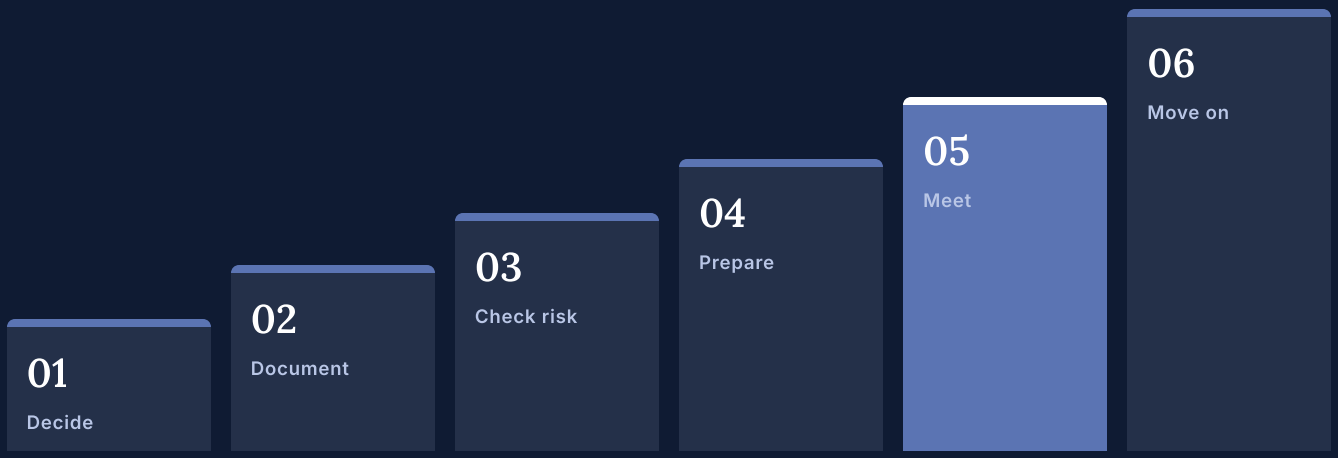
THE TERMINATION GUIDE

Letting someone go is never easy. *Doing it badly is expensive.*

How to handle performance and misconduct terminations with a clear record, a fair process and a conversation that respects everyone involved.



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A NOTE BEFORE YOU START

Most founders know when someone isn't working out. What they're less sure about is everything around the decision, and that's where the cost is.

Terminations usually go wrong for predictable reasons: months of avoidance and no written record, a decision made soon after someone took leave or raised a concern, a final paycheck that misses a state deadline, or a conversation that turns into an argument. Each of those is preventable.

This guide covers individual terminations for performance or misconduct. If you're eliminating roles for business reasons, see **The Layoff Playbook**, which covers selection, notice laws and severance for a reduction in force.

Peter Herrera

Founder, Herrera HR Growth Partners

SECTION 01

Before you decide

Four questions shape every termination. Answer them in order, and write the answers down.

QUESTION 1

Why are we ending this?

Name the specific reason: missed targets, a policy violation, repeated quality problems. If you can't say it in one or two concrete sentences, you're not ready.

QUESTION 2

Can we show it?

What exists in writing, with dates, that an outsider could follow? A good reason without a record looks like no reason at all.

QUESTION 3

Where do they work?

The state, and sometimes the city, where the employee works sets final pay deadlines, required notices and some protections. Remote employees follow the law where they work.

QUESTION 4

How will we do it?

Who delivers the news, when, with what paperwork, and what you'll tell the team afterward.

The three kinds of termination

TYPE	WHAT IT NEEDS	WATCH FOR
Performance	Clear expectations, documented feedback over time and a fair chance to improve	The most common type, and the one most often undocumented when the decision is made
Misconduct	A prompt, fair investigation and written findings before acting	Acting on a rumor or one side of the story; inconsistent treatment of similar conduct
"Not a fit"	Translate it into specific, observable behaviors or job requirements that aren't being met	"Culture fit" alone is subjective and is easily read as a cover for bias

"We're an at-will state" isn't a strategy

At-will employment means you generally don't need a reason to end employment. It doesn't protect you from a claim that the real reason was discrimination, retaliation or interference with leave. Those claims turn on the facts, and your records are the facts.

SECTION 02

Build the record

The biggest mistake is waiting until you've decided to let someone go before you start writing things down. Start the day a problem first appears.

DOCUMENTATION	WHAT MAKES IT USEFUL
Recap emails or messages	A short note after a conversation: what was discussed, what needs to change, by when. Dated and sent to the employee.
One-on-one notes	Even a few bullets show that an issue came up repeatedly and wasn't resolved.
Performance data	Sales numbers, quality errors, missed deadlines, customer complaints. Numbers carry weight.
Written warnings	Each step dated, specific about the problem and clear about what happens if it continues.
Performance reviews	Honest ratings that match what you said during the year. Inflated reviews are a common problem later.
Manager notes to file	A dated note written right after a difficult conversation, capturing what was said.

A RECAP THAT DOES ITS JOB

"Following up on today's conversation: two of the last three client reports went out with errors, and the Henley report was a week late. Going forward, reports need a second review and must go out by the agreed date. Let's check in on progress on June 12. If this doesn't improve, it could put your role at risk."

WHEN A PIP HELPS, AND WHEN IT DOESN'T

Use one when there's a real chance the person can succeed: specific goals, support, a 30- to 90-day timeline and regular check-ins.

Don't use one when you've already decided. A PIP that's really paperwork for a decision you've made is unfair to the employee and weakens your position if it's challenged.

If the record is thin, the honest options are to start documenting now and give real feedback, or to accept the risk with counsel's input and consider a severance offer.

SECTION 03

Check the risk

A solid reason and a solid record are necessary, but not always enough. Take ten minutes to check what else is going on before you proceed.

PROTECTED CHARACTERISTICS

Federal law prohibits decisions based on race, color, national origin, religion, sex (including pregnancy, sexual orientation and gender identity), age 40 and over, disability and genetic information. Many states add more, such as marital status, arrest or conviction records, or political activity.

RED FLAGS THAT CALL FOR A PAUSE

- [ ] They disclosed a health condition or asked for an accommodation
- [ ] They're on leave, or recently returned
- [ ] They recently complained about harassment, discrimination, pay or safety
- [ ] They filed a workers' comp claim
- [ ] They've threatened legal action or hired a lawyer
- [ ] This manager's past terminations show a pattern

MISCONDUCT? INVESTIGATE FIRST

1. Separate the people involved if needed, including paid administrative leave
2. Interview the person who reported it, the accused and witnesses
3. Collect messages, footage and records
4. Give the employee a chance to respond
5. Write up findings and the basis for the decision
6. Check how similar conduct was handled before

BRING IN EMPLOYMENT COUNSEL WHEN…

- A red flag applies and documentation is thin
- The timing is close to leave or a complaint
- Legal action has been threatened
- You're proceeding despite known risk. Counsel may suggest offering severance in exchange for a signed release.

> **Why retaliation matters so much**
>
> Retaliation is consistently the most common charge filed with the EEOC. A termination that follows soon after a complaint or leave can look connected even when it isn't, so the reason, the timing and the record all need to stand on their own.

What a defensible timeline looks like

Month 1

- Issue raised in a one-on-one
- Recap email with expectations

Months 2–3

- Written warning or PIP with dated goals
- Weekly check-ins, documented

Decision

- Goals not met, record complete
- Risk check done, then decide

SECTION 04

Prepare the day

Most meetings that go badly go badly because of something that wasn't ready. Sort out these details before anyone sits down.

Who

The manager delivers the decision and stays, out of respect and as a witness. HR or a second leader handles the details. If you expect confrontation, the manager can step out after the opening. Two company people is enough.

When

Morning, early in the week. Don't let someone work all day first, and avoid Fridays and the day before a holiday.

Where

A private room away from the team, or a video call with cameras on. Never by email, text or chat.

FINAL PAY

State deadlines vary widely. In some states, including California, Colorado and Massachusetts, final wages are due at the time of an involuntary termination. Others allow until the next regular payday, as in Illinois. Some states also require payout of unused vacation. If same-day pay applies, have a check or wire ready. A standard payroll deposit won't arrive in time.

SYSTEM ACCESS

Schedule access to end a few minutes after the meeting begins, never before. For higher-risk cases, involving data or misconduct, cut access during the meeting.

PAPERWORK TO HAVE READY

- [ ] Termination letter
- [ ] Separation agreement and release, if offering severance, plus the offer letter and confidentiality agreement it refers to
- [ ] Final pay details, including any PTO payout
- [ ] Benefits summary: end dates, COBRA, HSA or FSA, 401(k), equity
- [ ] State-required notices, such as unemployment information
- [ ] Instructions for returning equipment and collecting belongings

Prepare the manager

Write the opening lines with them, rehearse once, and agree that they won't debate the decision. It's personal for them. If the conversation turns confrontational, agree in advance that HR will take over and the manager will step out.

Remote employees

Use video, with cameras on, and send the packet by email right after. Arrange prepaid shipping for the laptop and equipment, and confirm the state where they work for final pay rules.

If you expect a strong reaction

Keep the meeting short, stay calm, and have a plan to pause. In the rare case of a safety concern, plan with HR and, if needed, building security in advance.

SECTION 05

The conversation

Plan for ten to fifteen minutes. Say the decision in the first minute, keep the reason brief, and spend the rest of the time on what happens next.

SCRIPT A · PERFORMANCE

Manager opens

"Thanks for meeting with me. As you know, we've been working on ***[the specific issues]*** *since* ***[month]****. We haven't seen the improvement the role requires, so we've made the decision to end your employment. Today is your last day."*

"I appreciate the work you've put in here. ***[HR name]*** *will walk you through the next steps."*

SCRIPT B · MISCONDUCT

Manager or HR opens

"We've completed our review of ***[the incident on date]****. That conduct violates our* ***[policy]*** *policy, and we've made the decision to end your employment, effective today."*

Keep it factual. Don't restate every detail of the investigation or invite a debate about it.

THEN · HR HANDLES THE DETAILS

Walk through the packet

"I'll go through a few documents with you. You'll also get copies by email so you can review them later. Here's your final pay, when your benefits end and how COBRA works, and information about unemployment. ***[If offering severance:]*** *This agreement offers* ***[amount]*** *in exchange for a release. You have* ***[number]*** *days to review it, and we encourage you to talk to an attorney. Nothing needs to be signed today."*

CLOSE

A respectful exit

"Would you like to collect your things now, come back at a set time, or have us ship them? If you have questions later, here's who to contact."

What to say, and what not to say

Vague language invites argument, and some well-meant phrases create problems later.

SAY	INSTEAD OF	WHY
“Today is your last day.”	“We’re going in a different direction.”	Clarity is kinder. Euphemisms leave people unsure what just happened.
“I know this is hard to hear.”	“I’m so sorry.” or “I know how you feel.”	A flat apology can sound like admitting the company did something wrong.
“The decision is final.”	Re-arguing each incident	Debate signals the decision is open. It isn’t.
“I understand this doesn’t feel fair.”	“You brought this on yourself.”	Acknowledge the feeling without agreeing or blaming.
“If you’d like to talk after you’ve had time to think, we can set that up.”	“You can always reapply.”	Don’t make promises you won’t keep.
Nothing about age, health, family, leave or a complaint	“You seemed distracted since your surgery.”	Comments like these become evidence in a claim.

If they push back

Don’t engage with the argument. Acknowledge it once and return to next steps.

> *“I hear that you see it differently. The decision has been made. Let’s make sure you have everything you need.”*

The walkout

- Offer a choice: collect belongings now, return at a set time, or have them shipped
- For a standard termination, give them space and walk them out when they’re ready
- For higher-risk cases, stay nearby and make sure systems access has ended
- Collect badges, keys, cards and equipment on the way out, not afterward

SECTION 06

After the meeting

Tell the team the same day, before they notice a missing chat status. They need to know what happened and who's covering the work, not why.

TELLING THE TEAM

Sample message from the manager

"I want to let you know that today was [name]'s last day. Out of respect for [name], I won't be sharing details. Here's how we'll cover their work: [plan]. If you have questions or concerns, grab time with me one-on-one."

WITH THE TEAM

- Be factual. Don't pretend a termination was a resignation
- Never share the reason or details
- Address coverage right away
- Offer one-on-ones. Some people will wonder if they're next. Remind them you address problems early and directly

OFFBOARDING

- [ ] Final pay processed on time under state law
- [ ] Benefits end dates set and COBRA notice sent
- [ ] Unemployment information provided where required
- [ ] Access removed from every system and shared account
- [ ] Clients and vendors told who their new contact is
- [ ] Separation agreement deadlines tracked
- [ ] Personnel file completed and closed

Unemployment claims

Respond accurately and on time. Contest a claim only when you have documented misconduct. A poor-performance termination usually doesn't disqualify someone, and fighting it rarely helps.

References

Set one policy and stick to it. Many companies confirm only dates of employment and title. Route all reference requests to one person.

If a demand letter or agency charge arrives

Note the deadline, contact employment counsel and your EPLI insurer if you have one, preserve all related email, chat and files, and don't contact the former employee about it directly.

SECTION 07

The pre-termination checklist

Run through this before you schedule the meeting. If you can’t check an item, stop and fix it first.

THE DECISION

- [ ] The reason is specific and written down
- [ ] Documentation is gathered: recaps, warnings, data, reviews
- [ ] For misconduct, the investigation and findings are complete
- [ ] Similar situations were handled the same way
- [ ] Protected status, leave, accommodation and complaint history reviewed
- [ ] Counsel consulted, if any red flag applies
- [ ] Severance and release considered, if risk remains

THE DAY

- [ ] State identified; final pay deadline and required notices confirmed
- [ ] Final pay ready: check or wire if it’s due that day
- [ ] Paperwork printed, or ready to send for a remote meeting
- [ ] Meeting set for the morning, in private or on video
- [ ] Manager briefed, with opening lines agreed
- [ ] System access timed to end after the meeting begins
- [ ] Plan for belongings and equipment
- [ ] Team message and work coverage plan ready

Employees outside the U.S.?

At-will employment is largely a U.S. concept. In most other countries, terminations require notice periods, statutory severance and sometimes a specific process or approval. Talk to local counsel or your employer of record before taking any step.

> **The best termination is the one that surprises no one**
>
> When expectations are clear, feedback is regular and problems are written down as they happen, the final conversation is a confirmation, not a shock. That’s fairer to the employee and far safer for you.

SECTION 08

How I help

Terminations are often the first call I get from a founder. On a monthly retainer, I'm the person you call before the decision, not after, and I work alongside your employment counsel when a case needs it.

BEFORE THE DECISION

- Review the record and the risks with you
- Design a fair performance improvement plan
- Run or guide a workplace investigation
- Coach managers on documentation and feedback

ON THE DAY AND AFTER

- Prepare scripts, letters and the packet
- Join the meeting and handle the details
- Coordinate final pay, benefits and access
- Support the manager and the team afterward

20+ years of HR leadership	**4 industries** financial services, healthcare, hospitality and tech	**2 companies** where I built HR from scratch	**1 to 250** employees: the companies I serve

ABOUT PETER HERRERA

I've spent more than 20 years leading HR in financial services, healthcare, hospitality and tech. I was the first HR leader at a five-venue hospitality group, and later built the HR function at a tech company.

I started Herrera HR Growth Partners to give founders senior HR partnership without a full-time hire, especially for the hard calls. I'm based in Chicago and work with growing companies across the U.S.

YOUR NEXT STEP

About to let someone go? *Talk it through first.*

A short, confidential conversation before the meeting can catch the risks that turn a hard day into a lawsuit.

FREE, CONFIDENTIAL 20-MINUTE CALL

What we'll cover

- Whether your record supports the decision, or what to do first
- Any red flags around leave, complaints or protected status
- Final pay rules, the right plan for the conversation, and how a monthly retainer keeps you covered for the next one

Everything stays confidential. If you don't need me, I'll tell you.

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