

Too Quick to Hire? Too Slow to Fire?

By

Bill McCurry

Most of us have succumbed to the temptation to fill a slot too quickly only to realize later that we may not have made the best decision. The theory of “failing fast” is critical when it comes to discovering a “bad hire.”

How do you know it’s a bad hire and separation is the only option?

If there are tasks you’ve asked the employee to accomplish that haven’t been done to your satisfaction, there are usually four reasons:

1. The team member doesn’t understand the assignment.

Just asking, “Do you know what I want?” is an exercise in futility. Instead, ask open-ended questions requiring the team member to respond to you in their own words. Try something like, “Tell me how you would describe this assignment if you were going to ask someone to assist you with it.” Listen to how their words shape their focus toward the job at hand.

2. The team member doesn’t currently have the skill level or aptitude to complete the assignment.

You’ve heard you shouldn’t teach a pig to sing because it wastes your time and annoys the pig. Of course, you aren’t hiring pigs, but are you hiring people who just can’t do what you need done? If you’re looking for people to teach planting classes and they hate to get dirt on their hands, is there hope of a successful outcome? If they want to do the job and have the physical capabilities, then jointly outlining an education program (with specific milestones) can lead to a long-term productive team member. Confirm frequently that the employee wants to gain the essential skills and is motivated to continue lifelong learning so they can remain a productive team member.

Rapidly determine if the employee has the proper skill level or aptitude. We aren’t all good at every job. Have we made an improper hire and asked someone to do something which they aren’t capable of doing? If so, the kindest thing to do is to terminate the relationship immediately. (This assumes there’s no position available to which they can transfer and productively use their skills.) Prolonging the agony only increases frustration. If you determine there’s “no hope,” give the employee the dignity to get on with his/her life and allow the company the freedom to hire an effective employee.

3. The team member doesn’t currently have the tools or resources to complete the assignment.

This may not be as cut and dried as it sounds. If the employee was hired to teach classes, they may feel that they should have an entire visual aids department to build videos and other learning aids. There must be agreement between you and the employee specifying what tools the company will provide and where the limitations are. If the employee can't commit to getting the job done with the defined list of provided resources, then the outcome has unfortunately been determined. A good way to quantify this issue is to say, “This is the job I hope you will accept. You'll need to accomplish (list duties required) and you'll have these resources (time, budget, other personnel to assist, etc.). We'll need it accomplished by (date). Given these tools and timeline, can you commit to accomplishing it properly?

4. The team member doesn't have the desire to complete the assignment.

If the person knows what you want, knows how to do it and has the tools, the only reason it's not getting done is likely insubordination. It may not be blatant, in-your-face refusal, but at the end of the day the employee isn't getting done what your company needs, even though the person understands the task, has the knowledge and the agreed upon resources. Tragic, but true, it happens. You and the employee must understand each other. This problem won't cure itself. And you can't wait until the employee is “in a better mood” to discuss sensitive issues. (Face it, this employee hasn't had a “better mood” since the Kennedy Administration.) Act now!

There are legalities in terminating an employee. Failure to understand and implement them can make the procedure more difficult and possibly expose you to lawsuits. Here are two Legal Head's Up you should remember.

Legal Head's Up #1: You should consult your local competent legal counsel to confirm how these suggestions might be incorporated into your local situation. This document isn't intended to offer legal advice, but to give you topics to discuss with your local labor attorney. Laws change frequently. Stay in touch with your labor attorney.

Legal Head's Up #2: Leonard V. Feigel (Foley & Lardner, LLP) cautions employers to “use corrective action to address the unacceptable behavior.” The corrective action should spell out the specific behavior the employer deems unsatisfactory. Employers shouldn't inquire or question the employee as to why he/she is acting improperly. Avoid diagnosing the employee or asking if the employee is depressed or anxious. By asking such questions an employer **may** unintentionally trigger legal obligations under the Family and Medical Leave Act (FMLA) or Americans with Disabilities Act (ADA). Employers should understand that focusing strictly on the unsatisfactory behaviors is the approach with the least amount of risk of triggering potentially onerous legal obligations. You'll find more details at:

<https://www.foley.com/en/insights/publications/2019/05/when-counseling-jerk-employees>

Ideas For Employees Whose Behavior Hasn't Changed (Enough)

If the person understands your levels of expectation but hasn't reached them, it's time to act. Meet with the employee and together complete the “Upfront Contract”.

The Upfront Contract

We’ve spoken with some terminated employees who really didn’t know their behavior was going to cost them their job. The employee knew the boss “was mad at them,” but they “didn’t think they were that mad.” This tells us there was inadequate communication.

The Upfront Contract is the last step before termination. It lets the employee know, in very specific terms, exactly where they stand. In our experience, more than half the employees who get an Upfront Contract are able to respond favorably. It’s a process well worth using.

The process is simple. It’s best to complete the form with the employee so the employee feels you’re really trying to help them, rather than punish or push them into a corner.

Upfront Contract

Between _____	
(name)	(position)
and _____	
(name)	(position)
Desired performance goals:	
Performance commitments:	
Support commitments:	
Tracking procedures:	
Rewards and/or penalties:	
Copies to: _____	Signed: _____ Date: _____
_____	Signed: _____ Date: _____

When completed, one copy goes with the employee. The original stays in the employee's file.

Completed Upfront Contract

Between	<u>Fred Smith</u> (name)	<u>Customer Service Rep</u> (position)
and	<u>Gloria Gomez</u> (name)	<u>Sales Manager</u> (position)
<p>Desired performance goals: Fred will be in his assigned position, ready to start work at the assigned scheduled time. Fred will meet this goal every day for the next 90 days without fail.</p> <p>Performance commitments: Fred is committed to this goal. He will arise earlier every morning to allow for contingencies that seem to continually slow his arrival at work. Fred says he is committed to be at his assigned work station as scheduled.</p> <p>Support commitments: So Fred can plan his personal schedule and transportation, Gloria will ensure the work schedule is posted by the first and fifteenth of every month.</p> <p>Tracking procedures: Gloria will occasionally verify Fred's performance by physical observation. The team in Fred's department is aware and supportive of Fred's commitment as well. Time card monitoring will also be part of the tracking.</p> <p>Rewards and/or penalties: When Fred meets his commitment, the company will take that as his sign he wishes to keep his job. In the event Fred does not meet this commitment, it will be his signal he does not want to retain the job and he will no longer be employed by the company.</p>		
Copies to:	<u>Fred</u>	Signed: <u>Fred Smith</u> Date: <u>6/26/19</u>
	<u>Gloria (file)</u>	Signed: <u>Gloria Gomez</u> Date: <u>6/26/19</u>

This contract makes it clear to Fred that his job is in jeopardy. Don't judge this as being too harsh. There's no excuse for an employee to be surprised by a termination for failure to live up to performance standards. This ensures Fred understands the situation.

Let Employees Fire Themselves

Never threaten. Give the employee a promise instead. Then, regardless of the consequences, you must make good on your promise. Under no circumstances should you promise an action you can't or won't take. When you make a promise you won't fulfill, you lose all effectiveness and credibility. Ultimately your promise is to accept their decision.

“Fred, we’ve discussed being ready for work and in place at the scheduled time. We’ve agreed on the importance of this. Is that right?” (Don’t proceed beyond this point until the employee says they agree). *“The position you occupy requires the person performing the job be in place and ready to work at the scheduled time. If you are not in place, ready to work at the scheduled time, I’ll take that as your indication you don’t want that position and we should find someone. This is a serious matter. To be sure we understand each other, would you please tell me what you understood me to say?”* (Look at these words. Who is doing the firing? Fred’s actions have sealed his fate. That’s the way it should be—actions determine outcomes. Also notice how the manager is getting feedback from Fred.)

Terminating a Team Member is Never Easy

No matter how many chances, opportunities, and warnings, it’s still unsettling for most supervisors to terminate a co-worker. That’s because you’ve built a relationship and you have some feeling for them as another human being.

Here’s a tip you need to confirm with your employment lawyer to be certain you can use it in your locale. (Be forearmed. Ask your attorney now, before you have to use it. When you do have to use it, your attorney may be unreachable.) If you have an employee who has committed an intolerable act, (theft, violence, drugs, etc.) don’t fire them immediately. Instead, suspend them without pay, pending investigation. In many locales you can do this for up to 72 hours. This gives you time to cool down, collect the facts and make a studied decision. If necessary, it also gives you time to get the termination paperwork completed and final paycheck prepared. If an investigation is warranted, the employee is still employed by you. As such, you can still require him to cooperate with the investigation, consistent with the law. (You know the drill by now, “Consult with your attorney about the rules applicable to your situation.”)

A Couple of Thoughts to Ease the Termination Pain

Make the meeting brief and business-like. When the decision has been made, it’s final. No debate, no arguing. Meet them in a quiet place, whenever possible have a witness from your management team present. Tell them the decision has been made, complete the separation paperwork, collect your property from them, give them their final check and be done with it. Any prolonged discussion will have no positive benefit at that point. Do not, under any circumstances, hold out hope that the decision can be reversed.

In our experience, most weak performers expect to be terminated earlier than most managers finally act. Most co-workers know the weak performer should be terminated and the delay costs management credibility.

One bad excuse for putting off a termination are some connected costs—like unemployment insurance. Get real! A poor performer’s cost to your organization is a whole lot more than the unemployment insurance expense. If it’s not working, either get it resolved or separate the worker. We aren’t “termination-happy” here. Every day we see poor performers kept on for sympathetic reasons. If you truly have feelings for the person, cut them loose and let them get on with their new life. Of course, this assumes they’ve been given every opportunity to improve their performance.

James McDowall was an outside director for McCurry Companies for over 25 years. He gave us a truism that has proven remarkably accurate.

“Help the terminated employee get a new job and you’ll rarely be named as a defendant.

- People who don’t have jobs can’t eat.
- If you can’t eat you get angry.
- If you’re angry you want revenge.”

James McDowall
McDowall & Sons Insurance

Does it sound inconsistent with termination for cause? It’s not! Here are things you can do to help your departed former employee land on their feet.

Reference letters, No! Thank you letters, Yes!

Many firms have ceased writing reference letters due to liability concerns. That’s a nightmare. The astute employer writes reference letters of a different sort. This works for all terminations except those done for intolerable behavior.

Send a letter, on letterhead, to the former employee at their home address. Thank them for their time of service. Write something in the letter they did to contribute to your organization. If they choose to, they can then share it with whomever they want. This may save you from the liability problem. (You got it—check with your attorney!). What it really does is help the former employee in their new job search. Don’t overdo it. Writing a fluffy letter raises the question of why you let them go. Consider doing this for all employees who leave. The support these letters give can create immense goodwill with former employees.

In Closing

I’ve had managers tell me, “It’s not my fault. I’ve told him a thousand times.” Well, if that’s true, that manager won’t be on my future management team. They’ve just admitted that their people: 1) don’t listen to them, 2) don’t believe them; 3) don’t respect them; and 4) just don’t care. You can’t be a leader if no one is following your lead. If you tell an employee something three or four times, it should be over. If it isn’t, you’re admitting you can’t handle a management job.

Questions? Comments? Bill would love to hear from you....

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