

NATIONAL ASSOCIATION OF REALTORS®

Human Resources Tool Kit

Employee Relations: NAR Employer/Employee Guidelines for Wrongful Termination

1. PERFORMANCE REVIEWS

The performance review is an excellent opportunity to provide feedback to employees. Discuss the employee's outstanding accomplishments and those behaviors that need improvement. Also, set goals for the employee to meet by the next performance review; such goal-setting is a good motivational technique, because it makes employees feel they have a say in their work. Frequent performance reviews can also help catch misguided behaviors before they develop into major problems.

It is a good idea to review all new, transferred or promoted employees six months after their starting date in the new position. Schedule the employee's second performance review from six to 12 months after the first, and schedule all subsequent reviews on an annual basis. Conduct additional performance reviews if the employee's performance or behavior warrants it.

In addition to the more formal annual performance review, managers and supervisors should make it a goal to consistently provide ongoing, immediate positive and negative feedback to employees. Always remember to praise employees publicly and to offer any constructive criticism in private.

Formal performance appraisals must be documented in writing and signed by the employee. Keep in mind that performance reviews do not necessarily require wage and salary adjustments.

[Access more information about performance appraisals in the "Employee Retention" section of this tool kit >](#)

2. DISCIPLINARY ACTION

Employees must be disciplined in a uniform and progressive manner. Follow set steps when disciplining poor employee performance and violation of any standards of conduct. An association executive's decision about which step to take will depend on the nature of the violation or performance problem, its seriousness and frequency, and the employee's record.

2a. Verbal Warning

For many minor infractions or performance problems, an employee may only require a verbal warning to correct the situation. Procedure for administering a verbal warning:

- Meet with the employee.
- Explain the nature of the violation or the performance problem.
- Discuss the problem and its resolution with the employee.
- Describe the future behavior expected of the employee.
- Establish the time frame by which the change needs to occur.
- Identify the consequences, should the change not occur.
- Note the date, time and content of the conversation in writing.
- If the employee repeats the behavior, provide another verbal warning or administer the next disciplinary action, the written warning.

2b. Written Warning

The next step in progressive discipline is to issue a written warning. Use written warnings if an employee continually repeats minor violations, has performance problems unresolved by verbal warnings, violates more serious standards of conduct or demonstrates major performance problems. Procedure for issuing a written warning:

- Create a written memorandum in which the facts involved in the problem are described. This document should detail the problem, solution, time frames and consequences, and reference all previous verbal warnings.
- Meet with the employee to discuss the memorandum.
- Ask the employee to sign the memorandum acknowledging his receipt and understanding of it.
- Allow the employee to offer a written response to the warning.

- Put a signed copy of the memorandum (with the employee's response, if any) in the employee's personnel file.

2c. Probation

Probation occurs after an employee has been warned about a specific behavior and there is an opportunity to correct the situation in lieu of suspension or termination. An employee on probation typically continues to report to work and to perform his duties with the expectation that the behavior or situation in question will be corrected. Probation procedure:

- Create a written memorandum in which the facts surrounding the situation are described, including prior steps taken in an attempt to correct the problem.
- Specify the duration of the probation and specifically identify what corrections to the behavior or circumstances are expected. Also include the outcome if expected corrections are not made.
- Meet with the employee to discuss the memorandum and ask the employee to sign it, thereby acknowledging his receipt and understanding of it.
- Monitor the employee closely during the probation period to see if the desired result is being achieved.

2d. Suspension

Some situations warrant the temporary removal of staff from the premises and/or interaction with other employees or members while further investigation or consideration takes place. An association's policy should address whether compensation and benefits also continue during a term of suspension. Suspension procedure:

- Prior to suspending an employee, seek advice from legal counsel to ensure any documentation (such as a memorandum) and conversations with the employee comply with state and federal laws.
- Write a memorandum stating the facts surrounding the situation and discuss in it any prior steps taken in an attempt to correct the problem.
- Specify the duration of the suspension in the memorandum and what will lead to the termination of the suspension. Also state whether compensation will continue during the suspension and what happens if the employee does not correct the situation or issue during the suspension period.
- Meet with the employee to discuss the memorandum. It is advisable to have another senior staff person present to witness the meeting. Ask the employee to sign the memorandum, thereby acknowledging his receipt and understanding of it.
- When suspension begins, ask the employee to leave the premises immediately and to take any personal belongings. Arrange to have a staff person present while the employee removes personal belongings from the workstation and/or office.

3. TERMINATION

State and federal laws greatly affect employee termination, and such an action must be handled with knowledge and expertise. If an occurrence appears to merit or be grounds for immediate termination, contact association legal counsel. If the behavior is a repeated offense, the employee's file must be sufficiently documented to support termination. Before discharging an employee, review all documentation with legal counsel.

3a. Documentation

All incidents of misbehavior, conversations with employees regarding those incidents, memorandums, employee responses, and other information pertinent to the misbehavior or performance problems of an employee must be documented in that employee's personnel file. Remember, when documenting violations or performance problems, be objective and provide only the facts. Do not include personal feelings or opinions about an employee or an incident in a memorandum or in any verbal warnings. Take care not to reprimand employees in front of other staff or members.

3b. Practical Concerns

The termination meeting with the employee should be relatively short and be conducted in a manner that maintains the employee's dignity. Do this by meeting in a private location, reviewing the appropriate documentation and informing the employee that his employment is being terminated. Confine your comments to the employee's behavior and do not pass judgment on the employee. Terminations based on

poor performance are commonly the result of a mismatch between the individual's talents and the needs of the job, and are not a reflection on the person's worth as a human being.

If severance pay is to be provided, it should be discussed at this time. Further, some organizations require the employee to sign a release agreeing not to sue the organization in exchange for the severance compensation. If you will require a signed release, have the document ready at the termination meeting.

The employee should be allowed to return to the office after hours (under your supervision) to collect personal items, should he so desire.

Remember, your current employees will pay careful attention to how you treat the terminated employee.