

Horrors From the Bad-Firing Files

If terminations are messy, public and humiliating, they're fodder for hungry plaintiffs' lawyers.

By Alan L. Rupe

Lawyers representing terminated employees love an ugly firing the way personal-injury lawyers love a bad car wreck. No matter how well deserved the termination, no matter how flawless the documentation of the employee's poor performance, and no matter how high the hopes for calm following the departure of a contentious employee, a poorly handled firing can turn even the best intentions into a nightmare of litigation. Since a "bad" firing can be used as evidence of the employer's animosity toward the employee in a subsequent discrimination, retaliatory or wrongful-discharge lawsuit, spitefulness in a termination can be very harmful to an employer's defense. In my top desk drawer, I keep clippings of "bad firings." Consider the following examples:

A computer systems engineer took his 8-year-old daughter to the office with him on "Take Your Daughter to Work Day." He was fired that same day (with his daughter sitting beside him in the human resources manager's office) and escorted from the building.

A cattle-feed salesman, employed for over 20 years by the same multinational company, was called late one snowy January night by his supervisor and instructed to drive to a city more than 300 miles away to discuss his sales goals for the upcoming year. When he arrived the next day, he was met by the HR director and handed a notice of termination, effective that day. The HR director took the keys to his company car, and the salesman had to call his wife to drive through the snowstorm to pick him up.

A whistle-blowing lawyer who worked in state government was fired when she reported to work one morning. After the lawyer was escorted from the office, the state official who had fired her wrapped the lawyer's desk with yellow police crime-scene tape, "for effect."

Upon arriving at work one Monday morning, several bank managers and supervisors (all over 50 years of age) were told to go to the bank's large conference room and wait for a special announcement. After they had waited for more than an hour, a security guard appeared with the bank's HR director, who handed each of the employees a severance agreement and a cardboard box that contained family pictures and other personal items from his or her desk. The employees were then escorted from the building by the guard.

A young lawyer who worked for a large law firm with a self-professed reputation for hard-charging litigation was abruptly fired by the managing partner when she criticized the firm's longtime administrator's handling of an employee issue. The HR director escorted the lawyer from the office in the middle of the day in front of her astonished coworkers, walked her to the parking garage, warned her never to set foot in the building again, and then followed the young lawyer's car as she exited the garage.

A universal description for each of these firings? Messy, public and humiliating. And fodder for hungry plaintiffs' lawyers.

Using the company's mission statement or declaration of corporate values, many effective plaintiffs' attorneys gleefully compare phrases such as "respect for human dignity" with the facts of an ugly firing. Jurors view such firings with distaste, and often respond sympathetically with large monetary awards to compensate for the employee's pain and anguish. Business owners, executives and managers should be very concerned about how

company terminations are handled. Since no termination is without significant emotion on both sides, there should be as much preparation, detailed planning and levelheadedness in a firing as in putting together a company's disaster plan. My recommendations:

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Know your company's terminator. A common factor in bad firings is a poorly trained human resources director. Know the personality, training and background of that person. Ensure that the individual has the temperament to be fair and impartial, and the ability to ask some hard questions: Is this termination legal? Does anyone have a hidden agenda? What are the repercussions of this termination? Make certain the terminator has an impartial script prepared in advance that responds to all possible questions by the employee.

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Treat each termination as if it were thine own. Business owners and boards of directors are ultimately responsible for their employees' actions. View each termination as if your own job were on the line, and do not simply "rubber stamp" each recommended termination. Remember that an employee lawsuit will almost certainly require your deposition and trial testimony, and you will have to explain your actions to a jury most likely composed of more staff or line workers than supervisors and business owners.

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Expect the unexpected. Although I am not a proponent of escorting a terminated employee from the building, particular circumstances may dictate otherwise, and employers should be prepared in the event that the unfortunate or unexpected occurs. Be prepared, but not obvious.

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Three words: civility, courtesy, candor. Too many employees are told, "You're not a fit with this firm," or "This is an 'employment at will' company," or "We don't have to give you a reason." In an effort to obtain an explanation, those employees generally go to a phone book, thumb through the yellow pages and find an attorney eager to sue an employer. I recommend that employees be told the reason for their termination. There is nothing wrong with responding, "Because of your continued poor performance."

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Don't be a jerk. Enough said.

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Remember that this is business and not personal. Firings are not an opportunity for the employer or its representative to vent or relive past affronts to the corporation. If an employee tries to turn the termination into a "boxing match," the terminator must remain as levelheaded and calm as a chess player. Remember that events at the termination might be replayed many times in a lawsuit and before a jury.

If you don't like to do firings, don't do them. You won't be any good at it. Use someone with the training, temperament and ability to handle terminations in a legally permissible manner that will allow all involved to behave with dignity.

The information contained in this article is intended to provide useful information on the topic covered, but should not be construed as legal advice or a legal opinion. Also remember that state laws may differ from the federal law.

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