject to any state or federal laws related to written notice requirements.



Final Payments

Make sure that you provide the employee with their final paycheck at the meeting if the employee works in a state where the employer is required to do so. If you are conducting the termination remotely, either overnight a physical check or send their final net payment via wire transfer, PayPal, Venmo, Zelle, or any other instant money transfer system. If you decide to provide the employee with a separation agreement during the termination meeting, let them know that you will be emailing them a copy of the same separation agreement.

- In addition to providing the departing employee with a paper separation agreement you should always send an electronic version of the document to them at their personal email address. This gives you some backup documentation in case the employee claims that they never received the document.
- Their final paycheck should always include all wages/earnings earned through their date of termination.
- Payment of additional money owed (Accrued Vacation, Sick leave, Personal Leave, Commission, Bonus, etc.) should be based on your company's policies and applicable state law.
- Be careful not to deduct any money from the departing employee's final paycheck unless you have their explicit permission to do so. If you deduct money without permission this could be considered wage theft (even if you believe the company is owed that money).



Post-Termination Obligations

Remind the employee of any post-termination obligations that he or she might have towards the Company once their employment ends. This could include confidentiality, trade secrets protections, non-solicitation, non-compete, non-disparagement, and return of equipment/data, etc.

When doing this, we recommend providing a copy of the documentation that the employee may have signed when they were hired. This could include a copy of their offer letter, NDA, Conflict of Interest, PIIA/CIIA, and/or handbook acknowledgement(s).

Part 4: Employment Practices Coverage

By  **FOUNDERSHIELD**



Employment Practices Liability Insurance (EPLI)

Whenever we talk to a business leader who is looking to terminate an employee, one of the first questions we ask is whether the company has Employment Practices Liability Insurance (EPLI). EPLI coverage adds another layer of protection for a company that is terminating an employee. This type of coverage can protect the company against claims from employees and former employees

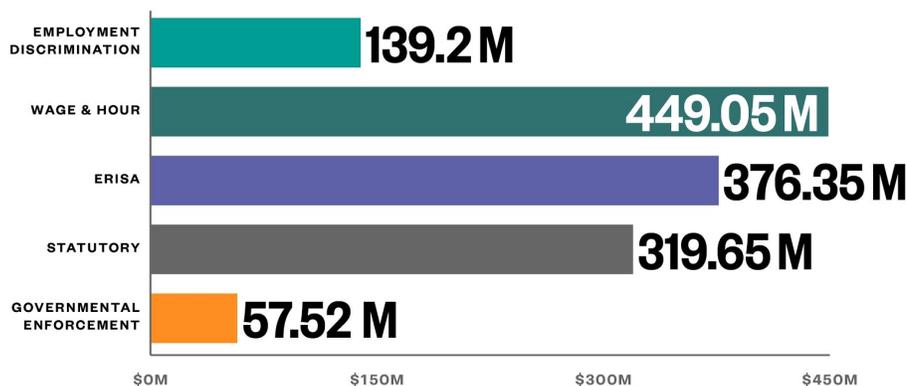
Our friends at Founder Shield have put together Part 4: Employment Practices Coverage, to give you a better idea of what EPLI is and how it can protect your company.



EPLI Considerations

Employing any sized workforce opens the door for an array of legal issues for management to face. What's more, we live in a litigious society where many individuals don't think twice about filing a lawsuit — especially when they feel wronged somehow. Employment practices liability insurance (EPLI or EPL insurance) helps to safeguard your company against costly and time-consuming claims. EPL insurance works to cover companies for employee lawsuits that arise from their employment conduct practices.

Settlement Amounts By Class Action Type





Rapid Growth

Companies that evolve quickly experience the highest amount of employment practice issues. No matter if your team is a couple of people or a group of 250, many factors play a significant role in employment practices, such as:

Change in company climate or mission

- New management or procedures
- A wave of new hires
- Employment health issues (i.e., pregnancy, illness)
- Lack of employee guidelines

It's easy for management to get stuck in a hiring pattern or forget to update the employee handbook when adding a handful of new employees. However, these overlooked issues are the ones going to land you in hot water.



Types of EPLI Claims

When employees feel wronged, such as during an incredibly uncomfortable termination process, they're more likely to follow up with a lawsuit. As indicated below, many cases stem from wage/hour and ERISA issues.

Some other lawsuits that arise from employment practices issues include:

- Breach of employment contract
- Discrimination
- Wrongful termination
- Failure to employ or promote
- Negligent evaluation
- Sexual harassment
- Wrongful discipline
- Mismanagement of employee benefits plans
- Wrongful infliction of emotional distress

Cost of EPLI

Cost of EPL Insurance

Every industry faces unique risks. However, many companies only purchase EPL insurance after validating the expense (i.e., the premium is less than the cost of potential EPL lawsuits). Unfortunately, this approach is often after a situation has already surfaced.

The optimal strategy is getting EPL insurance *before* experiencing any harmful or costly employment practices issues. EPL insurance cost depends on many factors, including company culture, industry, size of the business, etc.

Keep in mind that EPLI is often a tailored policy. Many insurance carriers custom build these policies based on the specific needs of your company. The key is to find an insurer that can identify your particular exposures and develop a well-rounded plan around those risks.

How Insurers Assess Premiums

When employees feel wronged, such as during an incredibly uncomfortable termination process, they're more likely to follow up with a lawsuit. As indicated below, many cases stem from wage/hour and ERISA issues.

Although EPL insurance is critical for any small-to-medium size business, it's not a one size fits all policy. That said, insurers assess premiums using various factors, such as:

- Industry
- Number of employees
- HR department procedures
- Turnover rates
- Policy limits, terms, and deductible
- Claims history

Your best bet is to depend on seasoned insurance professionals to identify your specific risks and review quotes from several carriers to land the best EPLI coverage.



If you have any questions about terminating an employee or need help doing so, feel free to reach out to Suitless for free initial consultation.

www.getsuitless.com

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