



Webinar 19 – October 9, 2024

Best Practices for Terminations and Layoffs

WEBINAR OUTLINE

INTRO/SETTING THE STAGE

- Why the Termination Process Matters in New York
- The Basics: Contractual vs. At-Will Employees and Termination/Layoffs

TERMINATION LAWS IN NEW YORK: WHAT EMPLOYERS NEED TO KNOW

- Employers' Requirements
- Terminated Employees' Requirements
- Termination Checklist

LEGAL IMPLICATIONS OF WRONGFUL TERMINATION IN NEW YORK

BEST PRACTICES FOR TERMINATIONS AND LAYOFFS

HRtelligence TIPS

INTRO/SETTING THE STAGE

Why the Termination Process Matters in New York

The termination process in New York is particularly crucial due to the state's stringent labor laws and the heightened focus on employee rights. The termination process matters for the following reasons:

- Legal Compliance.

Note:

Employers must comply with both State and federal labor laws in New York, which tend to favor employee rights. There are laws covering a range of employment aspects, including wage, hour and paycheck policies, as well as discrimination and harassment laws. Failure to comply with the law during the termination process can result in legal repercussions for the company.

- Protection Against Wrongful Termination Claims.

Note:

Employers need to practice caution when terminating employees due to the strict laws against retaliation, discrimination and harassment in New York. Employers can face wrongful termination claims for discrimination, breach of contract, retaliation for refusing to engage in illegal activity, retaliation for lawful whistleblowing or violation of protected job leave and employee rights. Therefore, the implementation of a fair termination process and thorough documentation of the reasons for termination are essential to mitigate the risk of claims.

- Maintaining Workplace Morale.

Note:

A poorly handled termination process can lead to demoralized staff, decreased employee engagement and increased employee turnover. Conversely, a transparent and fair termination process can bolster a positive work environment and feelings of trust and security. Employers must be aware of how their actions can impact morale and proceed with caution.

- Upholding Company Reputation.

Note:

The manner in which a company conducts terminations can affect its reputation and public image. Mishandled terminations can be damaging, demonstrating poor company values, deterring top talent and reducing the customer base. Employment practices, such as termination procedures, can have a significant impacts on business success.

- Ensuring Smooth Operational Transition.

Note:

Terminations can disrupt normal business operations and productivity. An employer should properly manage this process by planning how to reallocate the workload of the departing employee and how to restructure the team. A smooth transition process maintains efficiency and minimises disruptions to business practices.

- Reducing Financial Risks.

Note: *Unlawful termination procedures can lead to legal charges and settlements. If employers implement and follow proper processes, costly litigation can be prevented.*

- Employee Rights and Final Pay.

Note:

New York has specific laws in regard to employee rights, such as final paycheck rules. A final paycheck must be paid by the next regular payday, at the latest. Any unused paid vacation days must also be paid when employment is terminated, unless stated otherwise in a contract. If employers violate these labor laws during the termination process, they may face penalties.

- Ethical Considerations.

Note:

Ethical standards are important for employers to consider. In New York, all employees are required to be treated ethically and high standards are upheld in this regard. It is important for employers to be fair and respectful during the termination process. The actions of the employer reflects on the overall culture and values of the company.

The Basics: Contractual vs. At-Will Employees and Termination/Layoffs

- Employment relationships generally fall into two categories: contractual and “at-will”. If a contract exists, discipline and termination must be handled in accordance with the terms of the contract.
- Unless your employees have contracts, their status is most likely considered to be at-will employment. The at-will doctrine means that the employment relationship may be terminated at any time — by either the employer or the employee — for any reason or no reason at all (except illegal ones).

New York is an “at-will” employment state; therefore, employers have the right to fire employees for any reason, or no reason at all, at any time, without prior notice.

Legitimate Business Reasons for Termination

Even if an employee is at-will, advising an employee of the reason for the termination is considered a best practice. Providing the reason at the time of termination can prevent accusations that the termination was for an improper reason and can bolster the employer's position later for possible claims.

Examples of Legitimate Business Reasons for Termination:

- Employee conduct which goes against company values.
- Employee conduct which has a negative impact on the working environment.
- Poor performance and low productivity levels, not meeting company standards.
- A lack of productivity and low performance levels that do not meet the company standards.
- Violation of company rules and policies.
- Misconduct such as harassment, fraud or breaches of confidentiality.
- Engaging in illegal activity outside of work.

Layoffs in New York

When an employee is laid off in New York, it is not due to any fault of their own, unlike firing. Layoffs take place when a company needs to reduce its workforce for various reasons, including:

- The restructuring or reorganization of the company, leading to redundant positions.
- The need to implement cost-cutting measures, such as reducing the workforce, due to economic hardships.
- Mergers or acquisitions which lead to job duplication, requiring a reduction in the workforce.
- The closure of certain business areas or the whole company.

Depending on the situation, layoffs can be either temporary or permanent. In some cases, if the circumstances of the company improve, laid-off employees may be rehired.

In New York, employers must adhere to the federal Worker Adjustment and Retraining Notification (WARN) Act during the termination process.

The WARN Act and New York laws require all employers who meet the eligibility criteria to give advanced notice to employees of layoffs and plant closures. Employers who fail to provide notice will be liable to civil penalties and the payment of back wages and benefits.

TERMINATION LAWS IN NEW YORK: WHAT EMPLOYERS NEED TO KNOW

Employers' Requirements

- **Employment Termination Letter:** Under New York Labor Law 195(6), employers are required to provide employees with a written termination letter, stating the date of termination and the date of termination of benefits. The letter must be delivered no later than 5 days after employment termination.
- **New York Department of Labor (DOL) Employment Record:** Pursuant to 12 NYCRR 472.8, all employers are required to inform departing employees of their right to file for unemployment benefits. The New York DOL employment record form, Form IA 12.3, must be provided by the employer upon termination.
- **Final Paycheck:** Under New York Labor Law 191, employers are required to deliver the final paycheck to a terminated employee by the next regular payday, at the latest. The paycheck must be delivered by mail if so requested by the employee. The final paycheck must include all unpaid wages, commissions and unused paid vacation days, unless a written policy or employment contract states otherwise.
- **Health Insurance (COBRA) Notice:** In New York, all employers are obligated to inform terminated employees of their right to continue to receive health insurance under COBRA (Consolidated Omnibus Budget Reconciliation Act) for 18 months, or New York's Mini-COBRA program for employers with less than 20 employees, lasting 36 months.

Note:

Those who have reached the 18-month limit of COBRA coverage are able to receive coverage for another 18 months under the New York state law.

Terminated Employees' Requirements

- **Return of Company Property:** Terminated employees are normally required to return all company property and equipment upon departure such as employee cards, company documents, and IT equipment.
- **Acknowledgment of Final Paycheck and Documents:** Employees should be aware that they may be required to sign termination forms and acknowledge the receipt of final wages after termination.

- **Exit Interview:** It is common practice for employers to conduct an exit interview with employees upon termination. This provides an opportunity for departing employees to give honest feedback about the demands of the job and working environment.
- **Update of Personal Contact Information:** Upon termination, it is important for employees to provide current and accurate contact information to ensure the receipt of any necessary documents and paychecks.
- **Privacy and Non-Disclosure Agreements:** It is essential for employees to understand the detailed conditions of any privacy or non-disclosure agreements and how termination affects these.

Termination Checklist

Best Practices: Before terminating an employee, employers should review a “Termination Checklist” in order to see if there are any issues which may arise. These questions include:

Demographic Information of Employee

- Employee’s Age, Date of Birth
- Employee’s nationality/race
- Any known disability?
- Any other protected categories that might apply?

History of Issues

- Any recent complaints by employee to be aware of?
- Any recent complaints about the employee by supervisors/other employees to be aware of?

Does the employee have an employment agreement, or any other agreements with the Company?

If there is an employment agreement, is it for a fixed term?

- Employment agreements for fixed terms will have termination procedures within the agreement that will need to be followed to avoid being in breach of the agreement

Is the employee in a union?- Unionized employees will be subject to a Collective Bargaining Agreement, which will likely set out what grounds are valid for terminating the employee.

What is the reason for the termination?

- Is it for cause- Documentation must clearly demonstrate how the employee has violated company policy and/or failed to perform their job duties in order to support a potential claim for Unemployment Benefits

- Do you plan on replacing this position? If so, what is the demographic information for the prospective employee?
- Is this termination related to a change in the Company's organizational structure?

Documentation

- Is the relevant performance-based documentation consistent with the employer's performance management process and other relevant policies?
- Any documented discipline against employee? If so, who prepared the discipline notice and what was the date?
- Is the employee under a Performance Improvement Plan?
- How did the employee's performance compare to similarly situated employees not in a protected group and/or have not engaged in protected activity?
- Do inconsistencies exist in performance-related documents (ex: employee recently received commendations, raises, and promotions) and can they be adequately justified?
- Is there missing or incomplete performance-based documentation that could undermine termination?
- Does evidence exist that the employee received relevant performance-based documents and did the employee sign the document(s)?

LEGAL IMPLICATIONS OF WRONGFUL TERMINATION IN NEW YORK

In New York, the legal implications of wrongful termination can be extensive and complex, given the state's robust employment laws and protections. Here's a detailed look at these implications:

- **Violation of Anti-Discrimination Laws:** New York has strict anti-discrimination laws in place, governed by the NYHRL. Discriminatory employee terminations violate this law and guilty employers will be required to reinstate or promote the employee. Additionally, employers may have to pay monetary damages including back wages, lost benefits, damages for emotional suffering, punitive damages and employee attorney fees. At the federal level, laws such as Title VII of the Civil Rights Act, reinforce protections against discrimination and invoke further liabilities.
- **Retaliation Claims:** In New York, wrongful termination claims can be made by those who were terminated due to retaliation. Under New York Labor Law Section 740, the termination of an employee as retaliation for protected activities such as reporting a complaint, whistleblowing or participating in investigations, is unlawful.
- **Constructive Dismissal:** If an employee feels forced to resign due to intolerable working conditions created by their employer, this counts as constructive dismissal. The formulation of unbearable working conditions can be a more subtle form of employer retaliation against

employees. Wrongful termination claims can be filed for the violation of working conditions and employee rights, resulting in constructive dismissal. The employer may be required to compensate wrongfully fired employees for lost wages and benefits, emotional damage, and the cost of legal fees.

- **Breach of Contract and Implied Contract Claims:** New York is an “at-will” employment state, unless an employment contract states otherwise. If an employer violates the specifics of a contract, whether written, verbal, or implied, they may face wrongful termination allegations. When wrongful termination has occurred, an employee may be entitled to receive damages for breach of contract, lost wages, benefits and compensation for emotional suffering.
- **Violation of Public Policy:** In New York, employees are protected from termination that violates clearly mandated public policy. This includes discharging an employee for refusing to participate in illegal activities, for serving jury service, participating in lawful recreational or political activities outside of work, joining or forming a union or for exercising a legal right.
- **Financial Impact and Reputational Damage:** In New York, wrongful termination claims can significantly impact both the finances and reputation of a company. Employers found to have unlawfully terminated an employee will need to pay for legal services, penalties and damages.
- **Internal Impact on Employee Morale:** Wrongful termination claims negatively impact the internal working environment.

BEST PRACTICES FOR TERMINATION

- Understanding the Legal Grounds for Termination
- Reviewing Company Policies and Employee Agreement
- Documenting Performance and Conduct Issues
- Planning the Termination Meeting
- Communicating Effectively
- Preparing the Final Paycheck
- Preparing Final Documents and Benefits
- Handling Post-Termination Procedures



It is important that the termination process remains as streamlined as possible. This involves a number of steps:

- Review Employment Policies and Legal Compliance
- Document Performance Issues
- Plan the Termination Meeting Carefully
- Deliver the Termination Notice with Empathy
- Explain the Termination Decision Clearly
- Arrange Final Pay and Benefits Information
- Offer Support for the Transition
- Conduct a Professional and Private Exit
- Provide an Opportunity for an Exit Interview
- Communicate with Remaining Staff Appropriately
- Evaluate the Termination Process for Future Improvement