

When All Else Fails: Terminating the Employment Relationship

Well, here you are at the end of the employment relationship. You have coached, counseled, and attempted to correct, yet the employee's behavior is still not meeting expectations. Thus, you have concluded that it is time to terminate the employment relationship. So what are some final steps you should take to ensure you have dotted and crossed your proverbial i's and t's? Consider the following.

Pre-Termination Checklist

Use the following five questions as a pre-termination checklist. This can help in a variety of ways — from preparing your presentation for an unemployment insurance hearing to defending your action before a federal or state agency or local human relations commission, and, perhaps more importantly, helping to ensure consistent treatment of all employees who are in similar situations.

Forewarning

Are you able to describe when and how you set your standard or expectation for this particular employee? Or is this a case where your position is, “Aw, come on, everyone knows you are supposed to ...” or “Everyone knows you are not supposed to ...” While this might hold true for lying, cheating, and stealing (although certain actions of select political, business, and other leaders might lead one to conclude that *nothing* can be taken for granted), it is not the case for most performance standards. Take,

for example, excessive absenteeism or tardiness. I find this is a common standard that managers believe with all honesty and conviction that everyone shares and thus there is no need to define it. But, when discussing the matter with peers and colleagues, they regularly find that their expectations may not match those of their peers, including managers and supervisors in the same department, as well as across the organization. Try the following exercise with your management team, particularly those managers working in the same department. Ask them to write down on a sheet of paper their answer to the question, “How many unscheduled occurrences of absence in a six-month period do you consider to be excessive?” Then go around the room and have them answer one at a time while you record the answers. You can be pretty much guaranteed that you will find differences, sometimes vast, among their answers. Some may say three; some may say six. Now there may be very valid reasons for having different standards in different departments. For example, if I am an HR administrator in a hospital (which I was for nearly 10 years), it is likely that my attendance and punctuality standard for my HR staff would be different and possibly more lenient than the standard a director might have in a nursing unit for the direct care providers. Why? There is at least one valid business reason: The impact to business operations when my HR staff is late is less or at least potentially less than when a direct care provider is late or absent. There is no direct harm if a file is left unattended for some period of time. There may be dire harm if a patient is left unattended for any amount of time. So remember that what you take for granted as a reasonable expectation may not be shared by others; communicate your expectations from the beginning of the employment relationship.

How? Consider developing a new employee orientation checklist list (see Chapter 7). When an employee does not meet your expectation, provide objective and specific examples of desired performance (see Chapter 3). And, throughout these processes, remember to document these activities (see Chapter 2), because only then will you be well positioned if and when the time comes to demonstrate how and when you provided the employee with forewarning of your expectation.

What if you find managers within the same department have different expectations? Talk about the differences and why they exist.

Are the rationales justified based on business need or are they subjective? For example, let's say there are three managers in the accounting department: one in accounts receivable (A/R), one in accounts payable (A/P), and one in payroll. Each supervises one to three employees. One manager believes an employee should have no more than six unscheduled absences in a six-month period; the second manager believes an employee should have no more than four unscheduled absences in a six-month period; and the third manager believes an employee should have no more than two unscheduled absences in a six-month period. The managers should focus on the impact that employee absences have on business operations, compare and contrast the impact, and understand why they have set different standards. The A/R manager may indicate that unscheduled absences have the potential to delay the collection of money from clients and customers, which reduces the company's cash-on-hand, which might impact its bond rating or leave less money available for investments and thereby reduce interest income. The A/P manager may indicate that unscheduled absences have the potential to delay payments to vendors, which may result in late fees or charges, causing unnecessary costs to the company. The payroll manager may indicate that unscheduled absences have the potential to delay the processing of payroll, which could result in fines if employees are not paid in a timely fashion, not to mention the bad employee morale that may be created. All three concerns are tied to business operations and are valid. They might not, however, justify such a broad difference in the expectation. Thus, the managers might work with human resources to determine what is the company's average absenteeism rate per employee and agree upon one standard that all three managers will use for the entire accounting department.¹

Evidence

Do you have evidence to corroborate your position that the employee has failed to meet expectations? Evidence usually comes in one of three forms:

Employee's admission. Often an employee will admit to having done something incorrectly or inappropriately. But don't stop there. Asking, "Why?" can be a powerful inquiry; just knowing what an employee did may not be enough. Understanding why the employee did or failed to do something often opens doors to learning about systems, processes, training, communication, or other systems that need some fine tuning or are just not working. If that is the case, both you and the employee now have the opportunity to learn. You might establish a new training program or implement a new (or adjust an existing) policy or procedure. Sometimes, however, the employee does not admit to an error or omission despite evidence to the contrary. Thus, you will need to consider what other evidence you have to substantiate your claim.

Witnesses. You may have one or more witnesses who will report that they saw or heard or otherwise have knowledge of the alleged behavior. Having two or more witnesses is generally better than having just one witness. But what if you have just one witness and it becomes a matter of one employee's word against the other? Consider whether the witness would have any reasonable motive for fabricating the report. Does the employee have any reasonable motive for denying the allegation? This is where judgment comes into play. While it is subjective, you will need to determine whether it is more likely than not that the witness is telling the truth. Sometimes you may be left with a non-finding; that is, you cannot determine whether it is more likely that one employee is telling the truth over the other. In this instance, you might take this as an opportunity to meet with the employee to coach, counsel, educate, and/or reinforce a policy or expectation with regard to conduct or work performance. Document that meeting (see Chapter 2); if the matter should arise again, your documentation may help establish the likelihood that the employee has, in fact, engaged in the alleged conduct or failed to perform as expected or required. It will at least help establish the first element of forewarning and demonstrate that you did set the standard or expectation. The same could also be the case of multiple witnesses who may, on occasion, collude to create a story to get a coworker they dislike in trouble. Be open to considering these options. Often you have to conduct a credibility assessment. You

may have to determine which story is more accurate. This is where seeking assistance from human resources or another management colleague can help. An objective set of eyes and ears may help you decipher the truth of the matter. If you don't have any witness(es) or the employee's own admission, don't give up yet. Try and find some tangible evidence.

Tangible evidence. You may have tangible evidence — such as time-clock punches, video recordings from security cameras, e-mail or voice mail messages, Internet logs, written notes, etc. — that will corroborate your allegation. If you have none of the above, you may want to reevaluate your impression or opinion of the employee's performance and ensure that you are not biased in any way. This does not mean you had any ill-intent; rather, sometimes we can be influenced by what we have heard about an employee's performance, attitude, conduct, etc. If you hear that an employee is initiating gossip about a coworker and there is suddenly a report of a rumor being spread around your department about a coworker, you might immediately assume that you know who started the rumor or gossip. Don't assume; get evidence to substantiate your position.

Proper Investigation

Have you conducted a proper investigation prior to making your final decision to terminate employment? Just because you have your evidence as listed above doesn't mean the case is closed. Perhaps one of the most important elements of conducting a proper investigation includes getting the employee's side of the story before you make your final decision with regard to any adverse employee action. It has happened more than once that an employee tells the story of being called into the manager's office and asked to give his side of the story regarding an incident and, after he does so, the manager then turns over a sheet of paper that was sitting on the manager's desk during the entire meeting. The sheet of paper turns out to be a written notice of corrective action, which the manager then issues to the employee. What message did the employee just receive? That action speaks volumes to the fact that it did not matter what the employee said; the manager had already made up his mind. Be open to explanations, even if the conduct is unacceptable. Take sleeping on duty as an example. I

remember a situation in which a director came to human resources and wanted an employee fired for sleeping on duty. The employee had already received written, corrective action for sleeping on duty, and this was also in a direct patient care area so the potential impact in failing to respond to a patient could have had serious negative consequences. The director had done a good preliminary job of gathering evidence. The director produced statements from at least two coworkers who had observed the employee sleeping. When I suggested the director get the employee's side of the story, however, the director declined. The director's position was that there was no acceptable reason for sleeping on duty, and since the employee had already been warned once, termination was warranted. So, the employee was fired for sleeping on duty. The matter went through the grievance process and then to arbitration. The arbitrator reinstated the employee without back pay. Why? The arbitrator wrote that while he had reason to doubt the employee's veracity (the employee said she was not sleeping, only resting her eyes) he added that by the director's own admission she had failed to conduct a thorough investigation; she had failed to get the employee's side of the story before terminating the employee. What could be a reasonable excuse for sleeping on duty? Perhaps the employee had just been prescribed a new medication for a medical condition and the medication made her sleepy. Without getting that information first, you might have not only terminated the employee without knowing all the facts, you may also have a discrimination charge on your hands for failure to engage the employee in an interactive dialogue or provide reasonable accommodation under the Americans with Disabilities Act.

Lack of Discrimination

This element goes beyond what you may think when you hear the term "discrimination." It goes beyond legally protected classes such as age, race, religion, national origin, disability, sex, etc. It goes to the issue of equitable treatment. Ask yourself, "Is it your obligation as the employer to treat your employees equally or equitably?" Most likely the answer is the latter. You may not want to treat all your employees exactly the same or equally; you want to reward your top performers and provide incentives to those who

go above and beyond. Likewise, you may not want to impose the same sanctions or penalties to employees who are not similarly situated or who have different situations. Take attendance and punctuality as a common example.

A key question is whether you have treated this employee the same as others who have been similarly situated. This is where we distinguish between equal treatment and equitable treatment. Let's say you are preparing to terminate an employee who has been coached, counseled, and received corrective action for excessive absenteeism, and who has now incurred a total of 10 separate and unscheduled occurrences in the last six months. So you might ask, has any other employee incurred 10 unscheduled occurrences in a six-month period and *not* been terminated? If your answer is "Yes" then your next step is to determine why you are treating two employees differently who appear to be similarly situated. Perhaps it is because they are not, in fact similarly situated. While both have incurred the same number of occurrences in the same period of time, the circumstances may not be the same. Imagine the first employee's absences were all related to the same reason, such as caring for a critically or terminally ill relative, and the employee has worked for you for several years and has an otherwise exemplary work record. The second employee's absences, however, have been for a variety of unrelated reasons, none of which are particularly unique or exigent, and this employee has worked for you for less than one year and is only a marginal performer. While the two situations appear on their face to be the same, the circumstances are quite different. In this case, issuing corrective action to the latter employee and not the former may be justified.

Penalty Meets the Offense

Finally, ask if termination is warranted; e.g., is it reasonable to expect that any lesser penalty would correct the behavior? If the employee has already been coached and counseled and has received corrective action on three prior occasions, then it may be unreasonable to expect that a fourth would make any difference. But when an employee has not been given at least one or perhaps two opportunities to correct the behavior, it might be rea-

sonable to think that you could salvage the relationship, not to mention get a positive return on your investment (ROI) on the time and money you have invested in the recruitment, selection, hiring, and training of this employee.

Policy versus Practice

Managers may ask, “But, if employment is at-will, why do I have to jump through all these hoops? Why do I have to coach, counsel, and correct if employment can be terminated at the will of either party?” (see Chapter 6). The key is in considering what you must do as compared to what you should do, for any variety of reasons. And even that is difficult, since what “should” be done is often assessed in the eye of the beholder; e.g., what is best for the employer or the employee. Barring the existence of any employment contract or collective bargaining agreement to the contrary, you do not have to coach, counsel, or correct prior to termination unless you are in a state that does not recognize at-will employment, such as Montana.² But go back to the beginning of this chapter and you will find the answer. You help to protect yourself and your company and reap the greatest ROI on your recruitment dollars when you protect your employees. Whether you have a corrective action policy or not, and even if you have a very clear and express at-will employment policy in your employee handbook, also consider your past practice. It is likely you have given other employees opportunities to correct their behavior or performance informally, even if not formally. So, ensure your action is consistent with not just your written policy but also your past practice. Do so not because you have to do the same thing for every employee but because you need to be able to distinguish why you did “x” in one instance and “y” in another. Consider the discussion we just had under the element of lack of discrimination and equal versus equitable treatment.

Here is another common situation I have encountered. An employer has a leave of absence policy that reads that an employee may take an unpaid leave of absence not to exceed 30 days. On the 31st day of leave a manager wants to terminate an employee’s employment. The HR representative, however, is aware of at least two prior instances in which “good”

employees had *not* been terminated immediately after 30 days. This does not mean the manager cannot go ahead and terminate employment. It should, however, raise a flag to simply ask, “Why?” How is the current situation different from the previous situations? Is there a good business justification for treating this employee differently? For example, perhaps the two prior incidents involved long-term, high-performing employees who needed only two additional weeks of leave and it would have taken at least that long to fill their positions. The current employee may have worked for the company less than one year, has documented poor performance, and the employee’s expected return to work date is “unknown.” Add to these any legal considerations such as providing leave as a reasonable accommodation under the ADA (see Chapter 4).

Remember that your company’s practice can be just as important as your company’s policy. Also, read through your employee handbook or employment policies. Run a search for the words “will” or “shall,” and where it refers to corrective action or termination, consider replacing those words with “may.” Don’t back yourself into a corner. If you indicate that something “will” happen, you may lose the ability to exercise management discretion, and you may lose the ability to treat employees equitably versus equally. When you indicate that something “will” happen, then you must take the defensive position of justifying why you did *not* do something. When you indicate that something “may” happen, you retain the right to determine if and when it will happen.

Adverse Impact Analysis

Do you know the demographics of your last ten involuntary terminations, or your discharges in the last six months? In the last year? If not, you should. It is a proactive practice to track and monitor at least the age, race, and sex of employees who have been involuntarily terminated from employment. Employers with 100 or more employees (and certain federal contractors) are already required to collect data on the sex and race of their employees for EEO-1 and affirmative action purposes. Employers with fewer than 100 employees and those not required to have written affirmative action plans should consult with legal counsel about

collecting this data, inviting employees to self-identify using a voluntary self-identification form as there are some associated risks as well as benefits in doing so. Once collected, you can conduct a wide variety of analyses, such as the age, sex, or race of employees who are involuntarily terminated (as well as who voluntarily terminate) as compared to the same demographics of your workforce at large. For example, if 20 percent of your total workforce is age 40 or above (the ages protected against discrimination under the Age Discrimination in Employment Act, or ADEA) yet 50 percent of your involuntary terminations have been employees age 40 or above, those figures may appear to be statistically, significantly disparate. This may lead you to analyze those results and try to determine why a significantly larger percentage of your terminations are employees age 40 or above than are represented in your workforce as a whole. The same analyses may be conducted based on sex and race. Also consider whether a statistically significant number of terminations are occurring in a particular department, under a particular manager, within a particular location or business unit. Here you may see a pattern that may not necessarily give rise to a legal issue but rather to an opportunity to dialogue with that manager about his management style and expectations, and to share the objective data so that manager can consider why separations from his department are occurring at a rate higher than the company average. Being forewarned is being forearmed. You want to be aware of these trends before they are pointed out to you by an external party such as the federal Equal Employment Opportunity Commission (EEOC), state or local human relations commission, or a plaintiff's attorney.

Also, consider if there have been any unusual recent events such as a female employee informing you that she is or is trying to become pregnant; an employee requesting leave under the Family and Medical Leave Act; an employee filing a workers' compensation claim; or an employee engaging in any other legally protected activity. If the answer is "yes," this does not mean you should not proceed as planned. It will, however, enable you to review and confirm your pre-termination checklist (see Appendix).

Finally, tracking the demographics of your voluntary terminations can be valuable as well. It may be proactive to understand not just why employees are leaving your organization (addressed in exit interviews below) but who is leaving. Are there any groups that voluntarily leave your organization at a statistically significantly higher rate than other groups such as men, women, minorities, people under age 40, or people 40 or above? Exit interviews can be a great way to learn more about why people are voluntarily leaving your organization and what practices you might modify to increase retention. See Chapter 8 for more information about stay interviews and retention strategies.

Exit Interviews

Exit interviews can be a great, easy, and inexpensive way to gather data, proactively monitor the reasons your employees are leaving, and look for trends. I find most employers who conduct exit interviews do so for employees voluntarily leaving and not for employees who are involuntarily terminated. But when asked what they do with the data the answer I often hear is, “I don’t know” or “nothing.” The data is collected but not used in any practical way. Exit interviews can be conducted in person or electronically. Using an Excel spreadsheet, you can track the results by department, location, job classification, race, sex, age, and more. This data can be very valuable to not only signal any adverse trends — such as a statistically significant difference in the separation rate for men versus women, for persons age 40 or above, or for minorities as compared to non-minorities — but to also provide feedback to department directors and plant managers who may have a higher than average turnover rate as compared to the organization as a whole.

Consider the following:

- Do you know what your company’s current turnover rate is?
- Do you know what your average cost per hire is?
- Do you know how those rates compare to the standard rate for your industry?
- Are you tracking separations by departments or locations to watch for separation rates that are higher than the company average as a whole?

- Do you know why your employees are leaving? Are the separations predominantly voluntary or involuntary?
- What are the key reasons employees are voluntarily separating? Is it for better wages, and/or benefit?

These are just a few metrics of which you may want to be aware, whether you are the HR administrator for your company or a business owner, manager, or supervisor. There are a number of resources for finding formulas and tools by which to calculate and track these metrics.³

Why conduct exit interviews? Every time an employee leaves it costs your company money: from advertising, to interviewing, to conducting reference and background checks, to bringing the employee on board, and providing training and education on your company's policies, procedures, and job expectations. This is another metric that you should be aware of and that is mentioned above. What is your company's cost per hire? Which recruiting sources produce the most and best hires for you? All these and more add to the learning curve during which your new employee's productivity may reasonably be below the average as they are oriented and learn your way of doing things. So, if you can retain your top performers, you can save the company money. And, if the company saves money, that leaves funds available to enhance benefits, compensation, and more.

Why else should an employer conduct exit interviews? Have you ever been surprised to look at your mail and see the return address from the EEOC or your state or local commission on human relations? Why would an employee file a charge of discrimination with a government agency without ever bringing the concern to the employer's attention first? The answer I most frequently hear is "trust" — a lack thereof. Trust is a big issue for employees. Sometimes it is a matter of believing that the company or a management representative will retaliate in some way against the employee if he complains internally. Sometimes it is a matter of believing that the employer will do nothing to rectify the situation. I find the latter even more frequently than the former. The person or practice that is frustrating the employee has gone on for a long period of time and is well known to the company, at least to several members of management, but

nothing has been done to correct the matter. That is not just my experience. See Chapter 5 for more information on related research and findings from the Workplace Bullying Institute. Often the problem involves a management team member who lacks certain interpersonal skills or is perceived as being a bully. With no trust or confidence that the company will do anything about it, the employee simply resigns and/or seeks an external resource.

Ensure that your company has a policy that provides one or more resources to whom an employee can report any work-related concerns, particularly those related to actual or perceived wage disparities, discrimination, or harassment. Also ensure that it is your company's practice to promptly investigate such concerns, commit to ensuring no employee is subject to retaliation for expressing any concerns and taking immediate and appropriate remedial action (see Chapter 5).

Severance

When it comes to involuntary separation from employment, the question is sometimes asked, "Should I offer this employee a severance package?" This practice is common in the case of an individual job abolishment, individual or group layoffs, or plant closings. But what about when the job is still needed but the employee isn't? The employee has not engaged in any form of misconduct, but the employer feels the employment relationship is not salvageable. It is not a good match and the employee needs to go. A severance package is sometimes offered in this situation. It may be wise to have legal counsel draft or review any severance package you offer, particularly if you include in the package a waiver of the employee's right to sue your company. Most severance packages include such a waiver. The waiver often offers the employee salary continuation or severance pay for a certain period of time (and sometimes continued benefits such as health care coverage) in exchange for the employee waiving his right to sue the company for a wide variety of possible claims under federal, state, and local laws, as well as common law.

Another question often asked is, "If I give one person a severance package, am I obligated to do the same for every other employee I ter-

minate?” As described earlier, this is a question of equal versus equitable treatment. An employer should consider why it is offering this benefit to one employee and not another. There can be myriad reasons that may justify this difference in treatment, such as length of service and the reason for termination.

For persons age 40 or above, the Older Workers Benefit Protection Act (OWBPA) requires that, in order for such a waiver to be valid, the waiver agreement must include the following elements⁴:

1. It must be written in a manner calculated to be understood by the individual or by the average individual eligible to participate in the severance program. Employers should take into account such factors as the level of comprehension and education of typical participants. Consideration of these factors usually will require the limitation or elimination of technical jargon and of long, complex sentences.
2. It must be in writing.
3. It must not have the effect of misleading, misinforming, or failing to inform participants and affected individuals. Any advantages or disadvantages described shall be presented without either exaggerating the benefits or minimizing the limitations.
4. It must refer to the Age Discrimination in Employment Act (ADEA) by name in connection with the waiver.
5. It must advise the employee in writing to consult an attorney before agreeing.
6. It must not require the individual to waive rights or claims that may arise after the date the waiver is executed. This does not prohibit the enforcement of agreements to perform future employment-related actions such as the employee's agreement to retire or otherwise terminate employment at a future date, so long as such agreement is not contrary to any other requirements of the ADEA.
7. It must be in exchange for consideration in addition to anything of value to which the individual already is entitled. This means the employer must provide the employee with something, such as severance pay, that is in addition to that to which the individual is already entitled in the absence of a waiver. For example, if your company has

a policy in its handbook that provides that any employee whose job is abolished will be given two weeks' pay, then the employer must give the employee with more than two weeks' pay in order for the waiver to be enforceable.

8. It must give an employee a period of at least 21 days within which to consider the agreement. An employee may sign the waiver before the 21 days has expired but must be given at least 21 days. If an employee volunteers to sign the agreement the same day he receives it, it may be a proactive practice to advise the employee to take some additional time, read the agreement thoroughly, and to consult with an attorney before signing.
9. It must also provide the individual with a period of at least seven days following the execution of such agreement (the day the individual signs it), to revoke the agreement. The agreement shall not become effective or enforceable until the revocation period has expired. Thus, it can also be a proactive practice to wait to issue the first severance payment until at least the eighth day after an employee has signed the agreement.

In the case of a group termination or exit incentive program, the same rules as described above apply to waivers in severance agreements for persons age 40 or above except that the employer must provide up to 45 days to consider the agreement. The employer must also provide each employee with additional information including but not limited to eligibility factors; time limits; job titles and ages of all employees who are eligible; and the ages of all individuals in the same job classifications or organizational unit who are not eligible.⁵ This is why it is advisable to have an attorney review these agreements, whether they are for one individual or a group of individuals, to ensure that your company is complying with a number of federal, state, or local laws and regulations that dictate what these agreements must have (or not have) to be enforceable.

There is also language that may need to be added under the Defend Trade Secrets Act if the agreement includes any non-disclosure agreement (NDA) or related provisions.⁶

Unemployment Insurance

Another common question of employers (and employees) is, “Will this employee be eligible for unemployment insurance?” That answer rests with the state agency reviewing the claim. Each state has its own code for granting, denying, and administering benefits paid from the state’s unemployment insurance (UI) trust fund. A good answer to give an employee may be to provide the employee with the information, such as the website to the state agency through which he can file a claim for benefits. Let the employee know that the employer does not make the final determination regarding eligibility for benefits; the state agency will determine eligibility. Although the rules vary from state to state, there are some commonalities. Generally, an employee may be eligible for UI benefits whether the employee quits or whether the employee is fired. The question in either case is “Why?” If the employee quit for “good cause” including a reason connected to the job, such as a change in wages, hours, or some condition of employment, then the employee may be eligible for benefits. An employee might also be eligible if he quit for “valid circumstance,” which may include a reason not connected to the job but for a compelling personal reason, such as to care for a terminally ill family member. In this instance, the employee may be required to show that he sought an alternative, such as a flexible schedule or transfer to another position, before resigning. If the employee is fired for some level of misconduct, then the employee may be disqualified depending upon the nature of the misconduct, the employer’s policies, and whether the employee received any advance notice (i.e., coaching, counseling, or corrective action) prior to the termination. Once again, you can probably see that documentation can be critical to successfully defending why an employee should or should not be eligible for benefits (see Chapter 2).

Employers pay a tax for UI benefits that, for most employers (non-profit employers may be taxed differently), is based, in part, on the company’s experience rating. The more claims that are paid to your employees, the higher your experience rating and the higher your UI tax premium may be. Documenting performance problems and talking to your employee about the need to improve, as well as setting goals and objectives, can save your company money.

If you have never been to an unemployment insurance hearing, call your HR administrator or the person who handles the company's UI claims and ask if you may attend the next hearing next time one of your employees separates from employment. The experience can be quite educational and can give you insight into how your state's agency assesses separations, what documentation they are seeking, and how you can save your company money.

Practical Tips

- Get the big picture. Even if you are sure termination is the correct next step, run it by your HR representative or legal counsel. While your plan of action may be consistent with the past practice in your department, human resources can monitor and provide you with the overall company practice to ensure consistency across the organization, watch for company-wide trends or patterns, and ensure that any termination is well-documented and based upon valid business reasons.
- Don't just open your employee handbook to be sure termination is in accordance with your policy; be sure it is also consistent with how the company has treated other employees in similar situations. If it is not, then you should have a bona fide and business-related reason for treating this employee differently.
- Consider conducting an adverse impact analysis to be sure this termination will not appear to establish a pattern or practice of treating members of any protected class (based at least on sex, race, or age) differently from other legally protected groups. If it does, be able to provide a bona fide business reason as to how and why you have arrived at your decision.
- Follow your pre-termination checklist.