

RISK COMMUNIQUÉ

Determining Discipline and Termination Administration

This Communiqué offers guidelines to help your organization determine and administer discipline in a fair and consistent manner. The Communiqué refers to “employees”, but the risk management tips may also apply to volunteer members of your emergency services organization.

Determining Discipline

It is important for an organization to be able to prove reasonable factors are considered for determining discipline, up to and including termination. The following checklist may be utilized to ensure consistency and fairness in reaching disciplinary decisions for all employees.

- Consult with those designated within the organization that primarily handle employee performance issues (Fire Chief, Administrator, Human Resources Department, Supervisors).
- Consult with the organization’s legal counsel (experienced in labor and employment matters).
- Don’t make hasty or emotional decisions, which often lead to future problems (i.e. in litigation, the disciplinary decision is not fully supported by documentation).
- Has the organization followed what is required by its written personnel policies or guidelines (such as Personnel Handbook/Manual or collective bargaining agreement)?
- When applicable, follow the terms and conditions of the individual’s employment contract.
- Were relevant progressive discipline policies followed?
- Are there legitimate business reasons for the discipline or termination that can be supported by written evidence typically found in the employee’s personnel file?
- What prior notice or disciplinary documentation exists with respect to deficiencies regarding performance or misconduct and that the employee was given an opportunity to correct such deficiencies?
- Has the employee had sufficient time and an opportunity to correct performance, behavior or conduct that may lead to the disciplinary action?
- How were other employees disciplined for similar acts or performance in the past?
- Has the disciplinary decision been reviewed by appropriate persons as designated in written policies or guidelines (i.e. Personnel Manual or collective bargaining agreement)?
- Has the organization or third-party investigator conducted an impartial review of the facts and circumstances surrounding the potential discipline or termination?
- Is the employee afforded a reasonable opportunity to present his or her point of view?
- What harmful impact did the employee’s performance, conduct or wrongdoing have on other personnel, the organization, or the community? Consider future possible impact as well.
- If minimal or no harm was caused, what was or could be the potential harm to co-workers, the organization or the community?
- What action best prevents further substandard performance, wrongdoing or misconduct while protecting co-workers, outsiders and providing a safe and productive work environment?
- Was the employee’s conduct malicious, intentional or negligent?
- Is the employee likely to commit future wrongdoing or misconduct?
- When applicable, did the employee cooperate with investigation efforts?

This is a sample guideline furnished to you by VFIS. Your organization should review this guideline and make the necessary modifications to meet your organization’s needs. The intent of this guideline is to assist you in reducing exposure to the risk of injury, harm, or damage to personnel, property, and the general public. For additional information on this topic, contact your VFIS Risk Control Representative at (800) 233-1957.

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- If the employee committed workplace wrongdoing or otherwise violated the organization's rules, did the employee show remorse?
- Is an alternative to termination appropriate to give additional time to investigate and deliberate before termination, or otherwise allow the employee's performance to "turn around"? Examples include instituting a performance improvement plan, probation, leave of absence, reassignment, demotion, or suspension.
- In the event of litigation, would witnesses and documentation be available to help justify the disciplinary or termination decision?
- Would a jury conclude that the organization's treatment of the disciplined or dismissed employee was unquestionably fair and reasonable?
- Has the organization hired or does it plan to hire another person to take over the terminated employee's job responsibilities? Be prepared to explain when and why those arrangements were made. What are the qualifications of the replacement employee? Are there any facts present that could suggest unlawful discrimination?

Preparing For and Conducting the Termination Meeting

Proper preparation for a termination meeting can help demonstrate respect for involved parties, limit liability exposure for the organization, and mitigate potential violence. The following checklist is designed to assist in facilitating uniform and equitable termination meetings.

- Before a termination meeting, once again consult with those designated within the organization that primarily handle employee performance issues (Fire Chief, Administrator, Human Resources Department, Supervisors).
- Did the organization consult with its legal counsel (experienced in employment and labor matters) before the termination meeting?
- Ensure the termination decision is supported as much as practicable by written documentation in the personnel file.
- Termination letters, severance agreements and other correspondence should be reviewed by legal counsel and those within the organization responsible for personnel administration.
- Organize necessary information to provide to the employee including the final paycheck, benefit information, and any documents necessary for the employee's signature. Compile a list of the organization's property or other items that must be collected from the employee.
- Select an available and appropriate witness for the termination meeting to help corroborate what is said, resolve any disputes, and protect against potential violence.
- Does the designated witness understand his or her role in the termination meeting?
- Have those facilitating the termination sessions received training on proper procedures?
- Plan your dialogue and prepare a written outline to make sure all necessary points are covered with the employee.
- Plan the location of the termination meeting to allow for no interruptions and as much confidentiality as possible (under no circumstances should an employee be terminated in the presence of peers or coworkers except a designated witness).
- Has the dismissal meeting been scheduled at a time that will eliminate or minimize the employee's personal contact with coworkers before he or she leaves the premises?

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- Be respectful and professional while communicating the termination decision with the employee.
- Tell the employee the legitimate business interests behind the organization's decision to terminate the working relationship. While it may not be legally required to give specific reasons for the termination, to give vague or no reasons often provokes suspicion. The former worker and remaining employees may speculate as to the "real reason" for the termination.
- Firmly communicate the termination decision is final, unless new information is learned in the meeting that should delay the termination process.
- Diligently document issues covered during the termination session. Listen to and document what the employee has to say.
- Be careful what is said and written during the meeting. Everything written could be seen by others outside of the organization (i.e., attorneys, judges, juries).
- Let the employee read and sign the document or form used to record the issues addressed during the termination meeting. If the employee refuses to sign, note the refusal on the form.
- Ask the employee to update his or her contact information for benefit and tax purposes.
- Request the employee participate in an exit interview to gain further insight about the organization, and learn of any alleged wrongdoing in the workplace.
- Send an exit interview form by mail to the former employee if he/she is unavailable or otherwise chooses not to participate in the face-to-face exit interview.
- Place documentation regarding the termination in the employee's personnel file.
- Has the organization considered whether outplacement counseling is appropriate? An outplacement counselor on-site may help defuse a potentially hostile situation by redirecting the former employee's anger to focusing on the next step – moving forward.
- After the termination, don't leave coworkers completely "in the dark". Without infringing on the terminated employee's privacy, inform those immediately impacted by the departure whether their job duties will change and, if appropriate, review organization policies and/or performance expectations with remaining personnel.

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