

WHEN IT'S TIME TO LET GO

by Lisa Rund

Terminating an employee is never easy. Preparing in advance and working through termination checklists can help a city reduce liability, decrease stress, and prevent anxiety and morale issues for remaining staff.

When an employee is terminated, the situation is stressful for everyone involved. Given that termination in the public sector generally does not occur overnight, there is plenty of time for tension to build leading up to the event. In addition to the preliminary tension and the actual termination, the manager involved must also face staff reaction following the termination. Even if other employees agree with the action taken, anxiety and low morale are common responses to an employee's termination.

In addition to the pressure and emotions surrounding virtually every employee's termination, there are many potential requirements and liability concerns to consider. All should be examined prior to the employee's termination. This article discusses legalities and liabilities of employee termination, and offers some basic common-sense suggestions to guide managers through taking the necessary actions without the need for legal defense.

Review All Information And Create A Plan

Evidence may seem to support a recommendation to terminate. Before taking that step, carefully review the entire scenario. Depending on the circumstances, a manager or city council may feel pressure to make a quick decision terminate an employee – this is never a good idea.

The city should make the decision to terminate employment only after careful review of all pertinent information and the involvement of appropriate decision makers. Even in the most extreme cases, you can place an employee on a leave of absence so the necessary review and planning can take place.

The city should always seek legal advice prior to terminating an employee. Many times the case is clear, and a call to the city attorney is purely a precaution. Other times, the city attorney might slow the process to more thoroughly investigate policies. The timing of when the city consults legal counsel is also important. Contact the city attorney prior to arriving at a recommendation to terminate, not an hour before the manager is scheduled to meet with the employee in question.

It is important for the city to build a record that supports all termination or discipline decisions, even if the employee is at-will or probationary. In the event that an employment decision is legally challenged, good documentation of the process the city followed is a critical component in defending the decision. Working with the city attorney helps ensure there is sufficient documentation to support the termination.

Establish A Pre-Termination Process

Not all employees are entitled to formal “due process,” but it is still a good practice to have some sort of pre-termination process in place. When formal due process is required, the city must provide the employee in question with a formal opportunity to tell his or her side of the story prior to a recommendation to terminate. In addition, it is important to look for language that may establish an employee’s right to due process if your city has any of the following:

- Collective bargaining agreements.
- Personnel policies or handbooks
- Individual employment contracts.
- Civil service systems/rules

Even though at-will and probationary public employees are generally not entitled to constitutional due process, the city should still provide some type of pre-termination process. A simple notice of charges and an opportunity to respond to such charges will suffice. This action will effectively prevent any potential due-process claim, and can also be used as an additional check that the city is making defensible employment decisions.

The supervisor may recommend termination but, depending on the city, the authority to terminate an employee will likely rest with either the city council or city manager. When the final decision maker is someone other than the person recommending termination, the city should allow the employee to present his or her response to allegations to the final decision maker prior to a final decision to terminate. If the council must make the final decision, remember to follow the Missouri Sunshine Law, and consult the city attorney if you have questions about how that law applies.

Avoid Potential Lawsuits

It may appear the employee has no grounds for a lawsuit against the city. To be sure, prior to making the final decision, examine potential legal claims the employee may have. They could be based on:

- Discrimination or harassment of a protected class.
- Failure to reasonably accommodate a disability or religious beliefs.
- Failure to allow legally mandated medical leaves.
- Retaliation or whistleblower claims

If it seems the employee may have a potential claim, it will be important for the city to show that it made the termination for a “legitimate, non-discriminatory business reason,” and not because of the employee’s legally protected status. Most importantly, remember to create solid documentation for the reasons for termination, as well as the process used. As always, obtain legal advice prior to making the final decision.

Address Final Details

The city council may have moved to terminate the employee, but be sure to consider important details before taking action. When a terminated employee requests his final paycheck, wages earned but unpaid should be paid quickly as well as accumulated compensatory time. The payout for vacation, sick leave, or paid time off will be determined by the city policy. It is a good ideal to prepare a brief termination letter to the employee that states the effective date of termination and out-lines important benefit information, including continuation of coverage, retirement plans, and employee assistance programs or resources.

Work planning is a part of the termination process that is often overlooked. The employee who is being let go performs work that will still need to be completed. Whenever possible, prior to termination the employee, the city should have a plan in place for getting work done.

Consider Security Issues

When preparing to dismiss an employee, the city should also consider whether there is any potential the person may be a health or safety risk to him- or herself, or anyone else at the city. While it may seem impractical to alert the local police when conducting a controversial termination, it is certainly better to be safe than sorry.

When considering security issues, it is important to determine both the order in which the tasks must be completed and who will be responsible for each task. How quickly to move forward depends on the circumstances surrounding the termination. For example, if the city is terminating the employee for misconduct, and the employee has access to sensitive information or computer systems, you may ask him or her to leave immediately following the notification.

Prepare For The Termination Meeting

The meeting to terminate an employee is stressful, but planning ahead helps. Keep in mind that how this decision is communicated to the employee and others is a reflection of the values and professionalism of the city leadership. An employee treated with dignity and respect is much less likely to pursue a legal claim against the city.

Before meeting with the employee, it is critical for the manager to prepare the message in advance and practice, practice, practice! When preparing key messages, remember the purpose of the meeting is to communicate the message to the employee in the most professional and respectful way possible.

Write down key points of discussion for the meeting so, regardless of emotion, you will be able to refer back to your notes and keep the meeting on track. While it is important to be discreet, it is a good idea to have another management representative at the meeting. Have the meeting in the location where you will not be interrupted or overheard by coworkers or the public.

There are a lot of things that go into the decision to terminate, but this is not the time to revisit them all. The most important things to remember when meeting with the employee are to stay calm, keep the meeting short, and stick to the facts. At this point, the

decision has already been made. This is not the time to rehash events assign blame, or engage in arguments.

It is important to stay objective during the meeting. The employee may disagree or feel the decision is unfair. Let the employee speak, but do not feel the need to defend the decision. Try to end the meeting on a positive note. Let the employee know whom he should contact with questions going forward

It's okay to be relieved that the meeting is over, but there are still a few details to wrap up. After the meeting, help the employee gather his or her things or arrange for them to be collected at a later time. All city property, keys, and identification should be obtained from the employee at this time. Technology passwords and access cards/keys should be disabled.

As soon as possible, notify coworkers that the employee no longer works with the city. Follow data practices requirements and do not release private personnel data on the terminated employee. Be aware employees will have questions, and your ability to answer them may be limited. Do your best to reassure employees that you understand their concerns, but the □privacy of everyone involved needs to be respected as well.

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