LETTING PEOPLE GO

There is overwhelming evidence that the higher the level of self-esteem, the more likely one will be to treat others with respect, kindness, and generosity.

—Nathaniel Brandon

I once asked a candidate interviewing for a Vice President position: “Of the people you’ve hired, how many have you had to terminate?” He boasted that he’d never had to terminate anyone he’d hired. To me, this was a red flag. Most managers hire at a success rate of 50 percent to 75 percent; even the strongest managers know that hiring is an imperfect activity. I didn’t view the candidate’s record as evidence of superhuman hiring ability, but instead as a lack of commitment to building a winning team.

If you’re committed to excellent leadership, you’ll have to replace employees who aren’t a good fit. Further, a willingness to replace underperformers, or those in the wrong job, sends the message to your organization that you set a high standard for performance. Done properly, that standard will permeate throughout the whole organization.

DON’T PUT OFF THE DECISION

Most experienced CEOs report that they decided to terminate an underperforming employee later than they should have. It’s in our nature to put off unpleasant tasks; merely telling yourself you “won’t procrastinate” seldom works. In determining if you’re managing your work efficiently, or simply procrastinating, depersonalize the situation and ask yourself how you might advise a friend who called you for advice on the same problem. We often give advice to others that we have trouble accepting for ourselves.

Ask also what will happen if you do nothing. Over time, will the problem increase, shrink, or remain the same? Some problems take care of themselves if you ignore them, and those should be left alone. That’s not procrastination but time management and triage. But in the case of

This note is adapted from the book, The Dog Caught the Car: A How-To Manual for New Leaders. Lecturer David Dodson prepared this note as the basis for class discussion rather than to illustrate either effective or ineffective handling of an administrative situation.

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letting someone go, the problem often exacerbates rather than dissipates (e.g., missing operational targets, poor customer service, lower sales, a deterioration of the manager’s team).

An oft-cited excuse for postponing a termination is the desire for more certainty. If you feel yourself in this mindset, then ask yourself: what specific information you hope to gain through the passage of time, and then whether that information is realistic to acquire. If so, then make a conscious effort to quickly obtain the data.

Another common reason to postpone a termination is a failure to evaluate whether what you’re doing is working. We can coax ourselves into believing that if we try the same coaching again, and again, things will change. With employee performance, this is seldom the case.

Keep in mind that the decision to terminate an employee is almost always harder on the company in the short run, which is the last reason many managers delay the inevitable. Terminations typically mean additional workload for the remaining employees as you tackle hiring a replacement. Don’t let that be a reason to postpone.

**WHEN TO TERMINATE**

Terminating an employee is situational, but there are three frameworks that you, as a leader, can use to make the right decision quickly and confidently. First, ask yourself whether you see this person in the same position with the organization three years in the future (e.g., “Do I expect that Hannah will still be my CFO in three years?”). If the answer is no, that’s a significant red flag.

Second, imagine how you would feel if the employee in question came into your office and resigned. Would you be relieved, inconvenienced, or devastated? If you find yourself relieved, you probably have enough information to make your decision.

Finally, if the first two frameworks are directing you toward a decision to terminate the team member’s employment, write out what behaviors or characteristics of the person would have to change in order for you to alter your opinion. Then take a look at that list and either decide to take immediate action with the employee to implement those changes or concede that the required changes are not realistic.

Firing someone is upsetting and painful for the employee in question, but in the long run, it’s also in their best interest. Your company deserves high-performing employees, but at the same time, all of us deserve a workplace where we can excel. Over time, you’ll discover that most everyone you terminate will find a new and better position.

**STAY FOCUSED ON YOUR OBJECTIVES**

In preparing for termination, stay focused on your objectives. Often energy is unwittingly spent knitting the words together to ease the guilt you feel or the mistaken belief that there is a way to fire someone and not have it be painful for the other person. When doing so, the conversation often degrades into trying to justify the decision (which leaves you listing all of the shortcomings of the person), or one ends up making it about the manager, by referencing how hard it is for the person doing the termination. Instead, hone in on the following goals:
- Reduced emotional distraction to your organization
- Elimination of legal liability
- Compassionate termination
- Creating a bridge to help your employee get to their next position.

If you try to make the meeting painless to the other person, you’ll almost certainly make the situation worse. You may feel guilty about terminating an employee, but if you try to ease that guilt, it will come across as if you are asking the employee to let you off the hook. Avoid the temptation to say versions of, “This is hard for me also”; “I hope you understand”; or “I’d like to remain friends.” Do not make it about you. No matter how bad you feel, your employee is the one going home without a job, not you.

The termination conversation is also not the time to convince your employee that you’re making the right decision. You’ll find yourself criticizing the employee about job performance at the time when he or she feels most fragile. There’s also a risk that the meeting deteriorates into a debate; before you know it, you’ll be making your “case” for why your employee should be fired, which can sour things very quickly.

Finally, terminated employees often push back and express the need to know why they’ve been fired. Employees are entitled to that information, but it doesn’t have to come at the same moment they’re being fired, a point in time when they’re ill-prepared for, and unreceptive to, critical feedback. The antidote is to respond with:

The purpose of this meeting is to go over the terms of your separation. I’m happy to set up another time to review the reasons, and I’ll make sure to come well-prepared for that conversation, but for now, we’re here just to discuss the terms of your separation.

**Preparation**

Carefully prepare for the termination; have your documents and answers to all likely questions ready. Try not to create a situation where you must terminate an employee across two meetings because you arrived poorly prepared and forgot, for example, the separation letter or details on health care coverage. Do your best to finish the termination in one sitting.

In most jurisdictions, employees are legally entitled to compensation for any unused vacation time. You’ll want to have that amount calculated, along with a check for the amount your employee has earned, when you walk into the meeting. Your employee may also have vested stock. Be prepared to explain the individual’s specific situation and, depending upon the terms of your company’s equity program, what happens to any shares post-separation (i.e., they are repurchased, can be sold on the open market, etc.). If your employee will be required to execute any agreements, have those documents prepared for him or her to take home and review before signing.\(^1\)

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\(^1\) In most cases, it is desirable to have terminated employees take any documents home with them and be provided the time to carefully review what is being asked of them. Courts have viewed contracts signed during a termination to be unenforceable as they were signed under duress or in the face of coercion.
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The Consolidated Omnibus Budget Reconciliation Act (COBRA) is a federal program that allows employees to extend employer-sponsored health insurance coverage after a separation. As laws change, you’ll want to make sure you are current, but generally speaking, under COBRA separated employees have a window during which they can elect to continue their coverage for a price set at or below the actual cost to your company. You’ll need to explain to the terminated employee that this election requires the completion of federal paperwork. When possible, you should have the forms prepared for him or her before the termination conversation.

Depending upon your company’s policy, the employee may be entitled to severance. Unlike vacation pay, you may decide not to distribute severance pay until after the employee signs a release. Notwithstanding this, you’ll need to be prepared to discuss the terms of any severance package.

You may choose to provide your terminated employees with compensation and benefits beyond what they are entitled to in return for transition services, a non-compete or non-solicitation agreement, special personal situations, or most commonly, in return for a full release of any claims of wrongful termination. Since you cannot create an enforceable agreement by providing the employee something to which they are otherwise already entitled (e.g., vacation pay), you must offer something beyond what is legally required. The bargain is simple: “We provide XYZ to you, which we are not required to do, and in return, you agree that this severance is fair.”

A peaceful departure, combined with a legally binding release, can be valuable to your company. The risk of litigation can easily cost $50,000 in the simplest cases, and much more with complex cases or individuals in a protected class. Furthermore, in many jurisdictions, the labor board and courts often rule in favor of the employee out of a historical bias and the process in which labor boards are typically staffed. Regardless of what lawyers may tell you, employment litigation is expensive and puts considerable stress on your work-life and productivity, and your chances of success are lower than they will tell you. The best protection against legal action is to offer the incentive to cooperate in return for any earned compensation.

Consider paying the compensation over the period during which you expect your employee to help you with the transition. For example, five weeks of severance compensation may be paid over ten weeks in order to extend the period during he or she has an incentive to cooperate. Generally, the longer the period of the payout, the greater the benefit for the company.

**RELEASE AND TERMINATION AGREEMENT**

If you are providing compensation in return for a release of claims, you’ll want to prepare that agreement in advance and have it available during the meeting.² See Exhibit 1 for a sample separation agreement. While you will want to consult an attorney for your first few terminations, many experienced CEOs have their organization handle the paperwork internally, as they don’t find any additional value in reviewing standardized agreements before each termination.

² Terminating employees often involves legal exposure and you should consult with your Board or legal advisor. The attachments in this chapter provided are guidelines for a termination agreement, not legal advice or a substitute for speaking with an attorney.
In order to increase the likelihood of legal enforceability, use clear and simple language. That way, there is little chance that the employee will misunderstand the agreement or later claim to have misunderstood the contract. It’s best to use common language in the agreement instead of “legalese” which can be intimidating to the employee, hard to understand and signal an adversarial relationship. This makes it more likely a court or governing body will enforce the agreement.

Encourage the employee to get outside legal advice, and consider using all caps and underlining these sections. Use clear and specific language to communicate that by signing the agreement, the employee loses the chance to later sue the company. Again, this also increases the enforceability of the agreement.

Make sure not to create a situation where terminated employees feel pressured to make a quick decision. Giving them their options, and then requiring them to make a decision and sign the agreement in the same meeting is not only unfair, but also decreases the enforceability of any release. Instead, provide a few days for your employees to think things over; after they sign the agreement, give them a few more days to change their minds. And remember, don’t begin payment of any severance until employees have executed their agreements.

To make sure an employee does not claim to have changed his or her mind, request that he or she provide you a letter after the window for reconsideration has expired. The letter should state that the individual did not revoke the agreement during the stipulated period (see the last page of Exhibit 1). Finally, avoid negotiating or asking the terminated employee to “make an offer.” Don’t bargain for severance to save a modest amount of money. Arrive at the meeting well-prepared, with an equitable offer that a reasonable person would likely accept. Then present it as fair and non-negotiable.

In some cases, you’ll request that the employee help with a transition. This is often accompanied by severance; often, the amount you pay is a fraction of the benefit you get from a smooth transition, so this is usually in everyone’s best interest. If you choose to do this, be as specific as possible about your expectations, and consider allowing your employee a flexible schedule (e.g., working outside the office).

**IMPLEMENTATION**

Experienced CEOs have different opinions on the “best day of the week” for a termination, but generally, the outcome won’t change regardless of the day of the week you have your meeting. Simply consider what’s best for the employee—would having the weekend to process be helpful, or leave the person unsettled?

As for the setting, you’ll need privacy. A windowless office or conference room is best to avoid the chance that other employees see what’s happening. Some companies have terminated employees escorted out of the building by security. In most cases, this is not necessary, is humiliating to the employee, and degrades your brand. Have a bottle of water and tissues available, but not in an obvious place.
As for the time of day, most prefer the end of the day, since most other employees will have left the building. For a terminated employee, the walk out of the building is painful; the fewer people to see or speak with on the way out, the better. For this reason, some managers terminate their employees off-site. If you choose to do so, be mindful they may have personal possessions at the office that they’ll need to retrieve (e.g., car keys, handbag, etc.), a situation that creates additional logistical challenges and awkwardness, possibly offsetting any perceived advantage.

Most experienced managers do not outsource terminations to another party (e.g., outplacement firm, human relations department, or attorney), as it runs the risk of degrading your brand and leaves the employee feeling expendable. Whether you have another person present or not is situational, but generally, if you are terminating an employee that reports to someone else, it is appropriate to have that manager present. Some believe having another person in the room provides better safety in the event of litigation, but assuming you plan to have your employee sign a legal release, you may prefer a more compassionate approach and be the only one present in the meeting.

Access to and retention of confidential company property is non-trivial. Be alert to passwords, monitor the future use of laptops, and recover all hard-copy property of the company. You can also cover this in the termination agreement.

Some of the separated employee’s co-workers may need to be alerted of the termination in advance (e.g., payroll, senior managers). The imminent departure of a colleague is likely to be fodder for gossip and often upsetting no matter how clear the decision. That means time is your enemy. You might be tempted to lighten your burden by telling others in advance, but I recommend telling as few people as possible, as late as possible.

The meeting itself should be brief (five to ten minutes) and focused on the terms of separation. Once seated, make sure you begin the meeting with the news of the separation. Here is a potential script:

**CEO:** Wendy, this is going to be difficult, but I’m going to have to let you go. This is not a good fit for you, and what I’d like to do now is talk about the terms of your separation.

**Wendy:** I don’t understand why. What have I done wrong?

**CEO:** If you want, sometime next week we can go into the details, but the purpose of this meeting is to review the terms of your separation.

**Wendy:** I don’t get it. Can’t I know why?

**CEO:** Yes, you can. But let’s have that conversation in a separate meeting. I’ll make sure to be prepared for all your questions. But this is to discuss the terms of your separation.

**Wendy:** I think I deserve to know why.

**CEO:** You do. But this meeting is to discuss the terms of your separation. [While the repetition may seem cold, the alternative is to enter into a painful conversation about Wendy’s weaknesses].

**Wendy:** David, this is not fair! I’ve been with this company for over six years, I’ve given it my heart and soul and worked as hard as anyone. You’re being totally unfair!

**CEO:** I understand this is a hard situation. I’m going to suggest we make today your last day. You are entitled to your accrued vacation, which amounts to 13 days, along with
your regular pay through the end of today, and I have that in your check here. Your health benefits are covered under COBRA, and I have the paperwork here…

At this point, Wendy’s been handed terrible news, and likely her mind is flooded with emotions including anger, embarrassment, resentment, and sadness. She’s also worried about what to say to her spouse and whether they need to cancel their vacation. She’s in no mental state to digest performance feedback. It might appear cold to be “all business,” but being firm is the kindest approach. Recognize that part of Wendy’s healing might be to initially feel mistreated—that’s another reason not to justify your decision. You still have a job, and you also have all the power. If, on Wendy’s road to rehabilitation, she needs to drive home angry at you, that’s a role you’ll need to accept.

COMMUNICATION TO EMPLOYEES

You’ll want to limit your comments to other employees. There will be exceptions—such as if someone has stolen company property (in which case you may want to make a clear example out of that individual), or if the termination of a senior executive has material implications for the company (in which case you may need to give more background). But in most cases when you communicate with your employees, be brief and emphasize that the details of someone’s departure are a private matter. Consider the following script:

As you know by now, Julie is no longer with the company. The specific reasons are a private matter between me and Julie. Out of respect for her, I’d ask that we not make her departure a source of rumor or gossip. That’s not showing her respect and not how we do things here. However, there are several issues that are specific to your work going forward, and I’d like to address those now…

The likely questions on your employees’ minds, which you’ll need to address, include:

- Whom do I report to?
- Do you plan to replace Julie, and by when?
- Will you be considering internal candidates?
- How are we going to cover Julie’s work?

Don’t wait for them to ask these questions. Your employees may not be comfortable asking them in a group setting, but they’re probably thinking of them. Not addressing their questions and concerns simply leaves your employees feeling uncertain and reaching for their conclusions. In most cases, responding to these four questions takes care of most of the issues you’ll face. Many times, other employees suspect a termination is imminent and are relieved that the inevitable has happened and that everyone can move forward. The issues you’ve seen with the employee’s performance are probably even more pronounced with the employee’s subordinates; if you’ve made a good decision, the subordinates will be grateful.

COMMON THINGS THAT CAN GO WRONG

There are three common things that can go wrong:

- Emotional Breakdown: If this happens, it’s best to resist offering physical comfort such as a hug or a hand on a shoulder, as you are the source of your employee’s pain. In some cases,
your good intention could be misinterpreted or misrepresented in a wrongful termination dispute. Show compassion by offering tissues and water. Give the person time to settle down, and if necessary, offer to leave the room for a few minutes.

- **Arguing / Aggression:** Terminated employees may argue their case or become belligerent. Do not engage in a back and forth discussion as it will escalate the situation. People process pain differently; anger is an easy emotion to access and so many people turn to anger when the true emotion may be sadness or embarrassment. Let them voice their thoughts, and return the conversation to the terms of their separation. If you stay calm, usually, your employees will see that anger accomplishes nothing and the emotional temperature will drop.

- **Making a Scene:** A terminated employee may make a scene after leaving the termination meeting, perhaps expressing powerful negative feelings about you or the company. If this happens, gracefully accelerate the individual’s exit from the building. Avoid an escalation even if it means the scene continues for a few more minutes. Afterward, you’ll want to address the issue with your team:

  That was difficult for all of us, especially Wendy. I’m sorry you had to experience that. But it’s now behind us, and the quicker we can move on and get back to work, the better for us and for Wendy, who may come to find the last few minutes embarrassing. Let’s not contribute to that by making it a source of conversation. Now, the circumstances of her departure are, of course, between the two of us. Nonetheless, there are several issues specific to your work that I’d like to address...

### HOW TO MANAGE REFERENCES

You may be asked, or want to volunteer yourself, as a future job reference. Don’t agree to this out of guilt; accept if you think it’s reasonable to do so. There will be many cases where a terminated employee is suitable for another job, just not the position they’re currently in. In these cases, consider telling the individual:

  For the right position, I would be happy to help with a reference. What I’m going to suggest is that, if you are considering using me as a reference, contact me first, and based on the job description, I’ll tell you what I’d be comfortable saying on a reference call. If that works for you, then I’d like to help you find a good fit with another employer.

### TRAINING YOUR TEAM TO TERMINATE

You’ll want your entire organization to follow the same termination principles. After working with the affected team to prepare, spend time role-playing the termination, with different team members playing different employees being terminated. This way, your team will learn more from the termination.

Ideally, you will lead the first termination for your manager, modeling best practices. The next time you would accompany your manager, observing and inspecting his or her preparation, and sitting in on the actual termination.

Assuming the manager follows the procedure that you’ve implemented, going forward he or she can terminate employees without your direct involvement.
Exhibit 1
Sample Separation Agreement

[Date]

Mrs. Julie Jacobs
11825 Saint Sebastian Blvd
Tulsa, Oklahoma

Dear Julie:

This letter will confirm arrangements for a special payment package being offered to you as a result of your termination with ________ ("Company") effective [Date]. For the purpose of this agreement, the Company includes its officers, directors, shareholders, and affiliated organizations.

In consideration of your agreement to and compliance with the terms contained in this letter and all exhibits, Company will provide you with the compensation described below. The compensation described will be paid to you provided you acknowledge your agreement with the terms outlined in this letter and otherwise comply with the obligations listed below and attached in Exhibit A.

1. You will receive a payment equal to ___ weeks at your current salary level, paid out over a ______ week period through the regular payroll. All payments under this paragraph will be subject to normal and customary deductions and withholdings.

2. You further agree that, unless under legal compulsion, you will not in any way or at any other time intentionally do or say to any party anything that would be derogatory in nature about the Company, its business, or reputation.

3. For a period of ___ weeks, we will make available to you reasonable administrative support to assist you in securing employment elsewhere.

4. You understand that failure on your part to comply with all of the terms of this agreement (including paragraph 2) may result in the termination of this agreement (including paragraphs 1 and 3).
Exhibit 1 (continued)
Sample Separation Agreement

5. You understand that the terms of this agreement and the attached release are contingent upon the execution of Exhibit A and that you do not revoke such execution of Exhibit A (although you have certain rights to do so).

6. In consideration of the above (including but not limited to paragraphs 1 and 3), the receipt of which you acknowledge, you release and discharge the Company from any and all claims arising from your employment (including claims to compensation, bonus, or equity rights but excluding vested retirement benefits such as 401K), and claims of discrimination and wrongful discharge.

8. You have been given this agreement on [Date]. You acknowledge that you have been given at least 21 days to consider this agreement. During this period, you may seek advice from a lawyer. For this agreement to be effective, you must sign it in the presence of a witness and return the agreement to ____________.

You have seven days after you return the signed agreement to cancel it. This agreement will not become effective and enforceable until after this seven-day period expires. If you choose to cancel this agreement, you must send written notice to Company attention: ____________ and state "I hereby revoke my acceptance of our letter agreement and attached release". If you do not wish to revoke this agreement, 7 days after your execution of this agreement please sign the attached form and send it to ____________.

YOU UNDERSTAND THAT BY ACCEPTING THE TERMS OF THIS AGREEMENT, AND BY SIGNING THIS LETTER, YOU ARE RELINQUISHING ANY RIGHT TO SUE COMPANY OR IT'S DIRECTORS, OFFICERS, AND EMPLOYEES, ON THE BASIS OF SUCH CLAIM OR HAVE ANY ACTION FILED ON YOUR BEHALF AGAINST LI.

You acknowledge that this release is made by you voluntarily and you acknowledge that you have been given the opportunity to review your options and encouraged consult with advisors of your choosing, including an attorney, prior to signing this letter of release.

You also acknowledge that you have had an opportunity to make changes or modifications to this agreement and have declined to do so. Agreed to and acknowledged:
Exhibit 1 (continued)
Sample Separation Agreement

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This release is signed in conjunction with the letter agreement dated [Date] to which this release is attached. You understand that in order for you to receive the compensation package described in the letter agreement, you must agree to the following general release:

In exchange for the consideration listed in the letter agreement, you agree to release and discharge Company (as previously defined) from all legal claims which you ever had, or now have, as of the date of your signing this release. You promise not to sue Company or to start any legal proceedings against Company arising out of your employment by Company, ending of your employment by Company, and the actions described in this letter. This includes but is not limited to, for example, any legal claims based on any of the following laws:

- Title VII of the Civil Rights Act;
- The Employee Retirement Income Security Act;
- The Immigration Reform and Control Act;
- The Americans with Disabilities Act;
- The Consolidated Omnibus Budget Reconciliation Act of 1985;
- The Age Discrimination in Employment Act;
- The Older Workers Benefit Protection Act;
- The Occupational Safety and Health Act;
- The National Labor Relations Act;
- The Fair Labor Standards Act;
- The Civil Rights Act of 1866;
- The Civil Rights Act of 1991;
- Title 42 U.S.C. Section 1981 through 1988, inclusive;
- The Rehabilitation Act
- The Equal Pay Act
Exhibit 1 (continued)
Sample Separation Agreement

Family and Medical Leave Act
The Worker Adjustment and Retraining Notification Act;
The Immigration Control and Reform Act
[STATE LAWS]
Any other Federal, State or local civil rights or anti-discrimination law;
Defamation, wrongful discharge, negligent infliction of emotional distress,
intentional
infliction of emotional distress, and misrepresentation;
Any local, state or federal law, regulation or ordinance and or public policy, contract
or tort law.

By signing this agreement, you also waive any right or interest you may now have or have had in
reinstatement.

You acknowledge that this agreement is made by you voluntarily and you acknowledge that
you have been given the opportunity to review your options and consult with advisors of your
choosing, including an attorney, prior to signing this letter of release. You also acknowledge that
you have had an opportunity to make changes or modifications to this agreement and have declined
to do so.

If you do not sign this release, you will not receive any of the benefits or compensation outlined
in the letter agreement. If you choose to revoke this release after you have signed it, you will lose
all the benefits and compensation described above, and you will also have to pay back any benefits
or compensation that you have received under the letter agreement.

You further understand that if within nine days after entering into this agreement we do not
receive the letter stating that you have elected NOT to revoke this agreement, the benefits outlined
in this agreement will be suspended until such time as we receive the letter.

I have read this release as well as the letter that it is attached to and agree with the terms described:
Exhibit 1 (continued)
Sample Separation Agreement

________________________  __________
Employee Name (printed)   Date

________________________
Employee Signature

________________________  __________
Witness Name (printed)    Date

________________________
Witness Signature
Exhibit 1 (continued)
Sample Separation Agreement

Mr. Roger Roberts
CEO, Fine Company, Inc.
438 21st Street
Tulsa, Oklahoma
HAND DELIVERED

Dear Mr. Roberts:

I have not revoked my acceptance of the compensation package outlined in the letter by Dieter Kopp, dated [Date] and signed by me on [Date].

Cordially,

____________________________________