

# Termination Letters Police and Fire Why and How

OLSON & OLSON, L.L.P.

12<sup>th</sup> Annual Local Government Seminar  
January 21, 2016

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Termination Letters

## I. Introduction

The focus of this paper is to provide some rationale for drafting a written termination document and what to include in the termination letter for police officers and firefighters involuntarily removed from employment.

## II. Why document?

“At will” is not “at will” anymore. Anyone who thinks that you can causally tell an employee they are fired without any risk, even for a clear legal reason, is naive. Employment laws protecting individuals based on race, age, gender, national origin, whistleblower status, and disability are just a few of landmines that make a written document absolutely essential.

Constitutional protections such as free speech and freedom of association along with prohibitions on retaliation for use of FMLA time and engaging in protected activity provide a wide variety of potential claims for the savvy employee and their legal counsel.

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Background documentation of warnings, counselings, temporary suspensions, and training, are also very helpful in supporting the ultimate employment action. Laying out the facts supporting the discipline in the letter and thus at the time of the action, provides the employee with a written explanation for the action. Even if the explanation does not convince the employee, the document will help demonstrate to a judge or jury at a later date that the employer's position is not a recent contrived, convenient excuse but a response to employee's job related behavior.

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## III. Contents of the Letter

A termination letter should include only those allegations that can be proven. Chiefs often "know" that an employee has engaged in misbehavior that the employee has kept hidden, that was disregarded by a previous Chief or supervisor, or that is the subject of office gossip. Do not be tempted to include these issues in the letter. Should an EEOC charge or wrongful discharge case be filed, the employer will be forced to defend its actions and if the allegations in the letter cannot be proven, the reviewing agency is more likely to believe the employee's claims of an illegal motive.

The termination letter should include references to policies violated and the actions of the employee that are considered in violation of the rules. The letter also should include documentation of the Department's adherence to Chapter 614 of the Texas Government Code.

This is not technically required but it helps to demonstrate to potential Plaintiff's counsel that the City knew what it was doing and closes out loopholes that the attorney may have used in the past to win reversal of termination letter. This requires merely that the letter indicate that the signed complaint was provided to the employee, that the allegations were investigated, and that there was sufficient evidence found to support the allegations asserted in the termination letter. I usually add to this portion a notation that the employee was given an opportunity to respond and I cite any admissions of wrongdoing or outrageous denials included in his response.

The complaint provided to the employee should be drafted and signed by the citizen, if it is a citizen complaint. The Courts have taken the position that even an internal complaint must be provided to the employee as a signed document. The internal procedural complaint can be signed by the Chief but a specific complaint of misbehavior raised by a supervisor should be signed by that supervisor and provided to the employee. The complaint can be broader than the final charges in the termination letter. Allegations that are disproven in the investigation or that cannot be proven or disproven should not be included in the termination letter. Minor allegations included in the complaint that appear to be "piling on" or frivolous when compared to the major allegations, should be used sparingly.

## III. Service of the Letter

Many Chiefs serve the termination letter after a meeting to hear the employee's final explanation. This is appropriate if the employee has received the above referenced notice and has provided the investigator with his written response to the charges. Obtaining a written response to the allegations is important because it allows the officer to present any exculpatory information that may quickly resolve an investigation in the employee's favor. This requirement also provides the City with an opportunity to lock in the employee's explanation. Given enough time and a good employee representative, many seemingly valid explanations can be created. An early written response to the charges is more likely to be a true and accurate explanation. Unless circumstances warrant otherwise, the investigation should provide for a reasonable time for the employee's response, usually 48 hours.

If the Chief is hearing an employee's explanations for the first time at the final meeting, then the best practice would be to let the employee know that the Chief will consider his explanation and review the relevant portions of the investigation before making a final determination. That determination can be mailed to the employee after a reasonable amount of consideration.

## V. Other Benefits

Following these simple rules will make a disciplinary action stronger and more defensible. The employer will be able to demonstrate proper notice and fairness in the process.

These steps will also help with later administrative appeals including any internal appeal procedure, unemployment claims, and TCOLE F-5 appeals. An outline for the defense of the disciplinary action will be laid out in the termination letter providing a good initial impression.

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That initial impression is especially important before the Texas Workforce Commission (TWC) where the initial decision is often based upon a short telephone conversation with Human Resources and a copy of the documentation.

An unfavorable initial decision by the TWC can result in basically unrecoverable losses for the City even if the decision is later overturned in the appeal process. Many internal appeals are based largely on the termination letter and backup for the City's case with the employee having a full opportunity to provide their attacks upon the action. The SOAH process for F-5 hearings expects a good clear written termination letter which must be proven up through testimony and documentation.

#### VI. Conclusion

While it can be very satisfying to fire someone on the spot when observing their major infraction, it is not always the wisest thing to do. Proper documentation of the valid basis for the action can head off legal and administrative appeals or, at the least, can place the City in a better position to overcome those attacks.

#### TERMINATION CHECKLIST

After receiving a complaint or becoming aware of a major infraction by an officer or firefighter, the Chief should:

1. Obtain a signed citizen complaint or create a Chief or Supervisor's complaint of an internal policy violation.
2. Review the complaint and determine if the alleged behavior might result in serious disciplinary action.
3. Determine the best manner of investigation and the timing of notice to the employee.
4. Insure a competent and fair investigation and obtain the accused employee's written response to the allegations.
5. Review the investigation results and determine an appropriate action.
6. Draft a termination letter with an accurate and provable accounting of the facts determined in the investigation, notice of Chapter 614 compliance, notice of any appeal rights, and including any employee admissions of fault.
7. Meet with the employee, if possible, to hear his final explanations.
8. Issue the termination letter to the employee.
9. For TCOLE certified employees, file the F-5 notice of termination within seven days of the action OR exhaustion of appeal rights.
10. Wait 90 days for the last day to file a Whistleblower Claim.
11. Wait 300 days for the last day to file an EEOC charge.
12. Wait two years for the last day to file a constitutional claim.

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