



ATTORNEYS AT LAW

TERMINATION BEST PRACTICES
2018 FELHABER LARSON LABOR & EMPLOYMENT SEMINAR
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Hypothetical No. 1

Carl is 62, has been with the company for 25 years and has consistently been a low producer. He was never warned or told to improve; the company just kept taking job duties away and assigning them to others.

Recently, he has been observed sleeping during work. As you begin talking to Carl as a lead-in to termination, he tells you that he doesn't have enough to do. He then says that being under-stimulated at work makes it hard to stay awake because he has sleep apnea and does not sleep well at night.



Hypothetical No. 1 - Issues

- Can you identify some issues of concern?
 - What is he actually doing wrong?
 - What do the work rules say?
- Does his mention of sleep apnea give you some concerns?
 - Disability accommodation – is it needed?
 - What kind of information or records would make you feel better about terminating this employee?
- If there is no documentary evidence, what is the evidence?
- What other information would be helpful?
- If not, how do you justify terminating in this case?



Hypothetical No. 2

An employee has been with the company for 25 years, always getting above average or excellent performance appraisals.

A new supervisor comes in who has different expectations, and out of the blue the employee begins to have problems. The new supervisor comments at a department-wide meeting that she believes that the department is stuck in the “old ways” and that “some changes need to be made.” The supervisor comes to you and wants to terminate the employee, what should you do?



Hypothetical No. 2 - Issues

- Would you have any concerns moving forward with termination under these circumstances?
- What kind of information would make you feel better about that decision?
- What kind of information would give you concern should the employee be terminated?
- What kind of coaching would you suggest for the new supervisor?



Hypothetical No. 3

After a screw up, a manager has decided to terminate the responsible employee. While the employee is on break with co-workers, the manager finds her in the break room, and tells her she “f----d up yet again” and needs to clean out her locker because she’s gone. When the overwhelmed employee asks what she did wrong, the manager loudly orders her to stand up or he will pull her out himself.

The employee remains flustered and wants the manager to explain what is wrong. The manager instead calls in two uniformed security guards who walk her through the plant and out to her car, telling her that she cannot return or she will be arrested for trespassing.



Hypothetical No. 3 - Issues

- Was there adequate investigation into the reason for termination?
- How have others been treated for this sort of problem?
- Do you have any concerns with the way the manager confronted her?
- What about his threats to get security involved and have her arrested?
- Assuming termination was the right decision, how do you think this situation should have been handled?



Hypothetical No. 4

The employer has finally decided to terminate Joe, a long-time problem employee. Joe is a large man with a reputation for getting into fights outside of the workplace.

The human resources manager schedules a meeting with Joe and when he arrives at the conference room finds that Joe has brought along his neighbor Ray, a former employee whom Joe describes as his “Life Coach.” Joe then pulls out his phone and places it on the table.

As the meeting progresses, Joe argues about the stated reasons for termination, suggests that this is unfair, and says he should be getting a warning just like Carol and Sally got. He says that he is getting set up by “the Mexicans” in the packaging area.



Hypothetical No. 4 - Issues

- Given Joe's reputation, what steps should the human resources manager have taken prior to the meeting?
- Would you allow the life coach to remain?
- How would you respond to Joe putting his phone on the table?
- How would you respond to some of Joe's statements in the meeting?
 - Attempting to negotiate a different result
 - Implying he is the victim of discrimination
 - Suggesting he is being set up by a group of employees



Hypothetical No. 5

A company decides to terminate one of its sales people. He has been issued a key card and has access to confidential customer and pricing information. After giving him notice of his termination, the human resources manager accompanies him to his office to pack up his belongings. The employee puts the laptop on his desk in his briefcase and says that his previous manager allowed him to use his own laptop because it was better than what the company gave him. He says he will take it home and then email you all of his company files.



Hypothetical No. 5 - Issues

- What challenges does the human resources manager face?
 - Can he say “no, you can’t leave with your computer”?
 - If not, what can he do to protect the company’s confidential business information
 - If the manager asks for the computer and the employee refuses, what choices does the manager have?
 - What else can or should the manager do in this situation?
- How could this organization have been better prepared?



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QUESTIONS?

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