



FIRING FOLKS

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WHEN YOU FIRST GET THE INKLING

A few years ago, a company president who had been hiring and firing for 22 years and was a long time client of ours shared one of the secrets of his successful managerial reputation. He told us that one of the major differences between a good manager and an excellent manager was NOT in the company he worked for, the type of business it was in, or the talent that he discovered or hired. The major difference, he claimed, was that he took more risks in hiring people, but he also FIRED more of them faster and quicker. His hiring style was pretty traditional: a few interviews, reference check, etc. He relied a lot on gut feel, which we all do. But the major difference was that he knew when to FIRE the right (or should we say wrong) people. His rule was very simple: You should fire someone when you first get the inkling!

Over the years his theory has proven correct. We don't claim that it is easy or fun to fire someone. But how many of us have fired someone (or made it so difficult on the person that they quit right before they were fired) and after a few hours or days we asked ourselves why we didn't do it sooner! This president, upon further questioning, revealed that he had had so many situations where he didn't fire someone soon enough and then gone through the above misery of discovering he should have, that he conditioned himself to avoid the mistake of letting it go on and he fired . . . when he first got the inkling! Interestingly, this president's reputation was based on his hiring such good people, that they were eventually promoted etc. In reality he hired more, fired more, but kept more of the best.

Labor attorney *Stephen Key agrees: "in my 20 years of



practice, I've been consulted on thousands of terminations by hundreds of managers. I've never once had a manager say, 'I think we pulled the trigger too quick on that one.'"

IT IS NOT ALL NEGATIVE

None of us wants to be fired, so we are reluctant to do it to others. We want to give everyone the benefit of the doubt, so we rationalize behavior. Even in the beginning of an employee's tenure, there are duties, responsibilities, etc., they must do. They either do them or they don't. If they don't in the beginning, they won't later.

After all that screening, interviewing, gut feeling, etc. we just hate to think we made such a mistake. We should admit our mistakes quickly and cut our losses early before they become blunders.

We also rationalize by thinking that although the person we hired has faults, we could end up getting other faults in someone else. So rather than go through the risky process of hiring someone else, we put up with it. Some faults, like continually being late, or chronically absent, affect the job function. Those types of faults can't be tolerated. Everyone has faults; some make no difference in the day-to-day function of business, others are big indications of how the rest of the job is done.

According to Mr. Key, firing is not all bad; there are many positives, including the following:

- (1) Good employees want the dead wood trimmed. Good employees value success. They view poor employees as impediments and don't want them on the team. By



keeping poorly performing employees, you demoralize your top performers, who will not drag the dead wood along very long. They will either give up and adopt the lower standard for themselves or leave to find a team more congruent with their own objectives. Either way, you're left with a mediocre team.

- (2) Don't confuse compassion with passivity. Often, managers want to believe that they are being compassionate by not terminating a problem employee when, in fact, they are really just being passive. By avoiding confrontation you are being destructive to your own organization and potentially limiting the employee's own ability to explore opportunities better suited for his skills and abilities.
- (3) No pain, no gain. Most poorly performing employees also have poor self-awareness. They don't realize or acknowledge their own shortcomings, even after you point them out. Termination can be a catalyst for self-exploration and life change for the employee, especially if it happens more than once. By not terminating a deserving employee, you are sending a message that his performance is satisfactory, which is misleading and potentially stunting the employee's own personal growth.

THE PROCESS

The process of firing someone is unpleasant enough, but we are never sure of the shock that will occur throughout the office or the rest of the company. To avoid creating a disruptive furor throughout the firm, we have a tendency to put up with



the employee. If that person is performing poorly, the furor is usually there **anyway, and people wonder what you as a manager are doing about it. There will always be repercussions, no matter what happens. The sooner it is done and over with, the better.**

Reasons for firing must be objective and documented. Most firms have policies and procedures on how to do it. Managers should know them BEFORE they undertake the firing process. With objective, fair, documented, informational warnings to the employee, being fired will not come as a shock. Telling an employee that “It’s just not working out” won’t cut it these days. Fair warning and a chance to correct any issues must be given. They must be communicated in an objective, businesslike, unemotional manner, always in writing. Counseling with upper management or even legal counsel may be in order.

Mr. Key believes that pride drives most employment litigation and that employees who are terminated with respect and dignity are far less likely to sue than those who are not. Here are some of the techniques recommended by Mr. Key:

- (1) Be specific, but not excessively detailed. It is best to be straightforward and specific about the reasons for your decision. However, it is entirely unhelpful to review every single thing that the employee has done wrong over the past 5 years. The idea is not to “convince” the employee that you are right. You will almost never achieve that result and your effort to do so will likely only add insult to injury. Instead, specifically and concisely identify the most important shortcoming(s), give one or two examples and move on.



- (2) Do not argue or attempt to resolve grievances. Again, you will almost never convince a terminated employee that they deserved it and arguing will only result in worsening the situation. Instead, validate and redirect. For example, you can use some variation of the following mantra: “I understand that you are very upset by this decision and I truly regret the challenges that it will probably cause, however, the decision is final and I cannot change it.” You may have to repeat this mantra several times, but eventually the employee will move their focus away from you and onto the immutable reality of the situation.

- (3) Do not delegate this responsibility. The one making the decision should be the one to convey it. Termination is a very significant event in your employee’s life and you need to show the respect and courtesy that it deserves.

NEVER FRIDAY

Never fire on Friday or before a holiday. When a fired person is off on a weekend or holiday, he has the time to be mad, angry and resentful. If a person is fired on Monday, with the right guidance on the part of the employer, the ex-employee has the business time to take positive action to seek other employment. Even suggest a good recruiter for the employee. Help the ex-employee be proactive in his quest for a new opportunity. Contacting the recruiter beforehand, preparing him for the call from the soon-to-be ex-employee and telling the employee is an excellent way to ease the pain.



Be prepared by having someone already hired to fill the position immediately. Managers who have screened and interviewed (from an off-site location) and hired a replacement for the fired employee can ensure a smooth transition, and the disruption over a lost employee on the part of the rest of the firm is subdued or nonexistent.

Stephen Key is the founding partner of The Key Firm, PC, a management-side labor and employment law boutique in Dallas, Texas. His practice is divided between litigation of employee disputes, assisting clients with union matters, advising clients with human resources matters that arise on a day-to-day basis. He is Texas Board certified as a specialist in labor and employment law and is recognized as a **Texas Superlawyer by Texas Monthly Magazine. He can be reached at 214-550-1800*