

**TERMINATION ANALYSIS CHECKLIST**

**Before the termination.**

1. What is the substantive reason we are terminating this employee?
2. How long has the employee been with us? (As a rule of thumb, the longer the employee has been employed, the better reason a judge or jury will expect us to have justifying the discharge.)
3. Are there any special risks to consider, including possible claims of retaliation (e.g., has the employee previously made harassment complaints, filed OSHA charges, made worker's compensation claims).
4. Is the employee covered by a labor agreement? By an employment contract? By a handbook? If so, will the reasons for the termination pass muster under those documents?
5. If the reason for the termination is poor performance:
  - ✓ Was the employee counseled previously about performance problems? Is the counseling documented?
  - ✓ Have we done performance reviews on a timely basis, and if so, do they reference performance problems?
  - ✓ Was the employee given a last chance performance plan? (If not, why not? If yes, how did the employee do on the plan?)
  - ✓ Has the employee been warned previously that if performance does not improve, he/she will be terminated?
  - ✓ How have other employees been treated for similar performance problems? Have we discharged other employees with similar records? Or, are we treating this employee more harshly than we have treated other employees with similar records? (If so, what is our justification for this discharge?)
6. If the reason for the termination is a rule violation or misconduct:
  - ✓ Were employees aware of the rule?

- ✓ Did we do an investigation, and give the employee a chance to tell his/her side of the story?
  - ✓ Do we have sufficient proof the violation occurred?
  - ✓ How have we treated other employees in similar circumstances?
7. If the reason for the termination is poor attendance:
- ✓ Was the attendance policy communicated to employees?
  - ✓ Have we enforced the policy consistently?
  - ✓ Have we let other employees with similar or worse records off the hook?
  - ✓ Are any of the absences FMLA protected – if so, we cannot hold them against the employee.

### **During the Termination**

8. Dignity Dignity Dignity.
9. Usually face-to-face meeting. What is the timing? Outline what will be discussed/ who should attend (i.e., who will be your witnesses) Where to meet?
10. Go through the written Notice of Termination with Employee. Obtain comments and signatures. Retain for the Company's records.
11. Exit package/release--what is being offered?
- a. Is resignation acceptable/will unemployment compensation be available if resign?
  - b. job placement service;
  - c. is a short term relationship (e.g., consulting) desired or needed for transition period? is this worth discussing?
  - d. consider job references--what will we say to prospective employers - title, salary, dates of employment ONLY
12. Confirm benefits -- what if any, do you continue?
- a. Health insurance (COBRA, HIPPA)
  - b. Life insurance

- c. Vacation/sick days
  - d. Disability insurance
  - e. Automobile
  - f. Portable computer
  - g. Credit cards
  - h. Pension/401-K contribution required
  - i. Loans
  - j. Amounts owed to individuals
  - k. Other
13. Meet with employee and obtain return of the Company Property -- keys, equipment, proprietary/confidential documents.
14. Schedule time after work hours or on the weekend to retrieve personal items.

### **Post-Termination**

15. Change of computer pass codes, if necessary.
16. Consider changing door locks, if necessary.
17. Schedule time to meet with staff, if necessary.
- a. No promises of continued employment
  - b. Reassure continuity of company
  - c. What else will be said?
18. Consider what will be told to professional community--what is public relations "fall out," if any?