**Termination Process Checklist**

_____  **Take Your Time at the Beginning.** Begin the process as soon as possible, but take your time and get it right. Investigations and review of the facts need to be performed before making any decisions. If there is an emergency, consider suspension of the employee with pay while the process is completed.

_____  **Identify Relevant Policies.** Review the company’s written policies – follow them.

_____  **Put Someone in Charge.** One person should be in charge of, and conduct, the investigation where possible. Note that this does not mean that one person (or even the same person) should make the decision without consultation with appropriate people after the investigation is complete.

_____  **Investigate the Facts.** Review the facts that brought you here, conduct interviews, obtain witness statements (as applicable), and get the employee’s perspective. Do not respond to the employee’s perspective – just get it down. Document the facts.

_____  **Identify Relevant Documents.** At a minimum, retrieve and review:
  - the employee's discipline history, especially performance reviews, improvement plans, etc.;
  - any contracts of employment, NDAs, and non-compete agreements; watch provisions governing termination (i.e. for cause, definition of cause, at will provisions, payment or buyout provisions);
  - any internal and external (e.g., EEOC) complaints regarding the employee’s conduct;
  - records of employees with similar infractions to compare the discipline imposed then with the disciplinary action considered now.

_____  **Identify Relevant Events.** Retrieve evidence of and review:
  - formal leaves of absence, such as FMLA or USERRA leave;
  - including requests to transfer, go to half-time, work from home, etc.;
  - claims for workers’ compensation;
  - recent changes in employment, including promotions, raises, transfers, etc.

_____  **Do Not “File-Build” After the Fact.** Creating a document trail after the fact is worse than not having the documents in the first place. Work with what you have.

_____  **Identify Potential Outcomes and Alternatives.** What disciplinary measures are allowed? Who are the stakeholders (especially consider other workers)? What has been done with other similarly-situated employees? What can be done short of termination? Document this process.

_____  **Call Your Lawyer.** Provide a summary of the investigation, and discuss the following steps with your lawyer **BEFORE** incorporating them into the decision.
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___ Identify Protected Class Status. Everyone is in a protected class – which apply here? Race, color, national origin, sex, religion, age, disability, pregnancy, marital status, sexual orientation, etc.? Determine if protected status is related, could reasonably be perceived as related, or will (reasonably or otherwise) be connected by the employee to the facts leading to the potential termination.

___ Review Other Protected Categories. Is the employee a “whistleblower”, in a union? Have they made internal or external complaints (e.g., EEOC)?

___ Review Employee’s Social Media. Access what you can find, and review for threats, solicitations of employment elsewhere, violations of NDA/non-compete, etc.

___ Review Employee’s Vesting Status. How close is the employee to vesting in benefits? (Retirement plans, stock options, restricted stock, etc.) If soon, can the termination be postponed until vesting occurs?

___ Decide If Severance Is Available. Offering severance in exchange for a waiver is a handy (and usually cheap) way to mitigate liability.

___ Decide to Terminate or Not. Get your lawyer’s advice, provide the documentation to the decision-maker(s), and give the decision-makers a deadline to decide.

___ Once You’ve Decided, Act Quickly. Be ready to terminate immediately upon making a decision. EXCEPTIONS: very recent protected activity (e.g., EEOC claim, etc.), vesting status.

___ Pay Up Immediately. Pay all wages and other monies due (e.g., vacation pay, etc.) at termination meeting, and have them sign that they received it. For severance agreements, pay immediately upon receiving the signed contract.

___ Provide All Notices and Contracts. Notices for benefits (e.g., HIPAA & COBRA for health insurance) should go in the mail ASAP. Follow the plan documents. Give the employee copies of all existing contracts, including NDAs, non-competes, and severance agreements.

___ Get Your Stuff Back. Retrieve any company property, especially if it gets them physical or electronic access to the company.

___ Communicate with Employees. Get your lawyer’s advice on who to tell and how far to go with details, but don’t leave relevant remaining employees completely in
Termination Process Checklist

the dark about a coworker who is suddenly no longer there.

___ Decide Whether to Contest Unemployment. Get your lawyer’s advice. Usually, it’s not worth it financially, but could be strategically important to your company.

___ Save the File. Get your lawyer’s advice, but generally six years is long enough.