

Features

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Turnover—By Design or Default?

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Firing employees is never pleasant, especially if it results in lengthy litigation. This article will discuss terminations related to either an immediate response to an unacceptable action or ending an unsuccessful coaching period. (We won't discuss separations involving shuttering an entire department, retirements or voluntary departures.)

Today, it's critical to have legal counsel about your local employment laws. Advice on human resources is plentiful and more economically available. In the last issue, we discussed how The Garden Center Group members

have access to Seawright & Associates, a human resources management consulting firm. Consider sources like Seawright, employerscouncil.org or other more local resources. It's probable most garden center operators are focused on new plant varieties this spring, rather than a potential subpoena with their name on it. Always outsource HR legal questions to locally aware professionals.

When it Happens Suddenly

Be prepared. If an employee does something utterly unacceptable (violence, theft, sabotage, etc.), know the legalities of your options. In some states, if you delay action due to being under-staffed, it may indicate the action wasn't that reprehensible because you kept the employee on the payroll for "employer convenience."

In some locales, the employer is required to pay discharged employees immediately upon termination. Ask if you can answer outrageous behavior with an immediate 72-hour suspension without pay. This allows both sides to cool down and consider the situation. You should weigh all factors. If separation is the answer, then prepare all the termination documents and final payments.

Some companies have termination documentation where the departed employee acknowledges understanding of certain policies and laws. Normally, this would include use of company property, tools and IT systems. It also covers the prohibition against using the company's database, especially for information about consumers or employees, for personal or non-business related matters. That could be considered violation of privacy legislation.

Your termination paperwork could include a complete release of claims against the company. In exchange for this release the company pays two weeks of severance (or some other cash incentive.) Again, check local laws.

Some retailers hesitate to terminate fearing an increased unemployment insurance rate. If the employee is toxic, exhibits unacceptable behavior or works at a sub-par level, the hidden cost to you is much higher than your

unemployment tax. Consider the customers and employees that person has driven away. Never underestimate the impact an unfit employee has on others.

Phyllis Rollins of Fairview Garden Center in Raleigh, North Carolina, says, “You can’t be an ostrich with your head in the ground. HR problems don’t go away by themselves. Management has to manage them to the best outcome possible.”

Jean Seawright, the HR advisor to The Garden Center Group, agrees. “If an owner doesn’t address performance issues when they arise, the owner can lose credibility with their best performers,” she says.

When it’s a Long-Term Issue

Separating from sub-standard employees is emotionally more difficult. There’s a lot written about how to handle the “exit process.” Check your current processes to ensure you aren’t using termination to solve systemic problems that might be handled with additional training, coaching and education.

Jack Welch, former CEO of General Electric, was infamous for ranking employees. In his book, “Winning,” he wrote about the bottom 10%. “There is no sugarcoating this,” Jack wrote. “They have to go.”

Critics point to the disastrous results of the GE culture Jack left behind. His belief in ranking employees created a back-stabbing, everyone-for-themselves environment. It also ignored the reality that every organization needs experienced, well-trained employees at every level to keep all systems functioning.

When termination is the only conclusion, be quick, friendly and firm. Once the decision has been made, act on it. Be humane, civil and encouraging. If warranted, help the employee seek a position elsewhere that’s a better fit for their skills and aptitude. Remember, a hungry litigant is a fierce enemy, in part because without income their survival instincts are activated. If they’re gainfully employed, they may be less litigious.

In the ideal situation, Jack writes, the last conversation will go like this:

Boss: Well, I think you know what this meeting is about.

Employee: Yes, I guess I do. So what are your thoughts on timing and what’s the deal?

This scenario assumes there’s been continual communication about the company’s standards and the employee’s performance. Numerous retailers mention situations where the employees knew what was coming. Often these employees thanked the boss for giving them so many opportunities. Terminations should never be a surprise.

The Peter Principle has been studied and debated since its 1969 publication. It was intended to be a satire on businesses that promote employees “to their level of incompetence.”

If your employee has reached this point, consider reminding them of how well they did in a different position. Encourage them to seek a position similar to what they had when they were successful. Don’t hold out any hope their old position will reopen. Give them hope for their future elsewhere.

The Final Word

Regardless of what you want to happen, be prepared for anything. Ideally, the final conversation will be with the employee, their immediate supervisor and the supervisor’s boss. This provides witnesses. Immediately and independently, the witnesses should each write their recollection of the meeting without collaboration. It’s a stronger record if the notes are done individually. Ask counsel about possibly recording the termination interview.

Although the employee knew this day would come, it’s embarrassing. Let the person depart with dignity. If the employee is friendly and amenable, avoid a public “perp walk” by choosing a time when few employees are around.

If someone is needed nearby, say for security, choose people at a higher management level to be there.

While not unheard of today to fire people via email or text, it's a terrible and cowardly way to avoid confrontation. It's also risky. You can't know the employee's thoughts or plans for retaliation. When your staff hears about it—and they will—they won't believe, "We're one big happy family." **GP**

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