

13.10: Legal and Ethical Termination

Learning Outcomes

- Identify ways to legally terminate an employee
- Identify ways to ethically terminate an employee

There should always be justification for terminating an employee. Any company that fires an employee “just because” can face serious consequences. To protect themselves from lawsuits, a damaged reputation, and a hostile work environment, companies need to ensure they have policies in place surrounding termination procedures. These policies should address ways to legally and ethically fire an employee.

Legal Considerations

Let’s start by exploring legal ways to terminate employees. Since the next section will address laws surrounding termination, let’s discuss strategies companies can use to protect themselves from legal repercussions surrounding employee terminations. First, consider layoffs from downsizing. This type of termination is unique because the employees are not fired for wrongdoing or breach of contract. Instead, the company has made a decision to cut costs and therefore has made a business decision to cut their workforce. When laying off employees it is important to consider the following:

- Can the company justify and explain their business decision to make layoffs?
- Are there written company policies that outline downsizing procedures? If so, they need to be followed.
- Is there anything in an employee’s contract that protects them from layoffs or requires some sort of severance pay in the event of a layoff?
- How will the company determine who they lay off? It is important to predetermine the departments and positions that need to be cut. In addition, there should be clear, objective criteria in place to determine who will be laid off (seniority, sales, etc.). These criteria should be used universally throughout a company when downsizing.

“Fired” employees are different than employees who are laid off. When companies fire someone, it can be for a number of reasons. For example, poor work performance, unethical conduct, or breach of contract. Even if employees have behaved in a way that justifies terminating their employment, there are still a number of things to consider before firing them. Check out the information below to learn more.



Document, Document, Document

Consistent and clear documentation is key to avoiding legal problems after firing an employee. If an employee is spoken to about their poor performance, the conversation should be documented every time. This way, employers are able to show habitual behaviors or poor performance and have evidence that the company tried to help rectify the employee’s shortcomings. When repeat behaviors are well documented, companies can justify firing an employee for a negative behavior or performance pattern.

Do Not Discriminate



While this may seem like common sense, it is extremely important to remain fair and consistent across the board, regardless of a person's background or demographics. If an employee is terminated based on discrimination and not their performance, major lawsuits are possible. In addition to legal and financial problems, companies that are found to be guilty of discrimination may experience a blow to their reputation and company morale.

Stay Consistent

It is extremely important for companies to consistently follow any policies and procedures they have in place around documenting poor performance and bad behavior. The way in which employees are terminated should also look similar. Employees should be fired in face-to-face, professional settings. Consistency is key to conducting legal and ethical terminations.

? Practice Question

<https://assessments.lumenlearning.co...essments/18201>

Ethical Considerations

Now let's review some ethical factors to consider when terminating someone's employment. It is important to note that just because something is legal, does not necessarily mean it is ethical. Here are some ways to ensure employees are fired in an ethical way:

- Be sure to hold conversations prior to firing an employee. If they are underperforming or not meeting expectations, having a conversation with them gives them a chance to course correct. The termination conversation should not be the first time the employee is hearing about their shortcomings!
- Stay consistent across the entire organization. We discussed consistency in relation to legality, but it is also extremely relevant to ethics. Consistency can help to avoid discrimination and ensure unbiased and fair treatment for all.
- Be transparent. Employees should be notified in person that they are being terminated. Finding out about getting fired through a letter or from a third party is completely unprofessional. Although most people do not enjoy firing someone, it is important to show the employee enough respect to sit down and have the conversation face-to-face.

? Practice Question

<https://assessments.lumenlearning.co...essments/18202>

Now that we have reviewed ethical and legal strategies for terminating employees, check out the video below to learn about additional strategies managers can use to streamline the termination process.

A link to an interactive elements can be found at the bottom of this page.

You can also [download a transcript for the video "3 things managers should know before laying someone off."](#)

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