

**Welcome!**

**Ryan Swanson's 32nd Annual  
Employment Law Webinar  
Series**

**September 28 - October 2, 2020**

**Employee Termination  
Best Practices  
(During COVID and Beyond)**

**Britenae Pierce  
September 30, 2020**

## Initial Termination Considerations

- Employment at-will, but no discrimination
- Think it through
- Due process
- Consider alternatives
- Treat employees similarly
- Special considerations if employee made a recent complaint
- What would a third party (judge/jury) think?

## Document!

- Contemporaneously
- Professionally
- Document when first decide to terminate

## Performance Improvement Plans (PIPs)

- What is a PIP
- Is it appropriate
- Concrete objectives, specifics, deadlines/dates
- Terminate prior to PIP period ending?

## Terminations during COVID-19

- Yes (and no)
- Must have safe workplace
- Focus on objective, business reasons
- Be cautious and truthful
- High-risk employees
- FFCRA, FMLA, PFML, sick leave, PTO, OSHA, etc.

## Layoffs or Reductions-in-Force

- Consider alternatives
- Objective, non-discriminatory criteria
- Worker Adjustment and Retraining (WARN) Act

## Company Specific Termination Requirements

- Check employment agreement, handbook, stock agreements, collective bargaining agreements, etc.
- Notice
- Severance
- Unused vacation days
- Stock vesting or re-purchasing

## Severance and Release Agreement

- Use when giving more than employee is entitled to receive
- Eliminate risk
- “Payment” can be \$\$, goods (keep the laptop), stock, etc.
- Special release considerations for age

## The Termination Meeting

- Schedule in advance
- Consider a witness
- Be professional
- Remind employee of obligations
- Cut off access
- Exit interview?

## Reasons for Termination

- Be truthful
- Keep it short
- Explain decision briefly, listen to response
- No extensive examples/detail
- If an employee requests reasons, then you must provide in writing

## Post-Termination Employee Obligations

- Noncompete
- Nonsolicitation
- Confidentiality
- Return of company property

## Emergency Termination

- Set general procedure
- Document afterward

## Final Paycheck

- Due on next regularly scheduled payday
- Cannot withhold for failure to return property
- Deductions authorized (in writing) and for employee's benefit
- Deduction if written agreement and incident during final pay period:
  - Cash shortage in till
  - Lost or damaged equipment based on dishonest/willful act
  - Dishonest/willful theft + police report

## Other Post-Termination Considerations

- Potential claims/litigation
- Securing company information
- Company morale



# Thank you.

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### Upcoming Webinars:

**Thursday, October 1, 12pm:**

Top Three New Employment Laws You Missed During the Pandemic

**Friday, October 2, 12pm:**

Panel Presentation - Employment Law Updates & FAQs

[ryanswansonlaw.com/registration](http://ryanswansonlaw.com/registration)

