

# Truthful Terminations May Lead to Better Consequences

November 23, 2015 | Blog | By [Jennifer B. Rubin](#), Brent Douglas

---

## VIEWPOINT TOPICS

- Employment

We are often asked what, if anything, employers should tell an employee about the reasons for the employee's termination, especially if the termination is abrupt.

---

## RELATED PRACTICES

We tell employers to tell the truth.

---

## RELATED INDUSTRIES

The truth, by the way, does not mean silence about the reasons for termination. Withholding the reason for a termination will not shield an employer from litigation. In fact, for many terminated employees, hearing phrases such as "we have decided to go in a different direction" raises more questions than it answers and may only provide fodder for a lawsuit.

Likewise, nothing can be gained by misstating the reasons for an employee's termination. It is easy to blame a termination on events outside someone's control – such as a terminations resulting from a sale of a business or the closing or relocation of an office, or other reasons that the employee should not take personally. If one of those reasons is truly the reason for the termination, no further guidance is really necessary.

But what if the reason is personal, such as a termination for performance? The reluctance to deliver such bad news stems from the human desire to be nice. But here we need to separate being nice – humanely delivering news an employee does not want to hear – and being truthful – telling an employee he or she is not performing up to standards. These are not mutually exclusive endeavors, and remain convinced that telling the truth about the reason for a termination is the best practice.

There are [many reasons](#) employees sue employers. While one reason employees sue is not being given *any* reason for a termination, we suggest that giving the wrong reason – even if well-intentioned – is also a bad practice.

If conflicting or wrong reasons are given to a terminated employee and he or she sues, then a case of pretext might be easily made. Pretext, which is core to discrimination claims, exists when a reason given for termination is fabricated to hide the real (and possibly illegal) reason for the termination. But if the employer is consistent and honest about the basis for the termination, it becomes more difficult to assert a claim that the reasons for the termination were not the *real* reasons but were invented to hide an illegal reason.

So what is a humane way to tell the truth? Balanced feedback is always a good place to start. If the conversation begins with an expression of appreciation and even praise for an employee's service, the news of performance failure, while unwelcome, might actually be information the employee can leverage to improve performance in future work.

This approach applies even if employees need to be dismissed quickly and without fanfare. A very brief explanation of the reason, a request for a cooperative and calm response, a clear (and we suggest written) directive about what is to come (final paycheck, benefits, unemployment and so forth), and the identification of an individual to be contacted for questions are recommended.

But do not withhold the reason. Do not misstate the reason. And do not try to sugarcoat the reason. While honesty may be difficult, it may be the best policy to avoid future employment disputes.

## Authors



**Jennifer B. Rubin**, Member

Jennifer B. Rubin is a Mintz Member who advises clients on employment issues like wage and hour compliance. Her clients range from start-ups to Fortune 50 companies and business executives in the technology, financial services, publishing, professional services, and health care industries.



**Brent Douglas**