

Employment Terminations

1) Best Practice

Checklist

You must have a process in place to manage compliance with final paycheck regulations, required notifications for terminations reasons, unemployment and benefits continuation rights, or any other notification, collection of company equipment, and exit interview process.

As a best practice, employers should create a termination checklist that includes all of the steps to be taken prior to the employee leaving the place of employment. In addition to labor law requirements for final pay and required pamphlets such as state unemployment, employers must ensure they act consistently with requests to employees for returning materials, filing final expense reports, and termination of benefits.

Items to be included in a termination process checklist are:

- Resignation letter received or termination letter prepared.
- Final paycheck, acknowledgement and address change form for tax reporting.
- Benefit and benefit continuation (COBRA) information.
- Unemployment information.
- Return of company property and final expense report.
- Exit interview.
- Internal processing for IT, benefit termination, and payroll.

2) Understanding Termination

In all U.S. states, with the exception of Montana, employment relationships are presumed to be “at-will.” This means that in an employment relationship for no specific duration, an employer may terminate an employee at any time, for any reason (except an illegal one), or for no reason at all. Similarly, an employee is free to leave a job at any time for any or no reason with no adverse legal consequences.

The at-will presumption is a default rule that can be modified by contract. For example, a contract may provide for a specific term of employment or allow termination for cause only. Union contracts generally have provisions that prohibit termination except where there is just cause. Just cause termination must be based on reasonable grounds, with a fair and honest cause or reason, regulated by good faith. Termination based on just cause may be based on one of the following two categories: Misconduct and Unsatisfactory Performance

Misconduct includes, but is not limited to, the following:

- Theft.
- Workplace violence.
- Intoxication at the workplace when required to work.
- Bringing firearms to work.
- Engaging in sexual or racial harassment.

Unsatisfactory performance. Examples of unsatisfactory performance amounting to just cause have included the following:

- Excessive absenteeism.
- Poor work quality.
- Failure to meet numerical production standards.

Serious misconduct is often subject to immediate dismissal, even under a union contract.

NOTE: However, unsatisfactory performance generally will not result in discharge until the employee has progressively been a discipline problem, been notified of the persistent problems, and failed to improve.

3) Exit Interview

Interview

The Company is committed to providing quality programs and a good working environment for all employees. Exit interviews can be an important tool for gathering information about the success of human resources programs. In an informal setting, exiting employees can provide insights into the success of recruiting efforts, the effectiveness of Company benefits, compensation and training programs, as well as information on the quality of work-life balance and Company employee relations initiatives.

Supervisors are urged to encourage all regular employees who are leaving employment at the Company or transferring to another department within the Company to participate in the Exit Interview Program. Supervisors should notify the Department of Human Resources as soon as they are aware that an employee is leaving their department or section. With appropriate advance notice an appointment can be set prior to the employee's leaving.

Procedure

The supervisor:

- Notifies human resources that employee is terminating or transferring from the department.
- Encourages employee to complete questionnaire and schedule an exit interview.

The department of human resources:

- Sends appropriate questionnaire to employee and sets appointment time for exit interview.
- Meets with employee, discusses information contained in questionnaire and any other relevant topics.
- Files questionnaire in confidential departmental file.

The employee:

- Completes questionnaire and sets appointment time with the department of human resources for exit interview.
- Gives completed questionnaire to the department of human resources at exit interview. Discusses information contained in the questionnaire with the department of human resources.

4) Guidelines

Guidelines

Important: Before activating an involuntary termination, best practice is to ensure consistency and review with legal counsel to mitigate potential risk and liability. This guideline provides a best practice process as a resource to assist with proper decision making when deciding upon taking action to terminate.

Termination Type – Involuntary

Termination that is a taken action by the employer.

End Assignment

Did the offer letter define that the position was for a duration of time, or until project "X" was completed, whichever came first?

- If yes, proceed to hold communication informing the employee that the project is near completion, and outline a reasonable exit strategy for both parties.
- If no, meet with the employee and discuss that the temporary position is coming to a close with the completion of the project and discuss an immediate exit strategy. Provide a written document outlining the high points of the discussion, assignment end date, termination date, etc.

Job Performance Has the employee demonstrated the ability to meet job expectations in the past?

- If yes, has a progressive disciplinary process taken place with documentation permitting reasonable time for the employee to correct and sustain the desired performance? If yes, continue toward termination.
- If no, document progressive disciplinary steps, permitting time for the employee to correct and sustain the desired performance.

Misconduct Has a similar event ever occurred in the past by another employee? How was that situation handled? If not, consider your best performer: Would you take the action to terminate for the same reason? Was the incident extreme and negligent causing harm, threat of harm, or financial harm? Was the incident with malice, or knowingly done?

- Misconduct exists when extreme inappropriate or unprofessional action is taken by an employee, is considered as gross and negligent with knowledge or malicious action and the act is severely irreversible, creates grave concern for safety by others, or negatively impacts or violates business operations and policy.
- If permitting this employee's continued employment may be deemed as unsafe to others or a negligent reaction by the employer, it may be permissible to terminate.
- If the employer would not take the action of termination with a top performer or believes the act was unintentional, or can be counseled without further incident, it may be permissible to retain the employee with documented counseling.

Policy Violation Has the employee repeatedly violated one or more policies in less than a six-month period?

- If yes, have the incidents been documented under a progressive disciplinary process? If so, then it may be permissible to terminate.
- If not, document the incident according to progressive discipline and review with the employee.

Poor Attendance Has the employee had repeated unplanned and unexcused absences?

- If yes, is there an established, written and well communicated policy regarding attendance and the company's expectation? Have the incidents been documented under a progressive disciplinary process? If yes, it may be permissible to terminate.
- If no, document the incident according to progressive discipline and review with the employee. If there is failure to sustain correction for less than six months, it may be permissible to terminate.

Reduction in Force Will more than one employee be considered in the reduction in force (RIF) or layoff?

- If yes, has an adverse impact report been completed and analyzed along with selection reasons? If yes, and the impact is not perceived as discriminatory and the duties will not be allocated to a new hire, it may be permissible to terminate and consider a separation agreement with reasonable severance pay.
- If no, are there other reasons this individual is being considered for termination? If yes, it may be relevant to discuss those issues and hold proper discussion with those involved in the decision. If retaining the employee is acceptable, consider progressive discipline or other options to address the concern(s). If that is not an available option, review with legal counsel and possibly consider a separation agreement with reasonable severance pay.

- Skill Has the employee been able to demonstrate the essential duties of the job at any given time during the past 90 days?
- If no, are these newly assigned duties? If yes, have the proper tools and training been provided? If the employee was hired with the assumption of possessing required essential skills, were these skills validated or tested prior to hire?
 - If no, consider having a discussion with the employee about the skill gap to determine if this can be corrected quickly. If the skill gap cannot be closed quickly, and the employee has not demonstrated the ability to perform the essential duties, it may be permissible to consider termination with a separation agreement with reasonable severance pay. The employer may have either made a poor hire or sponsored a promotion without setting the employee up for success. Termination may be relevant for additional consideration and discussion with your legal counsel.

Termination Type – Voluntary

Termination that is a taken action by the employee, regardless of intention and may be considered as resignation.

- Resignation When an employee makes reference to quitting, retiring, looking for another job, or another statement that would infer leaving employment, it is the employer's responsibility to seek the resignation in written form by the employee. A resignation only exists within the scope of employment when an employee has properly entered their desire to depart the employment on a specific date in writing.