

Why you should think twice about a 'Zoom termination'



Even during a national emergency, sometimes you have no choice but to terminate an employee—and sometimes the termination is brought about because of it. How should you go about the process in this time of heightened legal and emotional sensitivity, especially when face-to-face contact might be tricky?

Anniken Davenport, Esq., addresses one key aspect of terminations some employers might be approaching incorrectly.

"Right now," Davenport told us, "there are an awful lot of employers who have resorted to Zoom or some other virtual format for video conferencing, and many think, 'Well, maybe I should use this for discharges too.' But I think that a simple, standard conference call is probably a better bet.

Why? Because when you're doing something by Zoom or any of these other virtual face-time methods, it's unusually easy for the person on the receiving end of the discipline or discharge to be able to download and record the entire session. Although you may not have anything to hide, it's often not a good thing to have displayed to a jury. How you perceive yourself may not be how you actually come across in a video recording of a discharge. I think an audio conference call works better right now for this purpose."

One other thing to keep in mind about terminating remotely: You don't want to put yourself into a situation

where technical problems could complicate the meeting. Video might be more susceptible to dropouts and freeze-ups. Keep it simple if you can.

Keep in mind Davenport's general tips for termination meetings:

- Schedule the meeting after preparing the termination letter and other related documents like COBRA notices and severance agreements.
- Treat the employee with dignity even if they're being discharged for cause. Making the worker angry may make a bad situation worse and send them into the arms of an employment lawyer.
- Always include at least one additional company representative in the meeting who had no direct involvement in the decision. He or she should ideally be skilled in de-escalation.
- Try to end the meeting on a positive note. For example, offer transition assistance like career counseling if the discharge isn't related to performance, or offer a positive reference.
- Check to make sure you are complying with all state or local laws on last pay. Many states require you to pay fired workers immediately for any work already performed, regardless of paycheck due date. (Alice Gilman, Esq., points out that early in the pandemic, lots of employers gave employees laptops loaded with special software and peripherals so they could work from home. If you're now thinking of letting some of these employees go, don't hold a final check hostage until they return this property to you. In general, most state laws require you to pay the final check, regardless of whether your property is returned. However, a handful of states do allow you to hold the final check, so you should check your state law.)
- Make the meeting short and end it promptly. Don't engage in a debate over the underlying discharge reasons. Do emphasize that the decision is final.