



TERMINATING EMPLOYEES

IT'S AN ART AND A SCIENCE!

October 23, 2018

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OVERVIEW

- Legal Risk
- Types of Terminations
- Why do People Sue their (former) Employers?
- Reducing Legal Risk
- Processing the Termination



TYPES OF TERMINATIONS: VOLUNTARY

- Resignations
 - new job
 - self-employment
 - health
 - caregiving
 - “pursue other interests”
- Retirement
 - really a resignation with benefits



TYPES OF TERMINATIONS: INVOLUNTARY

- Discharge
 - performance
 - behavior
 - aggressive
 - uncooperative ???
 - bullying
 - cause
 - violation of sexual harassment policy
 - fraud/dishonesty
 - theft/crime
 - violence
 - insubordination
 - disloyalty



TYPES OF TERMINATIONS: INVOLUNTARY Cont.

- Reorganization
 - department
 - organization-wide
 - merger
 - outsourcing
- Downsizing
 - reduction in force
 - layoff
- Advance written notice



Legal Claims

- Discrimination (terminations/constructive discharge)
 - failure to accommodate
 - disability/pregnancy/religion/victim of domestic violence, sex offense, or stalking
- Retaliation
 - adverse consequences for protected activity
 - every employment law has a retaliation provision
- Whistleblower laws
 - Nonprofit Revitalization Act
 - Medicaid
 - NYS statute
- WARN
 - state and federal notice requirement for RIF's



Legal Risk: Why Do People Sue?

- get job back
- money
 - unrealistic expectations
- pride
- anger
 - at supervisor
 - at organization
 - *how the termination was conducted*



Legal Risk

- How likely?
- What kind of legal claims?
- How bad can it be?
 - damages
 - reputational cost
 - operational impact



Reducing Legal Risk: Employment Practices

- Internal Policies – and Practices!
- Evaluations
 - “social promotions”
 - incomplete, inaccurate
 - none at all
 - self-serving
- Prompt, thorough investigation
- Consistent treatment of similarly situated employees
- Progressive Discipline
 - how many steps?
 - how long is improvement period?
- Notice period
 - working or nonworking?



Reducing Legal Risk: Employee Relations

- “Fire early, fire often”
- Avoiding termination increases risk!
 - intervening events
 - claims by other direct reports, co-workers
 - credibility
- Consistency/fairness
- Communications
 - with the employee
 - with other employees



Reducing Legal Risk: Termination Meeting

- Things to think about:
 - When [day/time] should you have it?
 - Where should you have it?
 - Should it be in person?
 - Who should be in the room?
 - What is the tone of the meeting?
 - How should it be documented?
 - *Are you being recorded?*
- Three things to remember:
 - Be respectful
 - Don't apologize or become emotional
 - Give the employee benefits, pay and other exit information in writing



Reducing Legal/Financial Risk

- Severance Agreements
 - includes a release
 - consideration
 - legal requirements
 - ADEA (if at least 20 ee's)
 - time to consider!
 - nondisclosure clauses
 - cannot use with sexual harassment claims unless employee consents
 - *get legal help!*
 - Unemployment Insurance
 - waiting period
- Employment Practices Liability Insurance



Procedures for All Terminations

- termination letter (legal requirement)
- final paycheck (NYS: next regular payday)
- unused accrued vacation (legal requirement; policy)
- COBRA
- pension
- references
- records retention
- company property
- personal property



Takeaways

- Don't delay a necessary termination
- Don't rush to judgment
- Thoroughly investigate the facts
- Make sure you have documentation
- Apply policies fairly and consistently
- Use sound business judgment
- Assess legal risk
- Consider using a severance agreement
 - *get legal help!*
- Employment Practices Liability Insurance



QUESTIONS?

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