

## TERMINATION OF EMPLOYMENT CHECKLIST

- \_\_\_ Technically speaking, termination of employment is not disciplinary action in that its purpose is to end the employment relationship rather than to provide the employee with the opportunity to improve performance.
  
- \_\_\_ The supervisor should consider the following practical considerations for limiting liabilities prior to formally deciding to terminate the employment of any employee. The supervisor will have to prove with a preponderance of evidence that there was just cause for the termination of employment and support such action with sensory facts relating to job performance.
  
- \_\_\_ The supervisor should locate and personally review the company policy/rule/clause, involved before terminating the employee's employment and cite same in the letter of termination of employment.
  
- \_\_\_ Documentation is essential. The supervisor should have kept records of each instance of dissatisfaction or displeasure with the employee's performance. But, REMEMBER, the supervisor should not have simply "made book" "detective style," The supervisor should have let the employee know of the dissatisfaction/displeasure EACH TIME something was documented. Positive observations as well as negative observations should have been documented. Use chronological-time-sequence "CALENDAR NOTES" method to document.
  
- \_\_\_ Document all stages of stepwise discipline on the disciplinary track, and except for the most severe violations/misconduct, DO NOT BYPASS oral/verbal, written, and suspension or equivalent suspension steps before termination of employment.
  
- \_\_\_ NEVER terminate an employee's employment without a FACT-FINDING INTERVIEW during which the employee is made aware of the subject misconduct or poor performance and after it has been determined that the employee is guilty of the misconduct or poor performance the supervisor should ask the employee, "WHY DO/DID YOU DO THIS?" and DOCUMENT THE ANSWERS.
  
- \_\_\_ BEFORE any termination of employment, review the Disciplinary Action Checklist pages D-1 through D-6 and appropriate misconduct checklist and perform the +/-/? JUST-CAUSE ANALYSIS to determine the action best supported or justified, based upon:
  - 1) the specific employee misconduct/violation,
  - 2) the employee's past performance record,
  - 3) a preponderance of evidence, and
  - 4) consensus decision by immediate supervisor, department head, labor relations/employee relations manager.
  
- \_\_\_ Never terminate the employment of an employee without first MAKING A THOROUGH EXAMINATION OF THE EMPLOYEE'S PERSONNEL FILE and other employment records. Talk with other supervisors who are or were responsible for that employee and examine past performance appraisals or reviews.
  
- \_\_\_ Make absolutely sure the employee and the union are aware of all previous formal disciplinary action if the employee is a union member or if the employee has been working in a job classification contained in the Agreement.
  
- \_\_\_ In poor productivity cases (efficiency), be able to answer the question: "WHAT DOES THE EMPLOYEE DO WITH HIS/HER TIME?" (See "POOR PRODUCTIVITY" MARC Checklist.)
  
- \_\_\_ DO NOT compare the employee's performance with the performance of any other employee. Compare only to the REASONABLE AND VALID performance standard/criteria.

**TERMINATION OF EMPLOYMENT CHECKLIST**

- \_\_\_ REMEMBER, THE SUPERVISOR SHOULD BE ABLE TO PROVE BEFORE TERMINATION OF EMPLOYMENT:
- 1) the employee KNEW and HAD BEEN AWARE of the acceptable proper performance standard/criteria,
  - 2) the employee had been EVALUATED or CRITIQUED and had been made aware of the supervisor's displeasure or dissatisfaction whenever the employee deviated from proper standards,
  - 3) the supervisor PROVIDED THE OPPORTUNITY TO IMPROVE for the employee, except for the most serious misconducts.
- \_\_\_ Take appropriate action as soon as possible after the misconduct/violation, WITHOUT BEING HASTY.
- \_\_\_ Never terminate any employee without CONSENSUS among the supervisor, the department head, and the labor relations/employee relations department.
- \_\_\_ Utilize the tool of TEMPORARY RELIEF OF DUTIES PENDING INVESTIGATION and a THOROUGH FACT-FINDING INVESTIGATION whenever termination of employment is contemplated. Whenever termination of employment is being contemplated, utilize the REVIEW DISCHARGE procedure whereby the employee is first interviewed while being left "on-the-clock," in the presence of a second supervisor and in the presence of a steward and where the employee is TEMPORARILY RELIEVED OF DUTIES PENDING INVESTIGATION while a consensus decision is made.
- \_\_\_ Refrain from use of SUMMARY DISCHARGE, on the spot, during the heat of the situation without hearing the employee's side of the story.
- \_\_\_ Do not use the CONSTRUCTIVE DISCHARGE "QUIT OR I'LL FIRE YOU" approach. If the employee states he/she quits or asks if he/she may be allowed to quit, ask, "Why are you quitting?" and write down the answer. Make sure to tell the employee, "I will attach a statement to your resignation which will indicate that at the time of your resignation you were being investigated for possible disciplinary action, up to and including termination of employment, and the results of that investigation will be placed in your file." THEN INFORM LABOR RELATIONS/EMPLOYEE RELATIONS of the situation and let them determine if the employee will be allowed to quit, or if any other action would be appropriate.
- \_\_\_ Remember to provide a witness (representative for the union member) during all investigatory interviews and during termination of employment.
- \_\_\_ Make sure the immediate supervisor delivers the termination of employment, or at least make sure the immediate supervisor is present.
- \_\_\_ Determine if other employees have or have not been terminated for the same or similar misconduct/violation when circumstances were similar. REMEMBER, the appeal of disparate treatment ("you treated me differently") is a very effective one for the employee whose employment has been terminated. This "worst offender" consideration is especially critical in termination of employment cases.
- \_\_\_ Explain status and length of insurance and benefit coverage to the employee during the termination of employment exit session. Always escort employees off the property when employment has been terminated, and inform them of the proper procedure should they ever want to regain access. Obtain company property from the employee before the employee exits the company property.

**TERMINATION OF EMPLOYMENT CHECKLIST**

- \_\_\_ Beware the "one last chance" appeal on the part of the employee or the union during the termination of employment session. The "one last chance" approach is, in effect, a probationary period approach and should be utilized only if the company policy and previous disciplinary program has provided for such and only when terms governing the action are clearly and explicitly agreed to in writing by the employee and by an officer of the union who was one of the officers who signed the Collective Bargaining Agreement. If proper stepwise discipline has been followed, the supervisor should have made it clear to the employee and to the union that the previous step of discipline was indeed the "last chance" by informing the employee that "future violations/misconduct/poor performance could result in termination of employment."
- \_\_\_ Make absolutely certain that the employee's past union activities, union leadership, or grievance activity has not in any way affected the determination to terminate that employee's employment. The supervisor should consider, before termination of any employee's employment with an active union business past (protected conduct), if the same action would have been administered to an employee or to this employee in the absence of the protected conduct (past active union business experience). (See the CHECKLIST FOR DISCIPLINING UNION OFFICERS/STEWARDS.)
- \_\_\_ Do not go directly from a performance review to termination of employment, unless the employee had been on a disciplinary track for that offense or misconduct PRIOR to the performance review.
- \_\_\_ Make sure to inform security and appropriate supervisors of the termination of employment and make appropriate changes in posted employee schedules.
- \_\_\_ Termination of employment is a severe action often with traumatic effects upon the employee involved. Incidents involving berserk employee responses to separation from employment often receive widespread media coverage. Supervisors can reduce the likelihood of severe reaction by employees by taking prudent steps before making such decisions.
- \_\_\_ Utilize proper stepwise discipline, as appropriate, before termination of employment
  - \_\_\_ Utilize just-cause/due-process procedures.
  - \_\_\_ Utilize the two-part meeting, including a fact-finding interview with proper witnesses.
  - \_\_\_ Allow employees to tell their side of the story.
  - \_\_\_ Utilize temporary relief of duties prior to termination of employment.
  - \_\_\_ Have security personnel escort such employees off property and instruct such employees to "leave the property and do not return until \_\_\_\_\_."
  - \_\_\_ Notify gate/security and other supervisors of resulting schedule changes or employment status changes.

**ADDITIONAL CONSIDERATIONS FOR AVOIDANCE OF PERSONAL  
INDIVIDUAL SUPERVISORY LIABILITY  
DURING ADMINISTERING TERMINATION OF  
EMPLOYMENT TO EMPLOYEES**

Increasingly, supervisors, managers, and Personnel/Human Resources/Labor Relations/Employee Relations Staff personnel are being personally and individually sued by ex-employees in wrongful action suits even when there is a Collective Bargaining Agreement. The following considerations should reduce supervisory and employer liability and vulnerability in such actions.

**NOTE:** Once a manager or supervisor is named as co-defendant, he/she becomes a party to the lawsuit, not merely a witness.

\_\_\_ Likelihood for action against the supervisor or manager increases in cases where the discharged employee's supervisor or manager ultimately occupies the position of the discharged employee (temporarily or permanently) and where, as a result of assuming such additional duties, the supervisor or manager personally improves his/her own economic gain or position.

\_\_\_ Supervisors and managers are likely to be named as co-defendants in lawsuits arising out of alleged violation of anti-discrimination statutes.

\_\_\_ Supervisors and managers should not discuss terminations of employment or the facts or circumstances regarding terminations of employment with any persons except (1) employer representatives who have a legitimate employer interest "need to know," (2) representatives of a labor organization representing the employee where employment was terminated (and only then when the employee initiates or approves grievance or internal appeals procedures, (3) the employee, (4) legal representatives of the employee (formally and legally identified by the employee), (5) others approved by the employer's legal counsel or Employee Relations/Labor Relations Manager, (6) governmental agency officials with statutory right to know privileges.

\_\_\_ Supervisors and Managers should direct all inquiries to the Personnel Department regarding recommendations for future employment, prospective employer reference/character checks, "to-whom-it-may-concern" letters of recommendation, etc., even if such requests originate from the employee whose employment was terminated.

\_\_\_ Utilize the "consensus-decision-making" approach (three management representatives), the tool of "temporary relief of duties pending investigation," "+/-/? just-cause analysis" and provide the employee the opportunity to tell his/her side of the story (fact-finding interview with proper representation/witness considerations) prior to making the final decision to terminate employment.

\_\_\_ Do not unduly delay the employment termination decision (beyond reasonable time necessary to investigate, coordinate, and prepare the decision), and do not unreasonably delay exhaustion of the internal appeals/review/grievance process, once initiated by the employee.

**NOTE:** See "Employer Liabilities in Conducting Workplace Investigations" by D. Jan Duffy, Employment Relations Today, Spring, 1985, page 63.