



## **How to Properly Say “You’re Fired”**

By Kelly Schoening and Nick Birkenhauer

Terminating an employee is never a pleasant experience. Employers enjoy handing out pink slips about as much as employees enjoy receiving them. Termination of employment is, however, an unavoidable consequence of the modern employment relationship. It is also the single leading cause of employment-related litigation. For this reason, it is vitally important that employers understand how to properly handle a termination.

When appropriate, be sure to conduct a thorough pre-termination investigation. This can be accomplished by having a manager speak with the employees who have knowledge of the facts relating to the individual’s termination. The manager should then document the results of the investigation in writing. Also, thoroughly review the contents of the individual’s personnel file. Proper and timely documentation of the employee’s work history is essential. After these investigatory steps are completed, consult with your legal advisor to ensure that nothing has been overlooked.

If the termination is based on attendance, be sure that Family and Medical Leave time was not overlooked. Employers should also ascertain if the employee has recently filed a worker’s compensation claim, a harassment or discrimination claim or any other factors that pose a significant litigation risk.

When the time comes to actually terminate the individual, carefully plan the termination meeting in advance. The employee should be notified of his or her termination in person whenever possible. At least two company representatives should be present, and the meeting should occur in a private area, such as the human resources office.

When informing the employee of his or her termination, the employer should be straightforward, sincere and honest about the basis for the employee’s termination. Do not, however, apologize to the employee, and do not say anything more than is necessary to accomplish the task. Inform the employee of COBRA benefits in writing, and answer any questions he or she has regarding employee benefits. Instruct the employee and all others who are present to sign a copy of the notice of termination. When the meeting is over, document as many facts about the meeting as possible, including the employee’s reaction.

If another employer subsequently asks you to provide a reference for the individual, the best policy is to simply verify the dates of employment and give no other information. A bad reference could possibly result in a defamation action against the employer. Remember, you have no duty to advise subsequent employers of the employee’s shortcomings.

In the event that the individual files an EEOC charge or brings a civil suit against your company, contact your legal advisor immediately. Under no circumstances should you speak with the individual or his attorney without first consulting your own legal advisor. Litigation, like termination, is sometimes an unavoidable element of the employment relationship. However, following these guidelines will give your company a better chance of successfully defending a claim arising from a termination.