

Pre-Termination Checklist for Employers

Terminating employment is never easy, and it's rarely straight-forward.

Every termination must be handled independently. What you do for one termination may not necessarily be the same thing you do for the next exit.

Before making the final decision to exit the employee from the business, you have to make sure that you are confident in everything you have done that led you to termination.

Why? Because if you are challenged on the decision by a third party, it will come down to the process you conducted, and the supporting documentation for the termination.

QUESTION 1: HAVE WE IDENTIFIED THE REAL ISSUE?

- ☐ Is the reason for termination genuine and lawful?
- ☐ Can we clearly explain the reason in plain English?
- ☐ Have we avoided making an emotional or reactive decision?
- ☐ Are we relying on facts rather than assumptions?

QUESTION 3: HAS PROCEDURAL FAIRNESS BEEN FOLLOWED?

- ☐ Has the employee been informed of the concerns?
- ☐ Have they been given an opportunity to respond?
- ☐ Have we genuinely considered their response before making a decision?
- ☐ Have we remained impartial throughout the process?

QUESTION 5: HAVE WE FOLLOWED OUR OWN PROCESSES?

- ☐ Have we complied with our processes, policies and procedures?
- ☐ Have previous warnings (where appropriate) been issued?
- ☐ Have managers acted consistently?
- ☐ Have we treated this employee the same way we would treat others in similar circumstances?

QUESTION 2: DO WE HAVE EVIDENCE?

- ☐ Have we documented the concerns?
- ☐ Do we have relevant emails, file notes, or other records?
- ☐ Can we substantiate the reason if challenged?
- ☐ Is our evidence consistent?

QUESTION 4: WAS THE EMPLOYEE GIVEN A REASONABLE OPPORTUNITY TO IMPROVE IF APPLICABLE?

- ☐ Were expectations clearly communicated?
- ☐ Was feedback provided?
- ☐ Was appropriate training, support, or coaching offered?
- ☐ Was sufficient time given to improve?
- ☐ Were review meetings documented?

QUESTION 6: HAVE WE CONSIDERED THE LEGAL RISKS?

- ☐ Is the employee eligible to make an unfair dismissal claim?
- ☐ Could there be a General Protections risk?
- ☐ Could discrimination or adverse action issues arise?
- ☐ Have we considered any workplace rights or protected attributes?
- ☐ Have we considered whether any recent complaints, leave or protected activities could increase legal risk?
- ☐ Are we confident that our process, documentation and decision would hold up if challenged by the Fair Work Commission or any other applicable third-party bodies?

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QUESTION 7: HAVE WE MET OUR EMPLOYMENT OBLIGATIONS?

- ☐ Have notice requirements been confirmed?
- ☐ Have Award, Enterprise Agreement or employment contract obligations been checked?
- ☐ Has final pay been calculated correctly?
- ☐ Have accrued leave entitlements been confirmed?
- ☐ Has company property been accounted for?

QUESTION 8: IS THE TERMINATION MEETING PLANNED?

- ☐ Who will attend the meeting?
- ☐ Where will the meeting be held?
- ☐ What key messages will be communicated?
- ☐ What questions might the employee ask?
- ☐ Is dignity and respect at the centre of our approach?

Final Check

Before terminating employment, ask yourself:

- ☐ If this decision was reviewed by the Fair Work Commission, would our documentation support it?
- ☐ Could an independent person understand why we reached this decision?
- ☐ Have we followed a fair, reasonable and consistent process?
- ☐ Would we be comfortable explaining every step we took?

Reminder

Good employers don't avoid difficult decisions. They make difficult decisions well and ensure all potential outcomes or consequences are considered.

Unsure of the process or your decisions?

Contact Now Actually to provide independent, expert guidance. It's easier to invest in third-party support now rather than depend later on down the track when you aren't in control of the outcome!



Contact the Now Actually team

Disclaimer

This checklist is intended as general information only and does not constitute legal advice. Every workplace and employment matter is different. Employers should seek professional advice before making termination decisions.