

Before You Terminate an Employee

A leadership checklist for high-stakes workforce decisions



Why This Matters Now

Termination decisions carry consequences that extend far beyond the employment relationship itself. A single misstep can expose your organization to legal liability, damage team morale, disrupt operations, and impact your company's reputation in ways that take years to repair. Yet many leaders move forward based on incomplete information or unexamined assumptions about risk.

This checklist exists to create a pause point. Not to second-guess your judgment, but to surface blind spots that emerge when decisions are made under pressure or without full context. The questions that follow are drawn from patterns seen across hundreds of termination situations where early warning signs were present but not recognized until after the fact.

These aren't theoretical concerns. They represent real vulnerabilities that experienced leaders have encountered when what seemed like a straightforward personnel decision became something far more complex. Taking time to work through these considerations now can prevent outcomes that become significantly more difficult and costly to address later.

82%

Employment claims

Cite inadequate documentation as a factor

3x

Cost multiplier

Average legal defense costs versus one year of salary

What the Written Record Actually Shows

Documentation serves as the organizational memory of an employment relationship. When decisions are later questioned, the written record becomes the primary evidence of what actually occurred, what was communicated, and what actions were taken. Gaps, inconsistencies, or patterns in documentation often reveal more than the documents themselves.

Performance documentation trail

Does written feedback align with the stated reasons for termination? Review the last 12-24 months of performance reviews, written communications, and documented conversations. Look for progression from identification of issues through attempts at correction to current decision point.

Consistency across similar situations

How have comparable performance or conduct issues been handled with other employees? Disparate treatment of similar situations creates patterns that become difficult to explain. Document your review of how analogous cases were resolved.

Recent feedback contradictions

What was the employee told in recent reviews or conversations? Positive performance reviews followed shortly by termination raise questions about whether the stated reasons reflect the complete picture or if other factors are driving the decision.

What the Employee Has Reported or Raised



Protected activity encompasses a wide range of employee actions that carry legal safeguards against retaliation. When termination follows any form of protected activity, the timing itself creates a rebuttable presumption that requires explanation, regardless of the underlying merits of the termination decision.

The relevant timeframe is not just recent weeks but typically extends back months or even years, depending on the nature of the activity. Courts and agencies look for causal connections that may not be immediately obvious to decision-makers focused on current performance or conduct issues.

- **Workplace complaints or concerns raised**

Has the employee filed complaints about discrimination, harassment, safety issues, wage and hour practices, or other workplace conditions? This includes formal complaints as well as informal concerns raised to management, HR, or through company hotlines.

- **Leave or accommodation requests**

Has the employee requested medical leave, disability accommodations, religious accommodations, or raised health and safety concerns? Timing between requests and termination decisions receives significant scrutiny even when the underlying performance issues predate the request.

- **Participation in protected activity**

Has the employee participated in investigations, served as a witness, engaged in union activities, or exercised other legally protected rights? Proximity between this participation and adverse employment action creates risk regardless of performance issues.

How This Decision Is Being Made

The circumstances surrounding a termination decision matter as much as the substance of the decision itself. Who is driving the decision, their relationship with the employee, and the broader context in which the decision is being made all become relevant when the decision is later examined.

Manager-employee relationship dynamics

Is there documented tension, personality conflict, or history of complaints between the manager and employee? Has the employee raised concerns about this manager's conduct, management style, or treatment? Manager credibility becomes central to the organization's position if the decision is challenged.

Decision-maker objectivity

Who is driving the termination recommendation and what is their relationship to the situation? Has anyone with appropriate authority and distance from the immediate situation reviewed the decision independently? Fresh eyes often identify concerns that those close to the situation miss.

Recent organizational changes

Are there broader restructuring, leadership transitions, or team dynamics at play? Termination decisions made during periods of organizational change require closer examination of whether stated reasons fully explain the timing and motivation for the action.

When and How This Will Unfold

Timing communicates intent and creates context for how a termination decision will be perceived. While legitimate business reasons may drive timing, the appearance of timing matters when decisions are evaluated by third parties with limited information about internal considerations.

01

Proximity to protected activity

Days, weeks, or even months between protected activity and termination create temporal connections that require explanation.

02

Performance review timing

Terminations shortly after performance review cycles raise questions about the consistency of messaging and decision-making process.

03

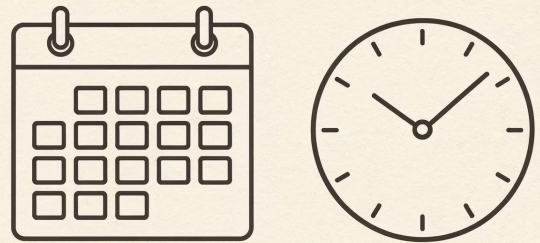
Life events and optics

Awareness of pregnancies, medical situations, or personal circumstances doesn't prohibit termination but changes the optics and scrutiny level.

04

Benefits and financial impact

Timing relative to termination check date



- ❏ **Perception becomes reality** in litigation and regulatory proceedings. Even when timing is purely coincidental, the burden of explaining that coincidence falls on the organization once a pattern is alleged.

Where Vulnerability Exceeds Typical Risk

Certain characteristics and circumstances elevate baseline risk in ways that require additional consideration before proceeding. These factors don't necessarily prevent termination, but they do change the calculus of how to approach the decision and what level of preparation is appropriate.



Protected class considerations

While all employees have legal protections, certain characteristics receive heightened scrutiny. Age, disability, pregnancy, race, religion, and other protected characteristics create additional layers of review when terminations occur, particularly if the employee is being replaced by someone outside their protected class or if statistical patterns emerge across termination decisions.



Public or documented statements

Comments made by managers or decision-makers about the employee, their protected characteristics, or circumstances create evidence that survives long after memories fade. Emails, text messages, and verbal statements witnessed by others become permanent parts of the record that shape how motivation for termination is perceived.



Workforce demographic patterns

Individual termination decisions don't occur in a vacuum. Patterns across termination decisions over time create organizational exposure even when individual decisions appear justified. Review recent terminations for demographic patterns that might create disparate impact concerns or suggest systemic issues with decision-making processes.

What Else Could Address the Situation

Termination represents a final decision point, but it's rarely the only available option. Exploring alternatives isn't about avoiding difficult decisions, but about ensuring that termination is truly the appropriate response given the totality of circumstances, risks, and organizational objectives.

In some situations, alternatives serve as important steps that strengthen the organization's position if termination ultimately becomes necessary. In others, they reveal solutions that address the underlying business problem more effectively than termination would. The key is approaching this analysis with genuine openness rather than treating it as a procedural checkbox.

**1**

Performance improvement pathway

Is there a viable path to acceptable performance with clear expectations, support, and timeline? Has the employee been given genuine opportunity to correct identified deficiencies?

2

Alternative role or restructuring

Does the employee's skill set align better with a different role or team? Would organizational restructuring address the underlying business needs while preserving the employment relationship?

Managed separation approach

How This Gets Executed

The mechanics of how a termination unfolds can create or mitigate risk independent of the substance of the decision itself. Poor execution of an otherwise defensible termination introduces unnecessary exposure, while thoughtful execution can help contain potential fallout even in higher-risk situations.

Communication preparation

Who delivers the message, what exactly gets said, who else needs to be present, and what information gets documented?

Script key points to ensure consistency and avoid statements that create unnecessary exposure or suggest improper motivation.

Internal communication

What gets communicated to the team, other stakeholders, and the organization? Inadequate communication creates information vacuums that get filled with speculation, while excessive detail creates privacy issues and potential defamation exposure.

1

2

3

4

Logistics and access

How do property return, system access, final pay, benefits transition, and other practical matters get handled? Clear protocols prevent situations where frustration with logistics becomes the catalyst for legal action when the termination itself might not have been contested.

Documentation of decision

What contemporaneous record gets created of the reasons for termination, the decision-making process, and considerations that went into timing and approach? This documentation becomes critical if the decision is later challenged.

When to Seek Outside Perspective

This checklist is designed to help you recognize situations where the risk profile warrants outside advisory support before taking action. Not every termination requires external counsel or HR expertise, but certain patterns signal that additional perspective could prevent outcomes that become significantly more difficult to manage after the fact.

If multiple items in this checklist raised concerns, if you're uncertain about how to answer key questions, or if the situation involves complexity beyond routine performance management, consider that signal worth heeding. The cost of consultation before acting is measured in hours of professional time. The cost of addressing preventable issues after termination is measured in months or years of organizational resources, leadership attention, and potential liability exposure.

The goal isn't to delay necessary decisions indefinitely or to outsource leadership judgment. It's to ensure that high-stakes workforce decisions are made with full awareness of what you're working with and what you might be walking into.

Next Step

If this situation feels more complex than routine performance management, consider whether an outside advisory perspective would be helpful before proceeding.

Paradigm supports leadership teams during high-risk employment decisions.

Request a risk alignment conversation

- ❑ **Sound judgment includes knowing when a situation exceeds internal expertise or perspective.** That recognition is a strength, not a weakness, in leadership decision-making.

