



citycounty insurance services
cisoregon.org

Employee Termination Checklist

This checklist identifies important issues you should consider when deciding whether to terminate an employee. It also has information for planning and conducting a termination meeting.

If you are considering terminating an employee and your entity has general liability coverage with CIS, contact one of our Pre-Loss attorneys before you take action. They can be reached at **(800) 922-2684 ext. 7** or by email at preloss@cisoregon.org. There is no charge for consulting with our Pre-Loss attorneys and they will provide sound legal advice to help you make the right decision.

Before the employee's last day, consider the following:

- ☐ Are the facts upon which the termination is based correct?
- ☐ Has the decision been properly vetted by everyone who should participate?
- ☐ Can you state, in two sentences or less, why you are terminating this employee?
- ☐ Would less severe discipline be more appropriate in this situation?
- ☐ Is the stated reason for the termination contradicted by any documentation pertaining to the employee's performance, work history or other documentation? *For example, is the employee's termination for poor performance reflected in his or her performance evaluations or other documentation?*
- ☐ Is the employee a member of a protected class? (Race, religion, sex, sexual orientation, marital status, disability, age, etc.)
- ☐ Was the employee recently off work for any medical reasons, or because of the medical reasons of a family member? (Consider the federal Family and Medical Leave Act and Oregon Family Leave Act, disability, and workers' compensation issues here.)
- ☐ Has the employee complained to the employer or others about any safety concerns, or other matters that would affect the public interest?
- ☐ Has the employee ever complained about discrimination, harassment or any work-related concerns to anyone within the organization or to a federal or state agency? This could include (for example) the Oregon Bureau of Labor and Industries, the federal Equal Employment Opportunity Commission, the Oregon Occupational Safety and Health Division, and the U.S. Department of Labor.
- ☐ Are you in compliance with your handbook/employee policies or other policies and procedures in making the termination decision?
- ☐ Have you provided the employee with due process?

- Did you give the employee written notice of what he or she did wrong and what the possible consequences could be?
- Did you get the employee's version of events? How? (Examples here include written documents from the employee, interviews with the employee, and interviews or statements from witnesses.)
- See CIS' Due Process Form for more information.

In a performance-related discharge, also consider the following:

- ☐ Is the expected job performance consistent with the job's classification and description?
- ☐ Did the employee receive training or other resources to perform at the expected level?
- ☐ Has the employee's performance actually failed to meet the expected standards? Is there consensus on this issue?
- ☐ Were the expectations communicated to the employee? If so, how and when?
 - Is there any documentation demonstrating or corroborating these communications?
- ☐ Was the employee provided notice of the performance issue and given a reasonable opportunity to improve?
 - Was the employee advised of the consequences of his or her failure to improve? Was it documented?
- ☐ Is there documentation of the employee's performance issues and efforts to resolve the issues?
- ☐ Have employees with comparable performance deficiencies been treated similarly?

Consider whether to offer severance in exchange for a release of all claims:

- ☐ Does the employee have an employment contract that provides severance if he or she is terminated?
- ☐ Does your entity have a policy or practice of providing severance in certain termination situations?
- ☐ Is there a lack of proper documentation or other factors that might increase the risk the employee would win in a lawsuit against the entity?
- ☐ Is payment of severance conditioned upon the employee signing a release of all claims against the entity?
- ☐ If you decide to offer severance to an employee, consult with CIS' Pre-Loss team about the contents of the agreement, and whether provisions should be included in it to give the employee an incentive to sign. This includes, for example:

- A letter of recommendation?
- An agreement to pay or reimburse the employee for some COBRA insurance payments?
- ☐ Ask CIS' Pre-Loss team to review your proposed severance agreement/release of all claims before it is presented to the employee.

Plan the termination meeting:

- ☐ Who will be present with you when you tell the employee about his or her termination?
- ☐ Have you reserved a quiet, nonpublic room for the meeting? (No "fishbowl" conference rooms, if possible.)
- ☐ Have you selected an appropriate day for the termination? (Never a Friday, the employee's birthday, work anniversary, or right before Christmas.)
- ☐ Have you discussed with your IT department the shutoff of the employee's voicemail, internet access, remote access, cell phone, etc.? This should be effective on the employee's last day, but not until the termination meeting occurs or soon thereafter, if possible.
- ☐ Discuss with facilities staff how to prevent the employee's future access to locked or non-public areas of buildings (e.g., shutting down key fobs). This should be effective on the employee's last day, but not until the termination meeting occurs or soon thereafter, if possible.
- ☐ Decide how the employee will be able to collect any personal items from his or her office/cubicle/desk. If items will be made available to him or her, make sure a detailed inventory list is prepared.
- ☐ Arrange to have the employee's final paycheck available to give to the employee at the termination meeting.
 - Final paychecks for terminated employees are due pursuant to law no later than the end of the next business day after the employee's termination.
 - Ensure that all policies regarding accrued, but unused, benefits are followed with respect to final paychecks, e.g., payment for accrued but unused vacation time included in final paycheck, pursuant to policy.
 - Be careful about not violating Oregon's complicated deductions laws!

Conducting the termination meeting:

- ☐ Be direct with reasons for termination (practice this beforehand, if necessary). Give the reason(s) for the termination and, ideally, present the employee with a letter at the meeting that restates the reason(s) for the termination (your reason and the letter's stated reason should be consistent, obviously).

- ☐ Avoid getting into an argument with the employee, or going into great detail about the reasons for his or her termination.
- ☐ If the employee claims discrimination or retaliation, ask him or her to specify how/why and take very clear notes on the subject. Don't verbally agree or disagree with the employee's opinion, but do tell him or her that you will look into the matter and contact your attorney about it.
- ☐ Ask for the employee's keys, fob, phone, laptop, and any other entity property provided to him or her.
- ☐ Ask the employee if he or she kept any work-related documents at home (including whether he or she ever emailed any documents to a personal email account). Arrange for a time to send someone to pick up those documents. Get assurances that he or she will delete any materials he or she emailed to a personal account.
- ☐ Be sensitive to how the employee leaves the building. Is security *really* necessary to escort the employee out of the building?
- ☐ Document everything that was said during the termination meeting. If you have a witness present, ask him or her to do the same.