

TERMINATION CHECKLIST (Washington)

Pre-Termination Issues and Considerations

While employment in Washington is at-will, a company cannot terminate an employee for an illegal reason, such as discrimination, or in retaliation for the employee having exercised a legal right, such as requesting an accommodation or filing a worker's compensation claim. If you answer "no" to a question below, it does not mean that you cannot terminate the employee, but you should consider the matter further or get legal advice.

- The process for termination should start well in advance of the termination by thinking through all aspects of termination before doing it, documenting and supporting the decision, and if not enough support exists, potentially establishing the necessary support prior to the termination.
- Review the employee's contract, company handbook, stock agreements, etc. for any terms with respect to termination including notice periods, severance requirements, PTO/vacation payouts, stock vesting/re-purchasing, etc. Comply with all required terms.
- Are you treating this employee similar to other employees in similar circumstances?
- Is the employee being terminated after making a recent claim? If so, the company should have adequate documentation of the legitimate business reasons for the termination, unrelated to the claim. The further apart in time from the claim to the termination the better.
- Was the rule or policy the employee violated a written rule? Did the employee ever receive a written copy of the policy? If any other employees violated this rule or policy, did they receive the same disciplinary action? If not, can you articulate a good reason why this employee is receiving harsher discipline (i.e., repeated violations, problem employee, etc.)?
- If the decision to terminate is based on poor work performance, has the poor performance been documented and has the employee been given the opportunity to improve?
- Has the employee received any warnings, verbal or written, previously? Have alternatives to discharge been considered (lesser discipline, training, transfer, etc.)?
- Does the documentation in the personnel file support the termination? All documentation of verbal and written warnings should be retained in the employee's personnel file.
- Who will replace the employee? Someone significantly younger than the 60 year old employee? Someone who is a Caucasian male instead of the terminated pregnant female from another country?
- Consider whether a third party (for example a judge) would find the termination to be reasonable given all the circumstances.

- Is there a risk of the employee bringing a claim against the company after termination for discrimination or retaliation? For example has the employee made a recent complaint or is the employee in a protected class? If so, consider using a Severance and Release Agreement.
- Has the final decision to terminate been reviewed by Human Resources or legal counsel (if applicable) to ensure uniformity and consistency of treatment?

Termination Meeting

- Plan the date/time/content of the termination meeting in advance. When there is no time to plan ahead, the company should have a general framework in place, which involves who will handle any termination, that any termination will be handled professionally and not in a heated manner, and that the circumstances will be documented.
- Ideally have another supervisor or witness with you during the termination meeting.
- Tell the employee that he or she is being terminated within the first few minutes of the meeting.
- Explain the decision briefly, clearly, and truthfully. No need for detail or to overly explain the decision. Allow the employee an opportunity to respond. Pay close attention to what is said but do not argue with the employee in an effort to justify the decision. Keep the meeting short.
- If offering a Severance and Release Agreement, offer it at the meeting.
- Consider reminding the employee of any non-solicit/non-competition/confidentiality obligations.
- Have the employee return all company property either immediately or, if any property is not on-site, facilitate the return (i.e., by providing a pre-paid FedEx envelope or box).
- Immediately cut off all access to the company network, email, and physical location (office).
- Consider drafting an email to staff regarding the termination, if appropriate. The email should simply advise that the employee is no longer with the company and should not provide any details. Only discuss the details of a termination with those who have a business need to know. Maintain a positive company atmosphere following the termination.
- If the employee requests his or her personnel file, the company must make such file available locally within a reasonable period of time (10 days). This can be done by having the terminated employee view the file at a neutral location or providing a copy of the file to the employee.
- If the employee subsequently requests the reasons for his or her termination in writing, the company must respond providing the reasons in writing within 10 days.
- The employee must be paid his or her final paycheck on the next regularly scheduled payday.