



VETERINARY BUSINESS ADVISORS, INC.  
*Counsel for the Veterinary Profession*

## **Terminating an Employee Gracefully and Legally**

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It can be hard to say goodbye. But sometimes an employment relationship just doesn't work out. Let's say that your employee has performance or behavior problems. He or she has failed to meet the expectations set out in your employee manual. You've met with the employee to discuss the problems and documented the discussions. You've also practiced progressive discipline, imposing increasingly severe penalties for repeated policy infractions. Despite these efforts, the employee continues to fall short of your standards. At this point, you may have no choice but to end the employment relationship.

The termination process is inevitably uncomfortable and carries a certain amount of legal risk for your practice, as the employee may sue to challenge the termination. However, by following the termination strategies in this article, you can make the process as amicable as possible while minimizing this risk. It is important to note that the strategies below may not be applicable to every practice and every situation. You should view them as general guidelines and tailor them to fit your individual circumstances. You should also consult an employment attorney for advice pertaining to the laws of your state. The scope of this article is limited to situations in which an employee is terminated for performance or behavior problems. It does not cover reductions in force (terminations of multiple employees due to the practice's financial hardship or financial restructuring) or situations in which the employee resigns voluntarily.

The first decision you must make is whether to terminate the employee. Termination is a business decision, in which you weigh the relative costs and benefits of retaining versus terminating the employee. Many factors may affect your decision. These factors can include the nature of the employee's problems, the effect of these problems on the practice, the availability of a suitable replacement, and the costs of recruiting, hiring, and training that replacement. For instance, a negligent employee like an error-prone technician potentially exposes your practice to malpractice claims and should probably be terminated as soon as possible. On the other hand, a technician who otherwise does a satisfactory job and can be coached to better perform may be worth keeping, especially if there is a relatively short supply of good technicians.

Employees with behavior or performance problems can expose your practice to significant business and legal risks. Incompetent, negligent, uncooperative, or defiant employees pose a direct threat to your practice. Their actions or failures to act can cause harm to people, animals, and property, thereby exposing your practice to potential lawsuits and loss of business.

However, the effects of the employee's performance are not limited to the individual employee. Poor performance has a ripple effect that spreads through the entire practice. Other employees may be forced to cover for the problem employee, double check his or her work, correct mistakes, and do work that the employee is unable or unwilling to perform. They may be forced to carry more cases, take on more responsibility, or even to work longer hours. Their ability to do their jobs may be compromised, as their attention is diverted away from their own work. Not surprisingly, the negative effects of problem employees are magnified when employees work in small teams, which is typical of many veterinary practices. The disruption may be so great that practice morale suffers and good employees opt to leave. Thus, the actions of one problem employee can have serious repercussions for the entire practice. It is imperative that you terminate that employee in order to protect the practice and professional reputation that you have worked so hard to build.

Once you have decided to terminate the employee, you must devise a termination strategy. The termination process requires careful planning. Termination is always an emotionally charged event. Terminated employees have compared losing their jobs to such traumatic events as the death of a loved one and divorce. At a minimum, the terminated employee probably feels disappointment and a sense of failure that the employment relationship did not work out. Also bear in mind that the employee is losing his or her livelihood and probably is experiencing insecurity, loss of self-esteem, and maybe even panic. In some cases, the employee may feel anger or resentment toward the employer, and may even want to seek retribution. These emotions are exacerbated when the employee is surprised by the termination. When an employee is not aware of performance problems, he or she has no warning that termination may be on the horizon. When such an employee is abruptly terminated, he or she is more likely to legally challenge the termination. Given the gravity of the situation and the potential legal implications, the termination process must be carefully choreographed. This is not the time to improvise or to just meet with the employee and hope for the best. The following sections explain how to formulate and execute a plan for termination.

There are four steps in the termination process. The first step is to meet with the employee. At this meeting, you inform the employee that his or her employment is being terminated, make arrangements for the respective parties to return property to each other, and provide a letter summarizing the salient facts of the termination. The next step is for the employer and employee to return each other's property. The third step is to mail the employee's final paycheck and notice of any continuing benefits for which the employee may be eligible. In the final step, you handle reference requests and requests by prospective employers for information about the employee. Each of the foregoing steps is discussed below. The article closes by discussing high-risk terminations and strategies to minimize associated risks. High-risk terminations carry a higher-than-average risk that the employee will legally challenge the termination. Such terminations typically involve members of legally protected classes, difficult employees, employees with relatives who are attorneys, or employees who are surprised by the termination.

The termination process begins with scheduling a termination meeting with the employee. It

is best to tell the employee that you would like to discuss his or her work performance, or to follow up on a previous meeting about performance issues. You should not disclose the purpose of the meeting. However, if you have been meeting with the employee to discuss performance or behavior issues and practicing progressive discipline, the employee should not be surprised by the termination.

When terminating an employee, timing may be everything. You should schedule the meeting early in the workweek and toward the end of the workday. Scheduling early in the week gives the employee time to network, make inquiries, and to apply for new positions immediately. Holding the termination meeting on a Friday or right before a holiday gives the employee more time to stew about the termination while not being able to act on potential job leads. In addition, holding the meeting later in the day minimizes disruption to the practice and spares the terminated employee the embarrassment of walking through the practice during peak business hours.

If possible, try to have two practice representatives at the meeting. One representative can speak with the employee while the other takes notes and serves as a witness to the interaction. Having a witness can curb false allegations about what was said or done at the meeting. Finally, having two representatives may increase safety if an argument ensues or the situation escalates.

Another way to ensure that the process goes as smoothly as possible is to prepare a termination agenda or script in advance of the meeting. A termination agenda provides a list of topics to cover during the termination meeting. The agenda should also include a list of items to be returned to the employer and a reminder to confirm the employee's address so that the last paycheck can be mailed. Termination meetings are emotionally charged and stressful under the best of circumstances. Preparing an agenda in advance of the meeting will give you an opportunity to map out what you want to say. It will also remind you to cover all the important points. Once you have decided what to say, rehearse with a partner so that you become comfortable with the script. Being familiar with what you plan to say and anticipating the employee's responses will help you feel more confident during the meeting. You wouldn't go into surgery without a full understanding of the procedure. Similarly, you shouldn't go into the termination meeting unless you are well prepared.

It is best to keep the termination meeting brief, ideally 10-15 minutes, but no longer than 30 minutes. Remember that the purpose of the termination meeting is not to negotiate, and that the decision is final. While it is fine to allow the employee to vent briefly, it is important to bring the discussion back to the agenda. It is best to communicate the news of the termination within the first 5 minutes of the meeting and repeat it a few times during the meeting to ensure that the employee understands. A long buildup may confuse the message and may make it seem as though the decision is open for debate. Furthermore, the longer the meeting and the more extensive the discussion, the more likely it is that someone may say something that angers the employee or exposes the practice to a lawsuit. Toward the end of the meeting, you should hand a termination letter to the employee. This letter should state that the employee is being terminated, a brief description of why, the effective date of the termination, and should state that the employee's final paycheck and continuing benefit

instructions will be mailed as soon as they become available. Close the meeting by thanking the employee for his or her contributions and wish him or her luck in the future.

To be continued in VBA's August 2012 Newsletter....