



TERMINATION AND SEVERANCE OF EMPLOYEES

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Introduction

- At-Will Employment - Can Terminate Employee for Any Lawful Reason
 - Presumed in California
 - Employment relationship that is other than at-will can be implied from employer's conduct or other events
 - How to preserve at-will employment relationship
 - No probationary periods
 - No policy of multiple steps of discipline before firing
 - Avoid statements regarding limits on employer's ability to terminate employees



Documents to Provide on Termination

- Final Paycheck

- CA - If employer terminates employee, must provide final paycheck (including accrued but unused vacation) on termination. If employee resigns, must provide final paycheck within 72 hours unless employee gives 72 hours notice, then due on last day of work.



Documents to Provide on Termination (Continued)

■ Final Paycheck (Continued)

- No offsets - No amount may be held back to settle disputed amount or set-off amount employee owes company (exception for lost, unreturned or damaged property or cash shortages caused by employee - narrowly construed). Employer may not deduct money from wages to satisfy debts or loans unless specifically allowed in written agreement.



Documents to Provide on Termination (Continued)

- ADEA Disclosure (Employees Over 40) - Age Discrimination Law
- Cobra or Cal-Cobra Notice and Election Form for Individuals with Group Health Plans
 - Employer must notify plan administrator within 30 days of qualifying event
 - Plan administrator must notify employee within 14 days of event of eligibility for continued coverage
 - In CA, employer must notify employee within 15 days of right to convert to individual coverage without proving insurability



Documents to Provide on Termination (Continued)

- HIPAA Certificate of Group Health Coverage (Individuals with Group Health Plans)
 - Guaranteed access to health coverage for those who qualify, even with preexisting medical condition
- HIPP Notice (CA Employers)
 - Health Insurance Premium Payment Program
- Life/Disability Insurance Information (If Applicable)
- Information Re: Stock Option Vesting and Exercise Rights (If Applicable)



Documents to Provide on Termination (Continued)

- Personnel Change of Status Notice (CA Employers)
 - Employee's Name, SS#, date of termination, company name and signature of company agent
- EDD Publication DE 2320 Re: CA's Programs for the Unemployed (www.edd.cahwnet.gov)




Documents to Provide on Termination (Continued)

- Change of Address Info to Mail W-2s
- Confidentiality - If Employee Had Access to Trade Secrets, Remind Employee of Duty to Refrain from Disclosing and Request Written Acknowledgement of Duty
- Demand Return of Employer Property
- Reason For Termination - Not Required by Law, but may be Helpful to Prove Termination for Lawful Reason




Severance

- Severance Not Required Unless Employer Has Policy to Pay Severance
 - Can be Implied from Past Practice
- Separation and Release of Claims Agreement (If Applicable)
 - Severance
 - Non-disparagement
 - Confidentiality of Terms of Agreement



Severance (Continued)

- Separation and Release of Claims Agreement (If Applicable) (Continued)
 - Release of Claims
 - ADEA Waiver if Over 40 - Waiver of Age Discrimination Claims
 - Specifically refer to ADEA restrictions
 - Written in plain English
 - Encourage employee to consult attorney
 - 21 day consideration period
 - 7 days to back out of agreement



Severance (Continued)

- Separation and Release of Claims Agreement (If Applicable) (Continued)
 - Waiver of Unknown Claims
 - CA Civil Code Section 1542 Notice
 - General release does not extend to claims creditor does not know about, which if known by him would have materially affected his settlement with the debtor
 - Waiver of rights under this law



Reductions In Force (RIFs) - Layoffs

- Determine Who to Lay Off in Nondiscriminatory Way
 - Job Function
 - Seniority
 - Job Performance (Objective Factors)



Reductions In Force (RIFs) - Layoffs (Continued)

- Worker Adjustment Retraining Notification Act (WARN)
- Federal Plant Closings Act
 - Applies if:
 - At least 33% of workforce and at least 50 employees; or
 - At least 500 employees; or
 - Plant closing - permanent/temporary shut down of single employment site if 50 or more employees laid off during 30 day (or 90 day) period



Reductions In Force (RIFs) - Layoffs (Continued)

- Worker Adjustment Retraining Notification Act (WARN) (Continued)
 - Notices
 - Employees
 - Union representative
 - Chief elected official of unit of local government within which layoff occurs
- Review State WARN Act
- Meet with Retained Employees and Assure Them Jobs Are Safe (If True)
 - Otherwise, may have mass exodus



References for Former Employees

- Limited Statement
 - Employee was employed by employer
 - Dates of employment
 - Position held
- More Info - Get Written Consent of Employee
- Giving Positive Reference for Fired Employee is Risky