



Webinar 2 - February 25, 2026

## **Best Practices for Terminations/Separation Agreements**

### **WEBINAR OUTLINE**

**TERMINATION FOR NEW YORK EMPLOYERS**

**LAWS TO BE AWARE OF**

**A CASE STUDY FOR TERMINATION**

**KEY CONSIDERATIONS FOR DRAFTING SEPARATION AGREEMENTS**

**HRtelligence TIPS**

## I. TERMINATION FOR NEW YORK EMPLOYERS

New York is an "at-will" employment state, allowing employers to terminate employees at any time for any legal reason or no reason, without notice. Exceptions include illegal discrimination (race, age, gender, etc.), retaliation for whistleblowing, or violations of employment contracts. Key compliance steps include providing written notice of the termination date and benefits cancellation within 5 working days.

### **Key Considerations for NY Employers**

- **At-Will Employment:** Employees can be fired for "bad" or no reasons, provided they are not illegal.
- **Illegal Reasons (Wrongful Termination):** Terminations cannot be based on discrimination, retaliation for exercising rights like taking legally protected leave or filing complaints, or violating an existing employment contract.
- **Final Paycheck Requirements:** Final wages must be paid no later than the regular payday for the pay period in which termination occurred.
- **Notice of Benefits Cancellations:** Employers must provide written notice of the exact date benefits (e.g., health insurance) will terminate, typically within 5 working days of the termination.
- **Documentation:** Maintain detailed records of performance issues, warnings, and policy violations to defend against potential wrongful termination claims.
- **Separation Letter:** It is best practice to provide a clear, written, and simple statement of termination, sometimes including a recommendation or neutral reference.
- **Trapped at Work Act (2026):** Effective February 2026, agreements requiring employees to repay training costs upon termination are strictly limited, specifically prohibiting repayment if the worker leaves before a specific, mandated period.

## II. LAWS TO BE AWARE OF

**At-Will Doctrine (Common Law):** Employers may terminate for any reason or no reason, with or without notice.

**New York Human Rights Law (NYHRL):** Prohibits termination based on protected characteristics, including race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, marital status, and arrest or conviction record.

**New York Labor Law - Final Paychecks (§ 191):** Terminated employees must receive their final wages no later than the next regular payday.

**New York Labor Law - Notice of Termination (§ 195.6):** Employers must provide written notice of the exact date of termination and the termination of benefits within five working days.

**Retaliation & Whistleblower Laws (NY Labor Law § 740):** It is illegal to terminate employees for reporting legal violations, workplace safety issues, or engaging in legally protected activities (e.g., jury duty, voting).

**Contractual & Covenant Agreements:** Express or implied contracts (e.g., employee handbooks) that promise job security can override at-will status.

**WARN Act (New York State):** Requires employers with 50 or more employees to provide 90 days' notice for mass layoffs or plant closings.

## III. A CASE STUDY FOR TERMINATION/SEPARATION AGREEMENTS

**Hypothetical:** An employee who has worked for the company for 2 years has had a history of performance issues. About 3 months ago the employer placed the employee on a performance improvement plan. The employee has shown no improvement and the employer determines the employee must be terminated. However, 2 months ago, the employee asked for an accommodation. How should the employer proceed?

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.

#### A. 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?

If based on performance issues look back and make sure there is documentation and you have raised it to the employee. At this point, think about whether you want to still move forward...

If the position is being eliminated, what are you doing with the job duties of this position that you are eliminating? Who will absorb the individual's duties?

#### B. 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

### C. Draft a Business Case

Start drafting business case (to be done before terminating)

- 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 head off 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:

- **Poor performance:** The usually means an employee has consistently performed below expectations, in spite of you giving clear feedback that improvement was needed.
- **Work rule/policy violation:** This usually occurs when an employee's conduct is in violation of a company policy or the employee has acted in a manner that significantly jeopardized the company or fellow employees.
- **Layoff:** This usually results from lack of available work or other financial/budgetary concerns.
- **Job Elimination:** This can be done due to company restructuring.

### D. Notice Requirements

- Termination notice
- Unemployment form
- Separation agreement specific to where the individual is working/living - Employees have 21 days to review the separation agreement before signing

### E. Other Considerations

- Determine when/where termination is going to happen
- Will severance be offered?
- What about unused PTO?
- Work with IT to shut off access points
- Think about how you are going to communicate to staff about termination and clients/customers
- Ensure former employee returns all property, codes etc (was a Tech Use Agreement signed)

- Understand what your company's policy is about references – only dates of employment and position held

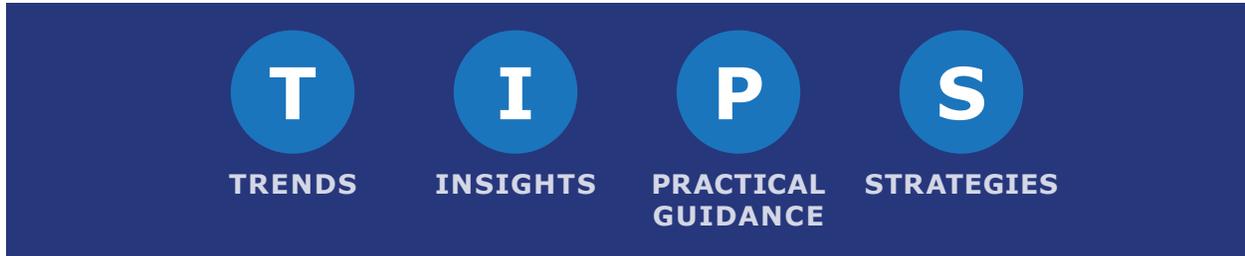
#### IV. KEY CONSIDERATIONS FOR DRAFTING SEPARATION AGREEMENTS

New York separation agreements for terminated employees must include clear terms regarding the final, paid-out consideration (severance) in exchange for a release of claims.

Key components and requirements for NY separation agreements include:

- **Voluntary Consideration:** The severance pay must be above and beyond what the employee is already owed (e.g., unpaid wages, accrued vacation).
- **Review and Revocation Periods:**
  - **Proposed "No Severance Ultimatums Act" (Pending):** Proposes a 21-business day review and a non-waivable 7-day revocation period for all employees.
  - **Current Law (Age 40+):** 21 days to review (45 for group layoffs) and 7 days to revoke.
  - **Discrimination/Harassment Claims:** Specific 21-day review and 7-day revocation periods apply if the agreement includes confidentiality regarding these claims.
- **Required Documentation:** Employers must provide a specific notice (Form IA 12.3) of the right to file for unemployment benefits at the time of separation.
- **Common Provisions:** Agreements usually contain the official termination date, non-compete clauses, non-solicitation clauses, confidentiality agreements, and non-disparagement clauses.
- **Final Paycheck:** Outstanding wages must be paid no later than the next regular payday.

For employees under 40, there is no state-mandated minimum review period unless the agreement settles specific, legally protected claims



**Clarify expectations in the beginning.**

Mandatory training on your employee handbook, with an emphasis on expected conduct, will be your biggest asset to avoiding disciplinary action in the future. Clarifying policies and expectations from the very beginning will be the best practice for creating a positive work experience.

**Have consistent policies.**

Ensure that termination decisions are fair and consistent with company policies and past practices.

**Documentation is key.**

If there are performance issues, they should be documented and articulated to the employee.

**Communicate your plan of action when disciplining employees.**

Once your employee understands the issue, communicate a corrective plan of action. Clear communication during the corrective process will help to avoid misunderstandings.

**Draft a clear statement of the grounds for termination.**

The goal of providing a clear reason for termination to the employee is to eliminate any debate over whether termination is a legitimate business decision.

