



EMPLOYER GUIDE

to Performance-Based Terminations

FOR TEXAS EMPLOYERS





THINKING ABOUT FIRING SOMEONE?

If you have an employee who has stopped performing up to the standards you've set, you need to act fast. Constant errors can affect your team's credibility and chip into your profits. On the other hand, terminating an employee too quickly can be a risky move for your business. Termination without taking the proper precautions may leave your team understaffed or cause a legal hassle. Before terminating an employee for poor performance, you need to follow a practical and fair process to reduce your liability, and give the employee ample opportunity to improve.

After all, recruiting, hiring, onboarding, and training a new employee is costly, and could be avoided if you can instead help your current employee improve. It's best practice to follow a progressive discipline process – which generally includes a series of increasingly severe penalties for repeated offenses – if you want to conduct performance-based terminations the professional way. Unfortunately, in some cases, termination is the necessary end result.

In this guide, we'll cover the 5 things you need to do before terminating an employee for performance issues plus best practices for termination.



IF YOU'RE CONSIDERING TERMINATING AN EMPLOYEE FOR PERFORMANCE, HERE ARE 5 THINGS TO DO FIRST:

1. Find out when the employee began underperforming
2. Keep a detailed record
3. Set clear expectations
4. Help the employee grow & learn
5. Create a performance improvement plan



1. FIND OUT WHEN THE EMPLOYEE STARTED UNDERPERFORMING

Don't combat underperformance with instant termination. If an employee's performance is falling short, you may want to look back on documents made, sales records, or any other work done by that employee and see when the issue arose. All of us go through rough patches. There might be an external factor that is contributing to their inability to meet expectations, and you wouldn't want to permanently lose an employee that was temporarily falling short. However if their productivity and engagement seems to be depleting more and more over a good bit of time, you have every reason to consider moving forward with the termination process.

2. KEEP A DETAILED RECORD

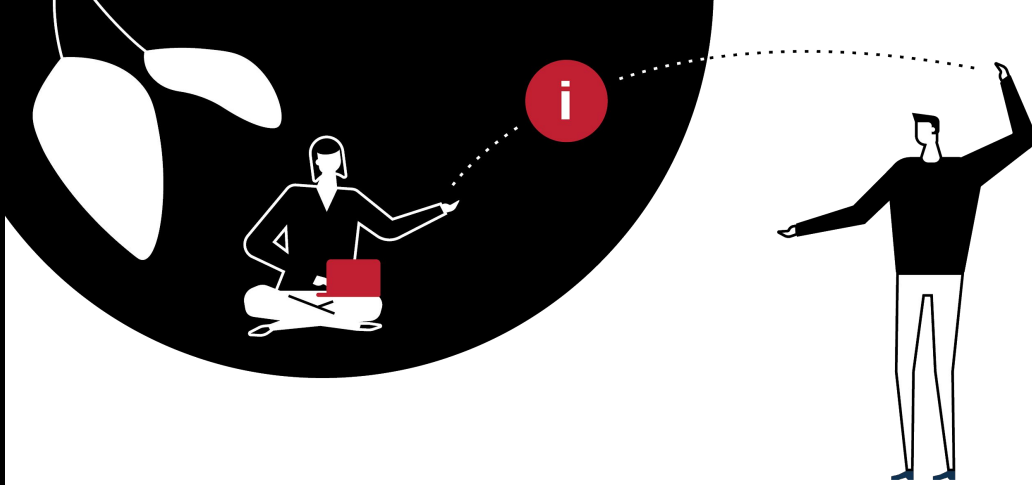
Documentation is key. If you don't have a record of something happening, it's easier to argue that it didn't happen at all. Even notes from informal conversations, when written and organized, can be helpful and count towards documentation. HR technology platforms make it easier to track and organize important records like performance reviews, time and attendance, disciplinary actions, or other personnel files. Documentation will be your greatest ally if you ever have to defend your decision to terminate an employee. These documents show that you've made an effort to help your employee be successful, and may decrease legal liability for your company. This proof of unsatisfactory performance could be what saves you from a lawsuit, so it is important to be thorough. With proof of underperformance you will have the real reason right there in black and white, just in case the employee makes a claim their firing is because of an alternative motive.



3. SET CLEAR EXPECTATIONS

Every job should clearly state the role and description expected of the employee. Having a clear understanding of the functions and responsibilities of each role in your team will help you communicate what it takes to be successful. Clearly define their roles, and you'll make it easier to pinpoint and correct problems. It's essential for your employees to know what's expected of them, and you can't assume they do. Effective performance reviews can play a large role in properly communicating these expectations with your employees.





4. HELP THE EMPLOYEE GROW AND LEARN

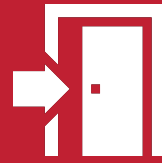
Is your employee struggling to perform because of a lack of skills that could be taught or improved upon? Don't be too quick to dismiss these cases. You don't want to lose someone who is the right culture fit and a solid team player, especially if they could develop the skills needed. Disciplinary cases could become great employees if they have genuine potential and if developing their skills costs less than restarting the hiring process.

In many ways, business leaders are also their employees' coaches. You praise the good, correct mistakes, celebrate successes, and focus on keeping your team motivated and inspired. Your employees need lots of feedback to understand what they're doing well, and how they can improve, long before you consider termination. Consistent, constructive feedback is the best way to keep everyone on track and nip performance issues in the bud before they become serious.

5. CREATE A PERFORMANCE IMPROVEMENT PLAN

If you're providing ongoing coaching, but you're still seeing major issues in performance, it's a good time to develop a formal performance improvement plan. This plan should specifically explain what the issues are and give detailed information on how to correct them. The improvement plan should also establish reasonable timelines and hold the employee accountable.

Document the conversation and the plan, and ask your employee to sign an acknowledgement form to confirm their understanding. If you verbalize the improvement plan instead, make sure you at least send a follow-up email so that you both have something in writing. However you handle it, include plans to check in on a regular basis. Document these follow-up meetings too, and keep giving specific feedback on the employee's progress. If you continue to see errors, and feel the employee isn't making progress, address it quickly. Again, in writing, detail specifically what needs to improve and how it can be accomplished.



HOW TO TERMINATE AN EMPLOYEE

Despite all your best efforts, termination is sometimes unavoidable. Once you reach this point, you should have clearly documented what you did to help the under-performing employee improve. If a performance-based termination comes as a surprise to your employee, you've done something wrong.



REVIEW TERMINATION LAWS

Look up your state's employment laws. [Here's an index of topics for Texas employers](#) from the [Texas Workforce Commission](#). Texas is a strong "employment-at-will" state. This means that, in general, either the employer or the employee may end the employment relationship without giving either notice or a reason.

While Texas law does not require written notice of termination or layoff, a simple, clear, and unambiguous written notice of work separation can help prevent employees from later claiming that they are owed additional pay beyond the work separation date, since they did not know they had been laid off or discharged.



Depending upon the circumstances, the following may need to be done at or near the time of termination:

- ❑ The employer needs to make a final wage payment within six calendar days for a layoff or discharge, or by the next regularly scheduled payday for a resignation
- ❑ If the employee had health insurance, the employer should give notice under state or federal COBRA laws
- ❑ Normally, except in the event of a mass layoff, no notice to the state of Texas is required for any kind of work separation, but if the employee was subject to a wage garnishment order for child support or alimony, the employer must notify the New Hire division of the Attorney General's office within seven days of the work separation
- ❑ For employees who are under child support orders, the employer must notify the Attorney General's office within seven calendar days of the effective date of work separation, and in case of certain lump-sum payments of severance pay, bonuses, commissions, accrued leave, or similar post-termination payments, any child support or alimony amounts must be taken out of such payments.

Consult with your HR experts to make sure you're aware of the workers rights when dealing with termination, and the steps that you'll need to take if you do end up having to terminate the employee. You don't want to miss anything and pay the price down the line.

Before you terminate, take the time to check off the following tasks:

- ❑ Review all the documentation leading up to the termination decision
- ❑ Contact your legal counsel or HR representative to ensure you're making a justified, well-supported decision
- ❑ Confirm with your HR representative that you're following all the wage and hour regulations
- ❑ If you use employment contracts, non-competes, or non-solicitation agreements, ask your legal counsel for enforcement guidance





HAVING THE TERMINATION CONVERSATION

When it's time to sever the relationship, don't disguise the real reason for a performance-based termination by saying it's a "layoff" or something else. Be honest and direct. If your decision is supported, the truth will come easily. A performance-based termination statement sounds something like this: "We've talked several times about your attendance. We haven't seen the improvements we expected. That said, we have made the decision to terminate your employment effective immediately." Leave no room for misinterpretation. You've stated the facts, and made your decision. This is a better approach than avoiding the truth or rug sweeping.

The timing and location of this difficult conversation are also important to think through. The right answer for your situation depends on a number of factors like the reason for the termination, the employee's disposition, your company's culture, and maybe more. While there's never a "good" time for this kind of conversation, you can try to make it as smooth as possible, and think about the impact to your team overall.



TERMINATION SHOULD BE SEEN AS A SOMETIMES NECESSARY LAST RESORT.

Give your employees every opportunity to improve, and make sure you're enabling their success with constant support, clear expectations, and accountability. And if you notice performance issues, act quickly to get them back on track. Document everything, just in case a performance-based termination becomes unavoidable. Make sure you are performing a thorough evaluation before onboarding your employee's replacement so that you won't have to go through this process again any time soon. If you spend the time to understand the reason the terminated employee failed, you can help your company avoid another termination.

With the right HR support, you can reduce some of the risks and liabilities of being an employer, and focus on attracting, retaining, and developing the best talent. [Get in touch with us](#), and start a conversation around improving your human resource processes to better support your growth.

CONTACT US



There are payroll vendors, insurance agents, and HR consultants – then there are HR Allies. True HR allies are invested in the success of your company and its employees. At Solid, we've been keeping promises to Texas businesses since 2009. We are a team of business experts who focus on driving efficiency in the employee administration processes, insurance experts who know how to control costs, and HR experts who balance employment liability, business goals and employee engagement.

REAL PEOPLE, READY TO HELP

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