

SOME GUIDELINES FOR CARRYING OUT AN EMPLOYEE DISCHARGE

The most sensitive and difficult part of the process of discharging an employee is the act of discharge itself. How the employer acts and is perceived before, during, and after the meeting with the employee often determines whether litigation will result. There is no “one size fits all” termination process. Individual circumstances require different approaches.

General Guidelines:

1. Maintain respect and dignity throughout the process.
2. Have more than one employer representative present.
3. Know and be able to explain the reason for the termination prior to meeting with the employee.
4. If possible, be prepared to give the employee their final paycheck and a clear explanation of other benefits including his or her COBRA rights. This is a time of great insecurity for the employee and a clear understanding of his or her benefits and remaining compensation helps. If the final paycheck will be provided at a later date make sure it is clear to the employee how it will be calculated and delivered.
5. Conduct the discharge meeting in a conference room away from the employee’s work station or co-workers. This may help maintain the employee’s dignity and provide a setting which is more supportive should the employee have an emotional reaction.

Based upon the employee’s history and conduct, if there is a possibility that the employee could become angry, lose control, and become disruptive then security may need to be notified and stationed so as to be immediately accessible but not outwardly visible.

6. All employer property should be returned by the employee at the meeting, if practically possible. Employer representatives should be aware of what property the employee has and make arrangements for its return, if needed.
7. Document the meeting.
8. Coordinate with the benefits people in human resources to make sure all required notices, such as COBRA, are given.

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9. Make sure the employer's position on unemployment compensation is consistent with the employer's overall strategy regarding the termination. Communicate with the person in human resources responsible for unemployment compensation to carry out the strategy.
10. Decide how to respond to requests for references.

Circumstances to Avoid:

1. Doing anything before, during or after the discharge meeting which can be viewed as threatening or intimidating. Remember, if the employer gets sued, the process of actual discharge must be defended as well as the reasons for the decision to discharge.
2. Physically touching an employee even if they react emotionally and you feel a need to comfort them.
3. Preventing the employee from leaving the meeting or the employer's property.
4. Mentioning other employee's names, what they may have said, or other unrelated personnel issues.
5. Allowing the employee to bring a lawyer to the meeting. The matter is between the employer and the employee.
6. Continuing any discussions with the employee after the discharge has taken place and the meeting is ended.
7. Exercise caution in using security to escort discharged employees off the employer's premises when the employee poses no threat and/or is a long-term employee. Remember other employees observe these things.

Each personnel action is unique and the Taft Labor and Employment lawyers are experienced in helping employers determine the best ways to take them to a successful conclusion.

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