**Terminations FAQ & Guide**

> Terminations FAQ

1. **What types of terminations should I know about?**Generally, there are two types of terminations: voluntary and involuntary. Involuntary terminations can be for cause, or a layoff/ reduction in force/ position elimination.

1. **When can an employee file an Unemployment Claim?**Employees can file an unemployment claim any time their hours are reduced significantly, temporarily laid off, or their employment ends. It is up to the adjudicator to decide if the benefits are awarded and whether they will be ‘charging’ or ‘non-charging’ to the employer’s account. Both the employer and the claimant have the right to an appeals process. For cause terminations that are well documented and follow your prescribed disciplinary process have the best chance of being decided in the company’s favor. It is important to respond to the request for employer information from the Unemployment office. Many states, including NC, require this by law, even if you do not wish to challenge the unemployment claim**.**
2. **What do I need to know about terminations for cause?**

Consequences of improperly documented terminations for cause can include unsuccessfully defending unemployment insurance claims, discrimination or other charges against the company, and decreased morale for existing employees. To mitigate these first two outcomes, documentation is key! Not only does the employee feel fairly treated, and therefore less likely to file a claim, but it will provide a defense and justification for the termination should the need arise for a defense.

Carefully crafting communication with the remaining employees after a termination is also important. The employer should not reveal the details of the termination but should communicate that the employee is no longer with the company and direct current employees to a new contact for work-related matters.

1. **What do I need to know about layoffs?**

In general, layoffs should have a formalized, non-discriminatory process for determining which employees will be affected. Tenure is one factor which is often used. When considering layoffs, several areas of employment law should be considered.

* **Title VII/ADA/PWFA:** Employers need to have substantial and objective documentation showing the need for layoff, how each group was selected and then how each employee was selected within their group, absent their race, color, religion, sex, sexual orientation, gender identity or expression, disability, or pregnancy.
* **WARN:** The Worker Adjustment and Retraining Notification Act is a federal law that generally applies to employers with 100 or more employees who will be conducting mass layoffs. WARN generally requires 60 days of advance notice of a plant closing or mass layoff to employees and employee representatives.
* **ADEA:** Age Discrimination in Employment Act – It is illegal to discriminate against employees over age 40, and severance agreements which include waivers of ADEA claims are governed by certain rules which are designed to protect the workers.
* **Retaliation:** Documentation for individuals being laid off who have filed recent complaints or participated in other protected activities, such as filing workers’ compensation claims, have well-documented reasons for their selection that have nothing to do with this protected activity.

1. **What do I need to know about severance packages?**

Severance packages are sometimes offered to employees for involuntary terminations. Severance generally includes a monetary amount provided to the employee in return for a waiver of potential litigation. When offering severance packages, consult legal counsel to ensure all legal obligations are met. Different agreements will be needed depending upon if a group or single employee is affected and for those over the age of 40 to ensure compliance with the ADEA and Older Workers Benefit Protection Act (OWBPA). Organizations with unions will need to consult their contract to ensure compliance.

> Terminations: A Step-by-Step Guide

Employees and their team members are deeply affected by a termination. Therefore, terminations should not be taken lightly. Even though North and South Carolina are “at-will” states, terminations can still result in legal action. A company should have a well-defined corrective action process in place and follow it consistently. Except in the case of an egregious event, an employee should be well informed of their status at the company, and the employee should have had warnings and opportunities to improve.

* **How should I handle the timing & location of the termination?** Upon notification that termination must occur, the next step is to plan where the termination should take place. Generally, this should be conducted in a neutral and confidential space such as an office or a conference room. Also consider what day and time the meeting should take place. Take into account start and stop times of shifts, specific schedules and whether or not the employee has their own transportation.

* **Who needs to know about the termination?** Notify relevant personnel when appropriate. This may include security, IT for termination of electronic access, payroll and others.

* **Who should attend the termination meeting?** Generally, it is a good idea to have two members of management, such as the direct supervisor and a representative from Human Resources – this will provide the best opportunity for a short and objective delivery of the termination message.

* **What should be said in the meeting?** The termination meeting is only to deliver the news of the end of employment. At this point, the issue(s) at hand are no longer relevant, there is no need to debate them, the decision of employment ending has been made. Prepare talking points prior to the meeting as terminations can sometimes be difficult for all parties involved. Oftentimes, the less said the better. Some key points to cover are:
  + The company has made the decision to terminate employment effective immediately (or other applicable date).
  + Provide the reason, but do not rehash the details.
  + If a separation package is offered, provide an overview and explanation.
  + Explain how other benefits will be handled, when they will be terminated and eligibility for COBRA, if applicable.
  + Review any applicable agreements such as non-competes.
  + Provide details on next steps such as cleaning out office or making a return-date appointment to clean out offices (or inform employee if belongings will be mailed); some companies may have staff clean out the office while the meeting is occurring.
  + Give information on who to contact (such as Human Resources) for post-termination questions.
  + Provide details on how the final paycheck will be handled and delivered. Be sure to check final pay laws for the state where the termination will occur.
  + Request return of any company property.

* **What happens after the termination?** Be prepared to inform staff about the termination in a general way. State that the employee is no longer with the company, indicate that you wish them well with future endeavors, address any concerns related to unfinished work, and describe how the job will be filled for the time being. Let employees ask questions, but if related to termination reasons, there is no need to provide information.