

Termination Checklist...

Legal Counsel Contact Information:

Scott Lawson, Managing Attorney P: (440) 666-9735 E: slawson@lawsonfirm.net

Single Employee

Employers frequently face legal challenges from terminated employees. These involve allegations of discrimination and other unfair treatment. The following lists major areas of concern for employers and provides general guidelines for structuring and implementing employee terminations in order to avoid legal challenges.

- Meet with Legal Counsel to review performance issues and reasons for termination.
 - Is the employee a member of a protected class? (i.e. over 40, a member of a racial minority, disabled?)
 - If disabled, were reasonable accommodations made or requested?
 - Was a Performance Improvement Plan used and, if so, what performance objectives were set and missed?
 - Did the employee recently file a workers' compensation claim or request for FLMA leave?
 - Did the employee recently report violations or alleged violations against the company?
 - Did the employee recently participate, as a witness or otherwise, in any hearings against the company (i.e. workers' comp claim hearings, EEOC complaint hearings?)
- Prepare termination letter and review with Legal Counsel.

Cleveland

P: (440) 666-9735

F: (440) 892-3396

Gemini Towers

1991 Crocker Road, Suite 600

Cleveland, Ohio 44145

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- Calculate severance.
- Forward severance information and entire employee file to Legal Counsel for preparation of severance package including releases (supported by consideration).
 - Be sure to include any employment agreements, non-disclosure/non-competition agreements, loan agreements, or other agreements the employee signed when hired.
 - (For Limited Liability Companies) Is the employee a party to the company's LLC agreement or operating agreement or, otherwise, a "member" of the LLC? If so, forward the agreement to Legal Counsel for review.
- Is the employee a foreign national working under an H-1B classification?
 - If so, provide all documentation to Legal Counsel to ensure proper reporting and handling.
- Is the employee located in another country?
 - If so, inform Legal Counsel to determine if the country requires prior notice of termination before the termination can become effective.
- Calculate COBRA, review and summarize impact of termination under ESOP, vacation pay or other benefit plans, and forward all information to benefits administrator.
- Schedule meeting with employee and include at least one witness.
- Notify security of the date of meeting and employee's last day.
- Hold meeting.
 - During meeting, be sure to verify the employee's current address for sending COBRA notices, any funds due to the employee and any further communications.
 - Collect back keys, company credit cards, laptop, PDA/Blackberry, marketing materials, training materials and other company property in the possession of the employee.
- Post Meeting:
 - Arrange for payment of any outstanding expense report items.
 - Deactivate computer network and phone system access.

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- Disable access to any external networks or website sites used by company (i.e. Leapfile)
- Develop plan for notifying customers and other outsiders (vendors, suppliers) for whom the employee is the main contact.
- Forward phone and emails to a designated co-worker.
- Preserve the employee's emails and all computer files including his or her hard drive.
- Follow up to ensure the severance package is signed and returned within the time allotted.
 - Employees under ADEA have a 21-day consideration period.

Independent Contractor (Sales)

- Review the contractor's agreement with Legal Counsel.
- Make sure all earned, but unpaid commissions, are paid within 30 days of termination.

Multiple Employees – Reduction in Force (RIF)

Whether it is called reorganizing, downsizing or rightsizing, reductions in an employer's workforce frequently give rise to litigation. The following lists major areas of concern for employers and provides general guidelines for structuring and implementing a RIF to avoid legal challenges.

- Meet with Legal Counsel to review justification and selection criteria.
 - Are the reasons for the RIF based upon objective, and documented, business or economic reasons? (i.e. loss of business, implementation of technology that reduces need for manual labor, reorganization, merger or acquisition, consolidation of functions).

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- Is the selection criteria objective? (i.e. Based upon seniority? Based upon location? Based upon job function and/or department?)
 - If based in whole or part upon performance factors, were the standard performance evaluation procedures followed?
 - Avoid implementing evaluations specifically for purposes of justifying selection for a RIF.
- Were alternatives considered such as:
 - Attrition, voluntary attrition or early retirement programs?
 - Programs that would allow employees to transfer to other positions or worksites in lieu of termination?
 - Salary freezes?
 - Temporary shutdowns?
 - Shortened work weeks?
 - Preference to existing workers for job openings in areas of company not affected by planned RIF?
- Will the RIF have a disparate impact upon protected classes? (i.e. persons over 40, member of a racial minorities)
- Are there written policies in place from past RIFs that must be adhered to?
 - Review policies and handbook with Legal Counsel.
- Are any of the employees involved covered by a collective bargaining agreement?
 - If so, have Legal Counsel review terms and NLRA rules to determine obligation to consider alternatives, obligation to bargain concerning labor costs, and procedures to be followed for this RIF.
- Prepare termination letter and review with Legal Counsel.
 - (For Companies with more than 100 Employees) If the RIF involves a worksite closing or layoff resulting in a job loss to more than 50 employees, Legal Counsel must prepare a WARN ACT notice that must be sent 60 days in advance of RIF.
- Contact outplacement provider and plan for outplacement services.
 - Have provider prepare packets for affected employees.

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- Determine need for provider to be onsite after RIF is announced.
- Prepare press release and review with Legal Counsel.
- Calculate severance.
- Forward severance information and employee data to Legal Counsel for preparation of severance packages including releases (supported by consideration).
 - Be sure to include any employment agreements, non-disclosure/non-competition agreements, loan agreements, or other agreements any of the employees signed when hired.
 - (For Limited Liability Companies) Are any of the employees a party to the company's LLC agreement or operating agreement or, otherwise, a "member" of the LLC? If so, forward the agreement to Legal Counsel for review.
- Are any of the employees a foreign national working under an H-1B classification?
 - If so, provide all documentation to Legal Counsel to ensure proper reporting and handling.
- Are any of the employees located in another country?
 - If so, inform Legal Counsel to determine if the country requires prior notice of termination before the termination can become effective.
- Calculate COBRA, review and summarize impact of termination of each employee under ESOP, vacation pay or other benefit plans, and forward all information to benefits administrator.
- Prepare scripts and FAQ sheet for managers and provide training.
- Prepare logistical plan for RIF meetings.
 - Meet with all involved managers to discuss process, roles, questions about scripts, communication, and answering questions.
 - Notify security.
 - Determine outplacement provider role in meetings.
 - Discuss pre-notification needs with IT (confidential).
 - Plan meetings with remaining persons at worksite or in affected departments.
- Meetings on effective date of RIF.

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- During meeting, be sure to verify the employees' current addresses for sending COBRA notices, any funds due to the employees and any further communications.
- Collect back keys, company credit cards, laptop, PDA/Blackberry, marketing materials, training materials and other company property in the possession of each employee.
- Post Meeting:
 - Arrange for payment of any outstanding expense report items.
 - Deactivate computer network and phone system access.
 - Disable access to any external networks or website sites used by company (i.e. Leapfile)
 - Develop plan for notifying customers and other outsiders (vendors, suppliers) for whom any of the employees is the main contact.
 - Forward phone and emails to designated areas.
 - Preserve employee emails and all computer files including hard drives.
- Follow up to ensure each severance package is signed and returned within the time allotted.
 - Employees under ADEA have a 45-day consideration period when terminated under a RIF.

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