



RISK MANAGEMENT INFORMATION
WHEN IT'S TIME TO LET GO:
SAMPLE CHECKLISTS TO USE
WHEN TERMINATING EMPLOYEES

Terminating an employee is one of the most stressful situations a manager will encounter. In addition to the multitude of potential legal requirements and liability concerns to consider, such action also can cause morale issues or anxiety for remaining employees. On top of that, when performance problems do occur, managers often are pressured to quickly take action. This memo will take you through three sample checklists of issues to consider before and after making the difficult decision to terminate an employee.

Sample Termination Checklist No. 1: Making the Decision

There may be times when a manager or city council feels pressured to make a quick decision to terminate an employee. This is NEVER a good idea. A decision to terminate employment should only be made after careful review of all important information and involvement of all appropriate decision-makers. Even in the most extreme cases, legitimate steps can be taken to address the concerns without terminating an employee. An administrative leave of absence is the most common tool to use, and it will allow necessary review and planning by all appropriate decision makers. Before terminating an employee, always seek legal advice. A good checklist will give consideration to who has the authority to terminate, due process, documentation, and potential claims.

Authority. It is important to determine who has the legal authority to terminate employees, and to obtain the proper approvals in advance of notifying the employee. Authority varies depending upon the type of city in which you operate. In a “Plan A” city, the city council is the authoritative body. In a “Plan B” city, the city manager is the decision maker. In charter cities, the authority to terminate is defined by the city charter. If the council in a charter city must make the final decision, be sure to follow open-meeting law requirements. (More information on how the open meeting law is related to employee discipline can be found on the league’s web site in Chapter Two of the HR Reference Manual.)

Due Process. Cities are prohibited by the Fourteenth Amendment to the United States Constitution from taking any action that deprives an individual of a protected property or liberty interest without first providing due process of law. Certain adverse personnel actions, such as terminations,

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Consult your attorney for advice concerning specific situations.

require cities to provide “*due process*” before a decision becomes final. Due Process includes providing a notice of allegations to the employee, and allowing the employee an opportunity to respond to the allegations.

Only those public employees with constitutionally protected property interests in continued employment are entitled to due process prior to the termination of their employment. Public employment does not, in itself, create any protectable property interest. Nor does the U.S. Constitution create property rights. Property interests are created by independent sources such as a contract or statute. Public employees who are employed “at-will” or considered probationary do not have a protected property interest, and therefore not entitled to constitutional due process.

Examples of property interests found in city employment:

- Collective Bargaining Agreements
- Personnel Policy or Handbook
- Individual Employment Contract
- Civil Service System/Rules

Before a city can deprive an employee of a property interest such as through termination or demotion, certain procedures must be followed. The employee is entitled to notice of the allegations against her and an opportunity to respond prior to the termination or demotion. Although a full hearing is not required, the employee is entitled to a process that operates as an initial check against mistaken decisions. The key question that will be asked is whether the employee had sufficient opportunity to present her side of the story before adverse action is taken.

The requirements of due process are satisfied by either verbal or written notice of the charges supporting the proposed termination, although documented notice is preferred. This can be accomplished as easily as an informal meeting between the supervisor and employee in which the reasons for the proposed discipline are discussed, or by providing the employee (or her attorney) with the results of an investigation substantiating charges against the employee.

There need not be a delay in time between the notice of charges and an employee’s opportunity to respond. Allowing a short period of time in which an employee can respond, however, reduces the significance of the “unfairness factor” found in many court decisions regarding terminations in the public sector.

If the final decision-maker is someone other than the individual recommending termination, such as the full city council, make sure the employee’s response to the allegations are presented prior to a termination decision. Better yet, invite the employee to present her response directly to the city council. If the response is verbal, be sure to follow the requirements of the Open Meeting Law.

Finally, a city should provide a pre-termination process even if the employment relationship is at-will. A simple notice of charges and opportunity to respond as described above will suffice. This will effectively extinguish any potential due process claim, and can also be used as an additional check that supportable employment decisions are being made.

Documentation. 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 an employment

decision is legally challenged, good documentation of the process followed by the city will be a critical component in defending the decision.

Potential Claims. Finally, prior to making the final decision, be sure to examine potential legal claims the employee may have. Legal claims could be based on:

- Discrimination or harassment based on a protected class;
- Failure to reasonably accommodate a disability or religious beliefs;
- Failure to allow legally mandated medical leaves; and/or
- Retaliation or whistleblower claims.

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

Sample Termination Checklist No. 2: Preparing for the Termination

Once you have made the decision to terminate an employee, you need to prepare to process the employee’s final paycheck, arrange for the return of any city equipment the employee might have, and plan for potential security issues.

Final paycheck and benefits. If a terminated employee requests his final paycheck, wages earned but unpaid must be given to the employee within 24 hours of the request. If there is no request for payment, the final paycheck must be sent to the employee by the next scheduled paycheck date. Since you don’t know when, or if, an employee will demand payment, it’s probably best to have the check prepared and sent immediately following the termination. In addition to wages for hours worked, a city must pay any accrued but unused compensatory time for non-exempt employees. The payout for vacation, sick leave, or paid time off will be determined by city policy. Cities should be aware that in order to withhold vacation pay, there must be a clear written policy in place explicitly providing for the forfeiture of accrued benefits under certain situations such as a termination based on gross misconduct.

Cities also should compile information the employee will need regarding benefits, including COBRA/state continuation notification, information related to retirement plans, and any employee assistance programs or resources that are available. It is a good idea to prepare a brief termination letter to the employee that states the effective date of termination and outlines important final paycheck and benefit information.

According to Minnesota law, an employee who has been discharged involuntarily may request that the employer provide a written statement of the reason for the termination. The request must be in writing and submitted within 15 working days following the termination. The employer must respond with the truthful reason within 10 working days following receipt of the request. In most circumstances, it is a good practice for the city to keep the information in the termination letter general. For example, an employee who was terminated during probation might be told that the reason for termination was that she “did not meet the performance requirements of the probationary period.”

Finally, consider whether or not an exit interview at a later time would be appropriate. In some cases when an employee is being terminated for performance reasons, the termination notification may be in advance of the employee's last day. An exit interview could be conducted prior to the employee leaving. An exit questionnaire by mail could be considered as well. Terminated employees can provide some valuable and honest insights. In addition, the opportunity to vent could dissuade an employee from pursuing legal action.

Security and Equipment. It is the responsibility of the city, as an employer, to provide all employees with a safe work environment. Unfortunately, there are times when the security of the workplace may be at risk. In preparing to dismiss an employee, the city should consider whether there is any potential that the person may be a health or safety risk to himself or herself or to anyone else at the city. While it may seem impractical to alert the local police department (or other appropriate authorities) when conducting a controversial termination or accepting a disgruntled employee's resignation, it is better to be safe than sorry.

When planning for security and equipment issues, it is very important to determine the order in which the tasks must be completed and who will be responsible for each task. Timing can be very important when carrying out these activities. How quickly these tasks must be accomplished depends upon the circumstances surrounding the termination. For example, if the employee is being terminated for misconduct and has access to sensitive information, the employee may be asked to leave immediately following the notification. Keys and equipment should be collected at the termination meeting and passwords immediately changed. However, if the employee had performance problems and has worked out an agreement with the city, more time may be allowed for transitioning the employee.

Work Planning. Work planning is a part of the termination process that often is overlooked. The employee who is being let go performs work that will still need to be accomplished. Often times, the remaining employees won't know exactly what those tasks are and how to accomplish them. Whenever possible, the city should have a plan in place to accomplish the work prior to terminating the employee.

Sample Termination Checklist No. 3: Notifying the Employee

Notifying the employee of the decision is undoubtedly the most stressful part of the termination process. How this decision is communicated to the employee and others is a reflection of the values and professionalism of city leadership. Therefore, leadership must always be professional and in control of their emotions. Employees who feel they have been treated with dignity and respect are much less likely to pursue legal claims against the city.

Before the meeting. In most cases, telling an employee that he is being let go is a very emotional event. It is critical the manager prepare what to say in advance and practice, practice, practice! The meeting will go more smoothly if the manager is calm and confident in what she is saying. When preparing key messages, remember that the purpose of the meeting is to communicate the message to the employee in the most professional and respectful way possible. The meeting should be short and stick to the facts. This is not the time to re-hash events, assign blame, or engage in arguments. Before meeting with the employee, determine what type of reference, if any, the city will provide.

It is always wise to arrange to have another manager present to take notes and assist as needed. Have the meeting in a discreet location where you will not be interrupted or overheard by co-workers or the public. Most management experts agree that employees should be notified early in the week. Terminating someone on a Friday gives the employee two days to think about the worst before he can actually begin his job search. It also makes sense to schedule the meeting at a time when the employee can leave discreetly. In many cases, this may be the end of the day.

During the meeting. The most important thing to remember during the meeting is to stay calm, and stick to the facts. At this point, the decision has already been made. There is no reason to drag out the meeting. Give a brief summary of what has happened so far and communicate the decision. Here are two examples.

“As you know, we have been working with you over the last few months to improve your performance. At this time, we have made the decision to end your employment with the city effective today.”

“We will be recommending that the city council terminate your employment effective ____.”

While this is a difficult message to deliver, it is very important to be direct about the decision. Making indirect statements such as, “I don’t think it is best for you to continue employment here” can leave the employee confused about whether or not the decision or recommendation is final.

It is important to stay objective during the meeting. Focus on the facts instead of your opinions or perceptions. Do not engage in “blame and shame”. At the same time, do not feel the need to defend your decision or argue with the employee. A simple statement such as “We’re sorry you feel that way, but we have made our decision” should suffice. The employee has already had their “due process” and the decision or recommendation has been made.

If the council does not need to approve the decision, review important compensation and benefit information. The employee likely will have a difficult time digesting information at this point. Therefore, it is best to have all of this information in writing for the employee to take home and review later. During the meeting, highlight any of the important deadlines, as well as available resources such as employee assistance program. Be prepared to answer questions about references for the employee and what information will be communicated to co-workers. If the council needs to approve the decision, the information will need to be communicated to the employee at a later time.

As difficult as it may seem, try to end the meeting on a positive note such as “We’re sorry this didn’t work out, but we wish you well in the future.” Let the employee know who he should contact with questions going forward. It is a good idea to have one person responsible for handling all communication.

Following the meeting. Help the employee gather her things or arrange for them to be collected at a later time. Have additional help available if you think the employee may become hostile or threatening. Collect all city property, keys, and identification from the employee at this time. If this isn’t possible, make arrangements to have the property picked up.

If it hasn't already been done, disable all passwords and access cards. Finalize the notes from the meeting. Remember, the notes should stick to the facts of what happened, and refrain from including opinions or perceptions.

As soon as possible, notify co-workers the employee no longer works with the city. Follow data practices legal requirements and do not inadvertently release private personnel data on the terminated employee. Communicate the transitional plan and set expectations for employees. Understand that employees will have questions, and your ability to answer them may be limited. Do your best to reassure employees that you understand their concerns and will share the information you can, but the privacy of everyone involved needs to be respected as well.

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. Remember, the League is here to help! Additional information is available in the League's HR Reference manual www.lmc.org, or by calling the HR and Benefits Department.

Lisa Rund, March 2008

SAMPLE TERMINATION CHECKLIST #1: MAKING THE DECISION

1. Has the proper authority been obtained in advance?

If council:	Open Meeting law and data practices considerations.
If City Manager/Admin:	Obtain appropriate written authorization.

2. Has appropriate “due process” been followed? (More than one may apply.) Have city policies been followed?

Requires due process?	
Union employee	Yes. Hearing required. In addition, employee has right to representation and grievance proceedings.
Veteran employee	Yes. Hearing required. In addition, employee must be notified he/she has 60 days of paid time to request a hearing before external board.
Civil service	Yes. Follow civil service rules.
Peace officers	Maybe; but being a police officer in itself does not mandate due process. Remember, if a formal statement is required, the city must follow the Peace Officer Discipline Act.
Employee handbook, employment contracts, and/or city policies	Maybe. Does the handbook refer to being terminated for cause? Is there a progressive discipline policy? Is there a grievance procedure?
At-will or probationary employee	No. However, the city should still provide a notice of charges and the opportunity for an employee to respond prior to making a final decision. How have similar situations been handled in the past?

3. Has sufficient documentation been prepared?

Examples of important documentation include:

- ✓ Documentation of city’s decision and basis for decision

- ✓ Copies of letters and information given to employee
- ✓ Employee response to charges
- ✓ Investigation report
- ✓ Records of previous discipline and basis for discipline
- ✓ Performance improvement plans
- ✓ Performance evaluations
- ✓ Employee's job description
- ✓ City policies, bargaining agreements, handbook, and contracts
- ✓ Supervisor's notes
- ✓ Timesheets, expense reports, security tapes

4. Have potential legal claims been considered? Has an attorney been consulted?

Discrimination or harassment	Based on a protected class such as: race, color, creed, national origin, religion, sex, gender, pregnancy, marital status, disability, sexual orientation, age, status with regard to public assistance, membership on a local human rights commission
Disability or other medical issues	<ul style="list-style-type: none"> • Failure to make reasonable accommodations for disability • Failure to allow legally mandated medical leaves • Discrimination based on pregnancy
Whistleblower or other retaliation claims?	<ul style="list-style-type: none"> • Retaliation for reporting suspected illegal activity • Retaliation for participating in an investigation • Retaliation for union activities • Retaliation for engaging in protected speech

**SAMPLE TERMINATION CHECKLIST #2:
PREPARING FOR THE TERMINATION**

Task	Responsible	Date	Complete
Final Paycheck and Benefits			
Prepare letter of termination	HR/Admin		
Termination action form	HR/Admin		
COBRA/State continuation notification	HR/Admin		
PERA refund information	HR/Admin		
Deferred compensation information	HR/Admin		
Schedule exit interview (if appropriate)	HR/Admin		
Prepare/arrange to collect final timesheet	Supervisor		
Determine appropriate pay out of compensatory time, vacation, PTO, and/or sick leave.	HR/Admin		
Mail final paycheck (within 24 hours of termination)	HR/Admin		
Information employee assistance program or other resources.	HR/Admin		
Security and Equipment			
Notify technology department in advance (change or disable all passwords)	HR/Admin		
Arrange to collect all keys, identification badges, and access cards	Supervisor		

Task	Responsible	Date	Complete
Arrange to collect all city-owned tools and equipment (laptop, cell phone, vehicle, etc)	Supervisor		
Arrange to collect any city credit cards	Supervisor		
Arrange to collect uniforms	Supervisor		
Work Planning			
Plan for project continuation, coverage and distribution of employee's work	Supervisor/ Admin		
Develop a plan to notify co-workers.	HR/Admin Supervisor		

SAMPLE TERMINATION CHECKLIST #3: NOTIFYING THE EMPLOYEE

Before the meeting:

Do one last final review of the decision.

- ✓ Have due process requirements been met?
- ✓ Did the employee have an opportunity to respond to the allegations?
- ✓ Have the necessary approvals been obtained?

Prepare short key messages. Practice key messages in advance!

- ✓ Purpose of the meeting (to discuss performance.)
- ✓ **Brief** review of performance plan or previous discipline (1-2 sentences).
- ✓ The decision: “We have decided to end your employment with the city effective ____.” Or “We have decided to recommend to the council that your employment be terminated. They will make their decision on _____”
- ✓ Information related to compensation and benefits.
- ✓ Data practices and the city’s position on references.

Set up the time and location of the meeting.

- ✓ Preferably early in the week, towards the end of the day.
- ✓ Discreet, comfortable location.
- ✓ Co-facilitator to assist and take notes.

During the Meeting:

Communicate the decision.

- ✓ Use appropriate tone, be professional and calm.
- ✓ Keep it short (15 minutes).
- ✓ Summarize the previous performance plan or discipline.
- ✓ Be compassionate but direct when communicating the decision.
- ✓ Manage your emotions and stick to key messages. Don’t defend your decision, or argue with the employee. A good response to arguments is, “We’re sorry you feel that way, but we have made our decision”.

Discuss important compensation and benefit issues.

- ✓ Give employee all compensation and benefit information in writing.
- ✓ Highlight important due dates and information.
- ✓ Give final paycheck or mail within 24 hours.
- ✓ Who should the employee contact with questions?

Discuss data practices issues.

- ✓ What references, if any, will you give for the employee?
- ✓ What will you tell co-workers?

Following the meeting:

Help the employee to exit.

- ✓ End with something positive.
- ✓ Have someone help the employee collect their belongings.
- ✓ Be quick and discreet.
- ✓ Arrange for help if needed.

Manage security issues.

- ✓ Disable passwords and access cards (during the meeting if possible).
- ✓ Collect all city property, keys, identification, etc from employee (prepare a list ahead of time).
- ✓ Arrange for additional help to be available if needed.

Document the meeting.

- ✓ Complete notes immediately.

Notify co-workers and other affected individuals once final process is complete.

- ✓ Respect employee's privacy.
- ✓ Follow data practices.
- ✓ Set expectations for behavior.