**TERMINATION CHECKLIST**

Use the following list of items for consideration, completion and/or documentation when deciding if you want to proceed with a termination.

**Prior to any termination, be sure to contact SDAO pre-loss legal to review and receive applicable guidance.**

**PRE-TERMINATION CONSIDERATIONS**

1. Can you articulate specific, job-related reasons for discharge?
2. Protected class?

e.g., sex, race, religion, age, national origin, marital status, sexual orientation, pregnancy, disability

1. Retaliation claim?

e.g., prior harassment or discrimination complaint, prior workers' compensation claim or injury, workplace safety issue raised, overtime claim made, protected leave taken

1. Whistleblower?

e.g., complained about safety?

1. Wrongful termination?

e.g., given testimony against employer, served on a jury?

1. Id there an employment contract?

Written?

Oral?

Implied?

1. How were other employees disciplined for same/similar conduct?

Progressive discipline policy?

Employee handbook?

Company practice?

1. If performance or conduct is at issue:

Is there adequate documentation?

Review personnel file

Review evaluations

Review notes/write-ups

1. Was there a fair opportunity to improve/correct the performance?
2. Consideration of a work plan before termination?
3. Were other company policies followed?

e.g., progressive discipline policy

1. Check Collective bargaining agreement, if any:

Follow all procedures

1. Is disability or family leave involved?

Have you fully explored whether a reasonable accommodation is possible?

Have you made sure protected absences have not been used against the employee?

1. Is a specific incident or problem involved?

Have you given the employee a chance to explain and followed up on the explanation?

1. Is it fair?

Consider the timing? Would a delay improve its fairness and our defense?

Was it adequately investigated?

Was the employee given a chance to explain?

Did you follow up, if appropriate?

1. What will the employee say is the real reason?
2. Is the decisionmaker completely neutral?
3. Beware of public dissemination of the reasons for termination.

**TERMINATION PROCEDURE**

1. Plan the termination meeting

Develop an outline

1. Have a reason or reasons ready; express to employee without elaboration or explanation
2. Take notes
3. Have two people present

Don't seek to intimidate

1. Early or late in the week, late in the day
2. Avoid holidays
3. Avoid leaks
4. Choose a location where you will not be seen or overheard by others
5. Commissions, bonuses, vacation pay, expense reimbursement

Have you paid all wages or compensation that need to be paid within timelines required by Oregon's final paycheck rules (ORS 652.140)

1. Don't express anger; keep your temper in check
2. Put security on notice; escort employee off the premises only if necessary and appropriate
3. Attempt to avoid embarrassment or humiliation

Remember that employees sue more because of how they are terminated than why they are terminated; so, be gracious and kind

1. Change passwords, codes, key card access, etc.
2. Consider making a CD or forensic copy of the employee's hard drive
3. Consider a separation agreement/release of claims

Have prepared in advance

Consider whether to reveal or give to employee

1. Be aware that it can be used as evidence and may put employee on notice of potential liability
2. Special rules for release of age claims
3. Be careful with tax issues

**THE TERMINATION MEETING**

1. What to cover:

Simple, direct, truthful and accurate reason(s) for termination

Effective date

Return of company property (keys, phone, etc.)

Final paycheck and what included

COBRA and other benefit continuation, if any

Whom to call with retirement plan questions

How you will respond to reference checks

Non-competition or non-disclosure obligations, if any

Confidentiality obligations, if any

Whether you will object to an employee's claim for unemployment

1. What to say/not to say:

Don't apologize or express regret (okay to be compassionate)

Consider giving the employee the option of resigning

Listen respectfully to employee's response

Take notes

Keep an open mind

If employee's response requires follow-up, do so promptly (consider postponing effective date)

If new information is offered and causes you to question your decision, suspend the employee (with pay - depending on the situation) pending further investigation; put the termination on hold