Best Practices for Employee Terminations

The Executive's Roadmap to Best-in-Class HR Strategy

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Welcome!

Jacqueline Breslin
Director, Human Capital Services, TriNet

- Based in San Leandro, CA
- 20 years experience in Human Resources
- Leads a team dedicated to compliance, workplace investigations and challenging employee relations issues
- Experience implementing and managing HR programs to include policy development, performance management, compensation, recruitment and retention, learning and development, coaching and M&A activity
Welcome! Meet Our Subject Matter Experts…

Barbara Gibbs

Performance Management Systems Administrator, TriNet

• Based in Gainesville, Florida
• Over 20 years in Human Resources
• As a Human Capital Consultant, Barbara provided HR best practices to clients including employee relations, policy development, compliance and training. Currently she supports Strategic Services including Performance Management, TriNet Learn, Corporate Ethics, Compensation Studies and Employee Engagement Surveys.
Welcome! Meet Our Subject Matter Experts…

Elizabeth Perlak  
Sr. Compliance Associate, TriNet  
• Based in New York, NY  
• 9 years experience in Employment Law issues  
• Provides best practices guidance to TriNet Ambrose clients in any and all areas of employment law including hiring, terminations, and performance management
Agenda

• Employment-At-Will
• Voluntary Terminations
• Reductions in Force
• Involuntary Terminations
• Separation Agreements
• Summary
Employment-At-Will

• An employment, having no specified term, may be terminated at the will of either party on notice to the other
  ➢ For any reason
  ➢ For no reason
  ➢ At any time

• Applies to all states with the exception of Montana.
At-Will Exceptions

Statutory Violations
Public Policy Violations
Retaliation
Voluntary Separations

For our purposes, a Voluntary Termination is when an employee terminates the employment relationship. Employees may speak of “resignation,” “quitting,” “leaving” or “giving notice.”

- Some common reasons for voluntary termination include:
  - Career move
  - Relocation
  - Returning to school full-time
  - Burnout
  - Personal dissatisfaction with employment
  - Work hours and/or working conditions
Voluntary Separations

Voluntary Terminations usually require limited paperwork

• Documentation
  ▪ Written resignation letter
  ▪ Acknowledgement of the resignation

• State Requirements Regarding Final Pay Availability
  ▪ CA regulations

• Exit Interviews
Involuntary Termination

- Performance Issues or Misconduct
- Reductions in Force (RIF)
Terminations due to a RIF

- WARN
  (generally covers employers with 100 or more employees)
Terminations due to a RIF

1. Clarify your business goals
2. Determine the criteria for selection
3. Clarify the process for decision making regarding “the list”
4. Minimize the risk
5. Think of contingencies
6. Lessen the pain for those leaving
7. Make the plan comprehensive
RIF Steps

✔ Balance both respect and security

✔ Define and communicate a clear start and end

✔ Execute the plan flawlessly
RIF Aftermath

- Implement the communication plan.
- Be sensitive to emotions.
- Pay attention to your key players.
1. Not being clear about business goals. Consider a RIF only if it fully realizes your goals.

2. Not having any clear criteria for selection.

3. Not paying attention to adverse impact and doing it “blindly.”

4. Not doing anything in terms of follow up (i.e. outplacement or severance).

5. Not ensuring that managers stick to the script. There is no correct answer when someone asks “why me,” so be prepared to deal with that and stick to what you can and cannot say.

6. Doing a RIF disrespectfully. Each employee who is involved is worthy of respect.
Involuntary Termination – Performance

- Always be preparing for a termination
- Set clear expectations all along
- Never surprise an employee with the termination conversation
- Give feedback so that employees know where they stand
- Be aware of complicating issues - disability, retaliation, other leave
- Document every step
## Documenting Performance Issues

### Performance Management
- Informal feedback – corrections, praises, team members input
- Formal feedback – reviews, promotions

### Documentation
- Date & time
- Clearly identifies and describes the performance issue
- Examples

### Method of Communication
- Verbal warnings
- Written warnings
- Acknowledgment by the employee

### Consistency
- Actions should be supported by the record
The Meeting

• Plan what you are going to say
• Anticipate questions and be prepared
  ▪ Payroll
  ▪ Benefits
  ▪ Company Property
• Prepare a Separation Agreement (if needed)
• Inform any other parties
  ▪ IT
  ▪ Security
  ▪ HR
• Have a witness
• Treat the employee with dignity and respect
Separation Agreements

• Must be for “consideration”
  ▪ additional money
  ▪ COBRA payments
  ▪ loan forgiveness
  ▪ outplacement services
• Be aware of past practices
• Tailor the agreement as needed
  ▪ State and local references
  ▪ Age claim considerations
  ▪ Confidentiality, Non-competes and Restrictive Covenants
Summary

It’s important for organizations to understand the various types of terminations and risks involved with each.

Today, we provided information and best practices for--

- Employment-at-will
- Voluntary Terminations
- Reductions in Force
- Involuntary Terminations
- Separation Agreements
Q&A
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