

LEGAL ASPECTS OF ONBOARDING/OFFBOARDING

PRESENTED BY:

ERICA L. ROSASCO, ESQ.

MCKAGUE | ROSASCO LLP

1



LEGAL DISCLAIMER: SEMINAR MATERIALS AND THIS PRESENTATION ARE NOT INTENDED AS LEGAL ADVICE AND ARE NOT LEGAL ADVICE. THESE MATERIALS CANNOT SUBSTITUTE FOR LEGAL ADVICE. YOU SHOULD CONSULT AN EXPERIENCED EMPLOYMENT ATTORNEY IF YOU HAVE QUESTIONS ABOUT YOUR BUSINESS, POLICIES OR YOUR PARTICULAR CIRCUMSTANCES.

2

MCKAGUE ROSASCO LLP



ONBOARDING: REQUIREMENTS & TOOLS

APPLICATIONS – WHAT NOT TO ASK:

- **DOB**
- **DISABILITIES**
- **SEX**
- **AGE—OTHER THAN MINOR/NOT MINOR**
- **PRIOR SALARY**
- **CITIZENSHIP STATUS**
- **CRIMINAL HISTORY (BAN THE BOX)**
- **RACE OR NATIONAL ORIGIN**
- **RELIGION**
- **ARRESTS**
- **CREDIT HISTORY**
- **WORK COMP HISTORY**
- **MARITAL STATUS**
- **CHILDREN**
- **PREGNANCY STATUS**

LC 2810.5 – NOTICE TO EMPLOYEES

EMPLOYEE WAGE THEFT PREVENTION ACT LC 2810.5:

- PROVIDE TO EACH NEW EMPLOYEE AT TIME OF HIRE A NOTICE INDICATING TERMS AND CONDITIONS OF EMPLOYMENT
- KEEP SIGNATURE/ACKNOWLEDGE PAGE ON FILE!
- IN ADDITION TO US DOL - MSPA (WH 516) NOTIFICATION

[HTTPS://WWW.DOL.GOV/WHD/FORMS/WH516.PDF](https://www.dol.gov/whd/forms/wh516.pdf)

- IN ADDITION TO CALIF. DLSE FORM 445, STATEMENT OF WAGES (FOR FLCS)
- FORMS AND FAQs AT:

[WWW.DIR.CA.GOV/DLSE/GOVERNOR SIGNS WAGE THEFT PROTECTION ACT OF 2011.HTML](http://www.dir.ca.gov/dlse/governor_signs_wage_theft_protection_act_of_2011.html)

NOTICE TO EMPLOYEE

Labor Code section 2810.5

EMPLOYEE

Employee Name: _____

Start Date: _____

EMPLOYER

Legal Name of Hiring Employer: _____

Is hiring employer a staffing agency/business (e.g., Temporary Services Agency; Employee Leasing Company; or Professional Employer Organization [PEO])? Yes No

Other Names Hiring Employer is "doing business as" (if applicable):

Physical Address of Hiring Employer's Main Office: _____

Hiring Employer's Mailing Address (if different than above): _____

Hiring Employer's Telephone Number: _____

If the hiring employer is a staffing agency/business (above box checked "Yes"), the following is the other entity for whom this employee will perform work:

Name: _____

Physical Address of Main Office: _____

Mailing Address: _____

Telephone Number: _____

WAGE INFORMATION

Rate(s) of Pay: _____ Overtime Rate(s) of Pay: _____

Rate by (check box): Hour Shift Day Week Salary Piece rate Commission



Worker Information—Terms and Conditions of Employment

1. Place of employment: _____

2. Period of employment: From _____ To _____

3. Wage rates to be paid: \$ _____ per hour Piece Rate \$ _____ per _____

4. Crops and kinds of activities: _____

5. Transportation or other benefits, if any: _____

Charge(s) to workers, if any: _____

6. Workers' compensation insurance provided: Yes _____ No _____

Name of compensation carrier: _____

Name and address of policyholder(s): _____

Person(s) and phone number(s) of person(s) to be notified to file claim: _____

Deadline for filing claim: _____

7. Unemployment compensation insurance provided: Yes _____ No _____

8. Other benefits: _____ Charge(s) _____

9. For migrant workers who will be housed, the kind of housing available and cost, if any: _____

Charge(s) _____

10. List any strike, work stoppage, slowdown, or interruption of operation by employees at the place where the workers will be employed. (If there are no strikes, etc., enter "None").

11. List any arrangements that have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. (If there are no such arrangements, enter "None").

Name of Person(s) Providing This Information: _____

Note: The Department of Labor—Wage and Hour Division makes this form available in certain other languages to enable employers to satisfy the requirement that the terms and conditions of employment be disclosed in a language common to the workers. Contact the nearest office of the Wage and Hour Division to obtain such forms.

While completion of Form WH-516 is optional, it is mandatory for Farm Labor Contractors, Agricultural Employers, and Agricultural Associations to disclose employment terms and conditions in writing to migrant and day-labor workers upon recruitment, and to seasonal workers other than day-labor workers upon request when an offer of employment is made to respond to the information collection contained in 29 CFR 50.600, 50.600.76. This optional form may be used to disclose the required information. Therefore, any migrant or seasonal worker has the right to have, upon request, a written statement provided to them or her by the employer, of the information described above. This optional form may also be used for this purpose.

We estimate that it will take an average of 30 minutes to complete this collection of information, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, Room 33532, 200 Constitution Avenue NW, Washington, D.C. 20210. Do NOT send the completed form to this office.

Persons are not required to respond to this information unless it displays a currently valid OMB number. Options form WH-516 (2009) 10/16/2009

RECORDKEEPING

EMPLOYERS MUST KEEP THE FOLLOWING EMPLOYEE RECORDS:

- **FULL NAME, HOME ADDRESS, OCCUPATION, AND SOCIAL SECURITY NUMBER.**
- **BIRTH DATE, IF UNDER 18 YEARS, AND DESIGNATION AS A MINOR.**
- **TIME RECORDS SHOWING THE BEGINNING AND END OF EACH WORK PERIOD (CLOCK TIME).**
- **MEAL PERIODS**
- **SPLIT SHIFT INTERVALS**
- **TOTAL DAILY HOURS WORKED.**



I-9 FORMS

- **HAVE ONE FOR EVERY EMPLOYEE**
- **USE FORM DATED JULY 17, 2017**
- **INSTRUCTIONS HAVE ALSO BEEN UPDATED (M-274)**
- **FIND THE FORM HERE:**
[HTTPS://WWW.USCIS.GOV/SYSTEM/FILES_FORCE/FILES/FORM/I-9-PAPER-VERSION.PDF](https://www.uscis.gov/system/files/force/files/form/i-9-paper-version.pdf)

**FLCS
AND
SEASONAL AGRICULTURAL WORKERS**



SEXUAL HARASSMENT TRAINING ON DAY ONE



HANDBOOKS:

THEY ARE NOT OPTIONAL ANYMORE

**MCKAGUE ROSASCO
LLP**



CONFIRM

Arbitration Agreement

ment is made
of _____
____ (address).



between _____

ARBITRATION AGREEMENTS

- **AN EMPLOYER'S BEST FRIEND**
- **BEWARE OF FREE/CHEAP ARBITRATION AGREEMENTS –**
- **YOU GET WHAT YOU PAY FOR**

ARBITRATION AGREEMENTS

- **DOES STOP CLASS ACTIONS**
- **DOES NOT STOP PAGA (PRIVATE ATTORNEY GENERAL ACT) CASES**
- **DOES NOT STOP AN AGENCY COMPLAINT**
- **EMPLOYER HAS TO PAY EXPENSES FOR ARBITRATOR**
- **EMPLOYER'S FAVORED IN ARBITRATION**
- **AVOIDS EXCESSIVE VERDICTS**
- **RESOLVES CASES QUICKLY**



MY EMPLOYEES ARE “AT WILL” SO I CAN TERMINATE THEM AT ANY TIME FOR ANY REASON, RIGHT?

- **CAL. LAB. CODE § 2922 - “[A]N EMPLOYMENT, HAVING NO SPECIFIED TERM, MAY BE TERMINATED AT THE WILL OF EITHER PARTY ON NOTICE TO THE OTHER.”**
- **BEST PRACTICE – HAVE IT IN WRITING AND HAVE THE EMPLOYEE SIGN AT WILL NATURE OF RELATIONSHIP**
- **WHAT DOES YOUR HANDBOOK SAY?**
 - **IS THERE A PROMISE OF PROGRESSIVE DISCIPLINE?**



"You should check your e-mails more often. I fired you over three weeks ago."

TYPES OF CONTRACTS

- **ORAL**
- **WRITTEN**
- **IMPLIED**

- **TIP – HAVE IT IN WRITING THAT THE EMPLOYMENT RELATIONSHIP IS “AT WILL”**



IMPLIED EMPLOYMENT CONTRACT

- **REQUIRES GOOD CAUSE FOR TERMINATION**
- **WHAT THE COURT LOOKS FOR:**
 - **REPEATED ORAL OR WRITTEN ASSURANCES OF JOB SECURITY**
 - **CONSISTENT PROMOTIONS**
 - **SALARY INCREASES**
 - **BONUSES**
- **WATCH OUT FOR THINGS LIKE:**
 - **YOU'LL ALWAYS HAVE A JOB HERE**
 - **YOU'LL BE WITH US UNTIL YOU RETIRE**
 - **WE ONLY FIRE PEOPLE FOR A GOOD REASON**
- **LENGTH OF EMPLOYMENT – WHEN DOES IT MATTER?**



"Tom, we're letting you go, but we'd like you to stay on and train your replacement so they know what not to do."

WHAT ABOUT PROBATIONARY VS. NON- PROBATIONARY?

DOES THIS CHANGE THE AT WILL
PRESUMPTION?

17

MCKAGUE ROSASCO LLP



"Everybody says this is an awesome company to work for once you get through the probationary period!"

TERMINATION FOR “LEGITIMATE AND NONDISCRIMINATORY REASONS”



**MCKAGUE ROSASCO
LLP**



TERMINATION WITH OR WITHOUT CAUSE?

WHAT DOES IT MEAN?

19

MCKAGUE ROSASCO LLP

OFFICE TIMETABLE

9.00	STARTING TIME
9.30	ARRIVE AT WORK
9.45	COFFEE BREAK
11.00	CHECK E-MAIL
11.15	PREPARE FOR LUNCH
12.00	LUNCH
2.45	BROWSE THE INTERNET
3.00	TEA BREAK
4.00	PREPARE TO GO HOME
4.30	GO HOME
5.00	FINISHING TIME

WHEN DO I NEED TO CALL A LAWYER?

- **WHISTLEBLOWER**
- **RETALIATION**
- **VIOLATION OF PUBLIC POLICY**
- **PROTECTED CLASS**
- **WORK RELATED INJURY**
- **ENGAGED IN PROTECTED ACTIVITY**
- **RECENT LEAVE OR INTERMITTENT LEAVE**
- **REQUEST FOR ACCOMMODATION**
- **TREATING THIS EMPLOYEE DIFFERENTLY THAN OTHERS HAVE BEEN TREATED FOR THE SAME OFFENSE**
- **JOB NOT AVAILABLE UPON RETURN FROM LEAVE**
- **WITNESS IN A CASE AGAINST COMPANY**

**CHARLOTTESVILLE WHITE
NATIONALIST DEMONSTRATOR
LOSES JOB AT LIBERTARIAN HOT
DOG SHOP**

SEE ANY ISSUES?



CAL LAB CODE § 1101

NO EMPLOYER SHALL MAKE, ADOPT, OR ENFORCE ANY RULE, REGULATION, OR POLICY:

- **(A) FORBIDDING OR PREVENTING EMPLOYEES FROM ENGAGING OR PARTICIPATING IN POLITICS OR FROM BECOMING CANDIDATES FOR PUBLIC OFFICE.**
- **(B) CONTROLLING OR DIRECTING, OR TENDING TO CONTROL OR DIRECT THE POLITICAL ACTIVITIES OR AFFILIATIONS OF EMPLOYEES.**

**MY EMPLOYEE IS CLAIMING HE
HURT HIS BACK AT WORK AND
HAS FILED A WORK COMP
CLAIM. HE'S LAZY AND I THINK
HE'S LYING. I LAID HIM OFF.**

ANY ISSUES?

23

MCKAGUE ROSASCO LLP



LABOR CODE 132A

- **PROHIBITS FIRING, THREATENING TO FIRE, OR DISCRIMINATING AGAINST AN EMPLOYEE FOR:**
 - **STATING THAT HE OR SHE PLANS TO FILE A WORKER'S COMPENSATION CLAIM;**
 - **FILING A WORKER'S COMPENSATION CLAIM; OR**
 - **RECEIVING A WORKER'S COMPENSATION AWARD**

MCKAGUE ROSASCO LLP



LAY OFFS

- **LAY OFF SELECTION**
 - **WATCH OUT FOR PATTERNS DISPARATELY IMPACTING RACE, GENDER, AGE, ETC.**
 - **DO YOUR POLICIES REFER TO SENIORITY**
 - **DON'T BURY AN ILLEGAL TERMINATION BY LAYING OFF A LARGER GROUP**
 - **DON'T TURN AROUND AND REHIRE NEW EMPLOYEES**

MCKAGUE ROSASCO LLP



REDUCTIONS IN FORCE/WARN ACT

- **WARN ACT REQUIRES COVERED EMPLOYERS TO PROVIDE EMPLOYEES AND CERTAIN AGENCIES 60 DAYS' ADVANCE NOTICE BEFORE CLOSING A PLANT OR CONDUCTING A "MASS LAYOFF" WHEN 50 OR MORE EMPLOYEES AT A COVERED ESTABLISHMENT EXPERIENCE A "LAYOFF" DURING ANY 30-DAY PERIOD.**
- **COVERED EMPLOYERS THAT DO NOT COMPLY WITH OR QUALIFY FOR AN EXCEPTION MAY BE LIABLE TO PAY EMPLOYEES BACK PAY AND BENEFITS.**
- **CALIFORNIA HAS ITS OWN VERSION OF THE LAW (CAL-WARN) THAT HAS MORE STRINGENT REQUIREMENTS.**

COVERED EMPLOYERS UNDER WARN ACT

THE WARN ACT DEFINES “EMPLOYER” AS ANY BUSINESS ENTERPRISE THAT EMPLOYS EITHER

- **(1) 100 OR MORE EMPLOYEES, EXCLUDING PART-TIME EMPLOYEES, OR**
- **(2) 100 OR MORE EMPLOYEES WHO IN THE AGGREGATE WORK AT LEAST 4,000 HOURS PER WEEK, EXCLUSIVE OF OVERTIME.**

TEMPORARY LAYOFFS CAN TRIGGER CAL-WARN ACT

- **THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LOCAL 998, ET AL. V. NASSCO HOLDINGS INC., ET AL., THE PLAINTIFFS ALLEGED THAT THEIR EMPLOYER VIOLATED CAL-WARN BY FAILING TO PROVIDE NOTICE BEFORE ORDERING ABOUT 90 EMPLOYEES NOT TO RETURN TO WORK FOR FOUR TO FIVE WEEKS.**
 - **THE CALIFORNIA COURT OF APPEAL CONSIDERED WHETHER THE FURLOUGH CONSTITUTED A “LAYOFF” TRIGGERING THE 60-DAY NOTICE REQUIREMENT.**
- **IN FINDING THAT THE CAL-WARN ACT IS BROADER THAN THE FEDERAL WARN ACT, THE COURT HELD THAT CALIFORNIA’S WARN ACT REQUIRES EMPLOYERS TO GIVE EMPLOYEES ADVANCE NOTICE OF MASS LAYOFFS EVEN WHEN THE LAYOFFS ARE NOT PERMANENT AND WERE LESS THAN SIX MONTHS IN DURATION (I.E., THE TRIGGER UNDER THE FEDERAL STATUTE.)**



WHAT DOES THIS MEAN FOR SEASONAL WORKERS?

- **EMPLOYERS ARE NOT REQUIRED TO PROVIDE A CAL-WARN OR FEDERAL WARN ACT NOTICE TO SEASONAL EMPLOYEES OR EMPLOYEES HIRED FOR A LIMITED PROJECT, SO SEASONAL LAYOFFS DO NOT TRIGGER A NOTICE OBLIGATION.**
- **AN EMPLOYER THAT INTENDS TO PERMANENTLY OR INDEFINITELY SHUT DOWN PART OR ALL OF ITS OPERATIONS (E.G., SHUTTING DOWN A PROCESSING PLANT OR STOP GROWING A PARTICULAR CROP RESULTING IN A “MASS LAYOFF”) MAY SUBJECT THE EMPLOYER TO THE STATUTE’S STRICT REQUIREMENTS.**



GOOD FAITH INVESTIGATION DEFENSE

- **AS LONG AS THE EMPLOYER'S DECISION TO TERMINATE IS "REACHED HONESTLY, AFTER AN APPROPRIATE INVESTIGATION AND FOR REASONS THAT ARE NOT ARBITRARY OR PRE-TEXTUAL," THE EMPLOYER IS SHIELDED FROM LIABILITY EVEN IF THE EMPLOYEE IS LATER EXONERATED.**
- **UNLESS THE EMPLOYEE HAS AN EMPLOYMENT AGREEMENT FOR A SPECIFIED TERM:**
 - **WITH AN EMPLOYMENT CONTRACT, CALIFORNIA LABOR CODE SECTION 2924 DOES NOT ALLOW THE EMPLOYER TO TERMINATE THE EMPLOYEE FOR AN HONEST BUT MISTAKEN BELIEF THAT DISCHARGE WAS REQUIRED OR THAT THE EMPLOYEE HAD BREACHED HIS OR HER DUTY.**





EMPLOYEE JOE IS A PROBLEM EMPLOYEE. HE TELLS YOU THAT HE FOUND ANOTHER JOB AND WILL BE LEAVING IN TWO WEEKS. YOU ARE THRILLED. A WEEK LATER HE FINDS OUT HIS NEW JOB WAS JUST ELIMINATED SO HE TELLS YOU HE'S NOT LEAVING AFTER ALL.

31

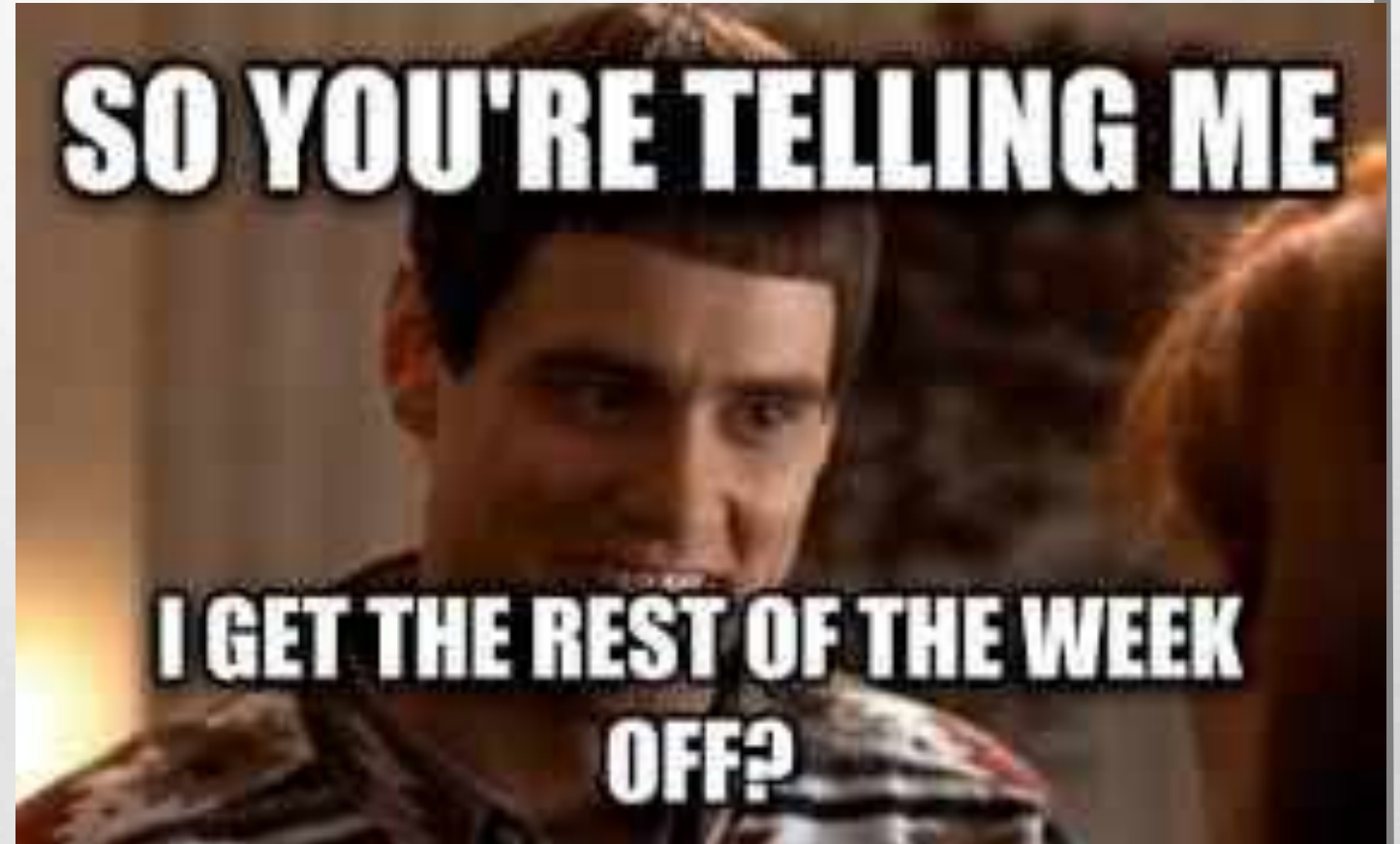
**MCKAGUE
ROSASCO LLP**



WHAT CAN YOU DO?

HOT TIP

**AN EMPLOYEE'S TERMINATION
SHOULD RARELY COME AS A
SURPRISE.**

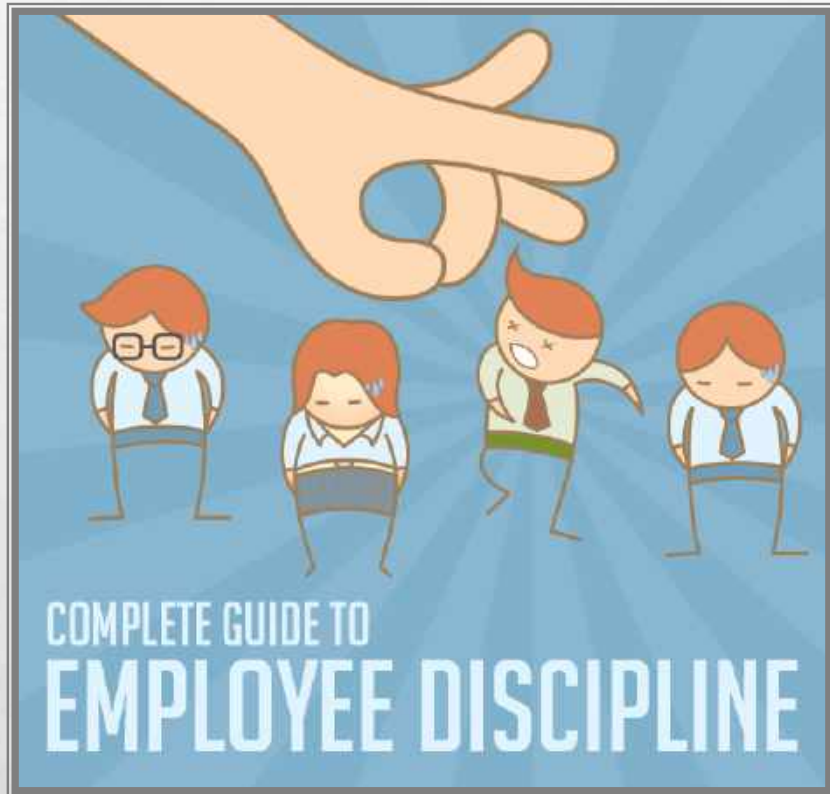




AVOID THE “CAT’S PAW” THEORY BY HAVING SOMEONE ELSE MAKE THE DECISION THAT YOU CANNOT MAKE

QUESTIONS TO ASK BEFORE TERMINATION

- **DOES THE PUNISHMENT FIT THE CRIME?**
- **WOULD SOMEONE WHO IS NEUTRAL TO THE SITUATION AGREE WITH YOU ON THE FAIRNESS OF THE ACTIONS YOU PLAN TO TAKE?**
- **IS THIS DECISION INCONSISTENT WITH PREVIOUS ACTIONS?**
- **IF THIS IS THE FIRST NEGATIVE OCCURRENCE, TERMINATION WOULD BE HARD TO JUSTIFY.**
- **HAS THE COMPANY ADMINISTERED DISCIPLINE IN A CONSISTENT MANNER?**
- **HAVE OTHER EMPLOYEES ONLY BEEN GIVEN A “SLAP ON THE WRIST” FOR SIMILAR WORKPLACE INFRACTIONS?**



PROGRESSIVE DISCIPLINARY STRATEGY

- **CAN BE HELPFUL IN TURNING A PROBLEM EMPLOYEE INTO A HIGHLY PRODUCTIVE EMPLOYEE**
- **GIVES YOU A STRICT TERMINATION PROCESS TO FOLLOW**
- **DOES NOT MEAN YOU CANNOT BE SUED**
- **JURIES LIKE TO SEE IT**
- **CAN BE SEEN AS A PROMISE TO DO THIS**

TERMINATION PREPARATION

- **GET APPROVAL FROM ALL PARTIES NEEDED FOR APPROVAL**
- **FOLLOW COMPANY POLICIES – RED FLAG IF YOU DON'T**
- **REVIEW THE PERSONNEL FILE – WHAT STORY DOES IT TELL?**
- **HAVE FINAL PAYCHECK READY WITH ALL ACCRUED VACATION AND PAY AT THE TIME OF TERMINATION**
 - **ENSURE ALL WAGES PAID AT THE TIME OF TERMINATION TO AVOID WAITING TIME PENALTIES**
 - **JUST PAY WAITING TIME PENALTIES IF PAYMENT IS LATE**
- **NOTICE TO EMPLOYEE – CHANGE IN RELATIONSHIP**
- **EDD PACKET FORM 2320 - [HTTP://WWW.EDD.CA.GOV/PDF_PUB_CTR/DE2320.PDF](http://www.edd.ca.gov/pdf_pub_ctr/DE2320.pdf)**

NOTICE TO EMPLOYEE AS TO CHANGE IN RELATIONSHIP

*(Issued pursuant to provisions of Section 1089 of the California
Unemployment Insurance Code)*

Name: _____

Last Four SSN#: _____

1. You were/will be laid off/discharged on _____

2. You were/will be on leave of absence starting _____

3. On _____ employment status changed/will change as follows:

(Name of Employer)

(By)

TERMINATION MEETING

- **AT LEAST TWO WITNESSES**
- **SOMEONE OTHER THAN IMMEDIATE SUPERVISOR IF THERE IS CONFLICT**
- **BRIEFLY STATE ISSUE THAT LED TO TERMINATION**
- **BE MATTER OF FACT AND NOT ARGUMENTATIVE**
- **PROVIDE TERMINATION NOTICES**
- **MAIL NOTICES WITH SIGNATURE REQUIRED IF EMPLOYEE IS ABSENT**
- **IN PERSON IS BEST**
- **AIM FOR TIME WHEN LESS EMPLOYEES ARE AROUND**
- **ESCORTING THE EMPLOYEE OFF THE PREMISES**



TERMINATION MEETING

- **GIVE EMPLOYEE OPPORTUNITY TO BE HEARD**
- **DO NOT TRY TO MAKE IT EASIER BY SAYING “NICE” THINGS**
- **EMPLOYEE MUST KNOW SPECIFICALLY WHY HIS/HER SERVICES ARE BEING TERMINATED – EMPLOYEE MUST LEAVE WITH A CLEAR UNDERSTANDING OF WHAT CAUSED THIS ACTION**
- **STAND YOUR GROUND – DO NOT ALLOW THE EMPLOYEE TO ARGUE WITH YOU**
- **SET OUT A PLAN AND FOLLOW IT – DO NOT CHANGE YOUR MIND**
- **DELIVER FINAL PAYCHECK**
- **DISCUSS ANY CONFIDENTIALITY AGREEMENT EMPLOYEE MAY HAVE SIGNED**
- **DOCUMENT EVERYTHING DISCUSSED DURING OR IMMEDIATELY AFTER THE MEETING**

**WHAT DO YOU DO WHEN
AN EMPLOYEE REFUSES
TO SIGN ANYTHING AT
THE TERMINATION?**

**PUT REFUSED TO SIGN ON ALL THE FORMS
PRESENTED**

DO NOT WITHHOLD FINAL PAYCHECK



WHAT NOT TO SAY?

- **A LIE**
- **BLAME THE ECONOMY**
- **CALL IT A LAYOFF AND HIRE SOMEONE ELSE**
- **IDENTIFY AN ILLEGAL REASON 'IN WHOLE OR IN PART'**
- **ANYTHING VIA TEXT, E-MAIL OR SOCIAL MEDIA**
- **ANYTHING INCONSISTENT**
- **APOLOGIZE**



WHAT CAN YOU SAY?

- **K.I.S.S – KEEP IT SIMPLE & SHORT**
- **BE HONEST**
- **DIGNITY**
- **RESPECTFUL**
- **PRIVATE**
- **OPPORTUNITY TO RESIGN?**



FINAL WAGES DUE

- **TERMINATION = IMMEDIATELY**
- **VOLUNTARY RESIGNATION = 72 HOURS**
- **MY EMPLOYEE GAVE ME TWO WEEKS NOTICE. TODAY IS HER LAST DAY.**
 - **WHEN ARE THE FINAL WAGES DUE?**

THE HAIL MARY MOVE...

- **YOU ARE IN A TERMINATION MEETING WITH YOUR EMPLOYEE. YOU EXPLAIN THE EMPLOYEE IS BEING TERMINATED FOR POOR PERFORMANCE AND EXCESSIVE TARDINESS. THE EMPLOYEE RESPONDS BY STATING: “WELL, WHAT ABOUT MY SUPERVISOR SEXUALLY HARASSING ME?”**
- **WHAT DO YOU DO?**



WHY TERMINATE?

- **PROBLEM EMPLOYEES CAUSE TENSION WITH OTHER EMPLOYEES**
- **TAKE ACTION WHEN IT IS NEEDED, DO NOT WAIT FOR THE PROBLEM TO GET OUT OF CONTROL**
- **PROBLEM EMPLOYEES COST ORGANIZATIONS MILLIONS OF DOLLARS EACH YEAR**
 - **EMPLOYEE TURNOVER**
 - **POOR PERFORMANCE**
 - **UNNECESSARY AND FRIVOLOUS LAWSUITS**
 - **CREATES DYSFUNCTION IN THE WORKPLACE**

NEED AN ALTERNATIVE TO TERMINATION?

TRY A PERFORMANCE IMPROVEMENT PLAN (PIP)



**MCKAGUE ROSASCO
LLP**



Performance Improvement Plan (PIP)

Performance Improvement Plan

Employee Name: _____ Employee ID No.: _____
Supervisor: _____ Date: _____

Reason for Improvement Plan:

Previous Disciplinary Actions:

Date: _____

Date: _____

Date: _____

Steps for Improvement:

Required Result:

Improvement Plan in Effect for: 1 month 2 months 3 months 6 months

Evaluations Every: week 2 weeks month 2 months

Supervisor/Monitor/Mentor: _____

I, the undersigned employee, agree that the above information is true. I am fully aware of the problem at hand and understand that I am required to show progress over the agreed-upon amount of time, with the arrangement that I will achieve the aforementioned results by the end of the improvement period. If I am unwilling or unable to improve my behavior in the amount of time provided, I will be subject to disciplinary action up to and including termination.

Employee Signature

Date



MCKAGUE ROSAS

NEGATIVE! NEGATIVE! NEGATIVE!

**IT SEEMS LIKE ALL WE GIVE OUR EMPLOYEES
IS NEGATIVE FEEDBACK SO I PUT POSITIVE
FEEDBACK IN PERSONNEL FILES.**

ANY ISSUES?



DOCUMENTATION TIPS

- **DOCUMENT AT OR NEAR THE TIME OF THE EVENTS**
- **DOCUMENT CONSISTENTLY**
- **AVOID LENGTHY BACK AND FORTH EMAILS ABOUT AN EMPLOYEE**
 - **DISCUSS FACE TO FACE**
- **WATCH OUT FOR DEFAMATORY STATEMENTS**
- **WATCH OUT FOR RED FLAGS –**
 - **DISABILITY, PROTECTED CLASS, PROTECTED ACTIVITIES**



CONSIDER AN AUDIT

- **WAGE RECORDS AND PERSONNEL FILES CAN BE DEMANDED WITHOUT A LAWSUIT**
- **KNOW AHEAD OF THE TERMINATION IF YOU ARE EXPOSED**
- **TIMECARDS MUST BE PRODUCED**
- **REQUESTS BY THE EMPLOYEE FOR PAYROLL AND PERSONNEL RECORDS ARE NOT INNOCENT**



THE PROBLEM EMPLOYEE

- **YOUR EMPLOYEE HAS BEEN TELLING HIS CO-WORKERS HE IS GOING TO SUE THE COMPANY. HE COMPLAINS ABOUT EVERYTHING, IS A POOR WORKER AND HAS A BAD ATTITUDE.**
- **WHAT SHOULD YOU DO?**
- **WHAT ARE THE RISKS?**



"You know, if it weren't for the personnel problems, Human Resources would be a great place to work."

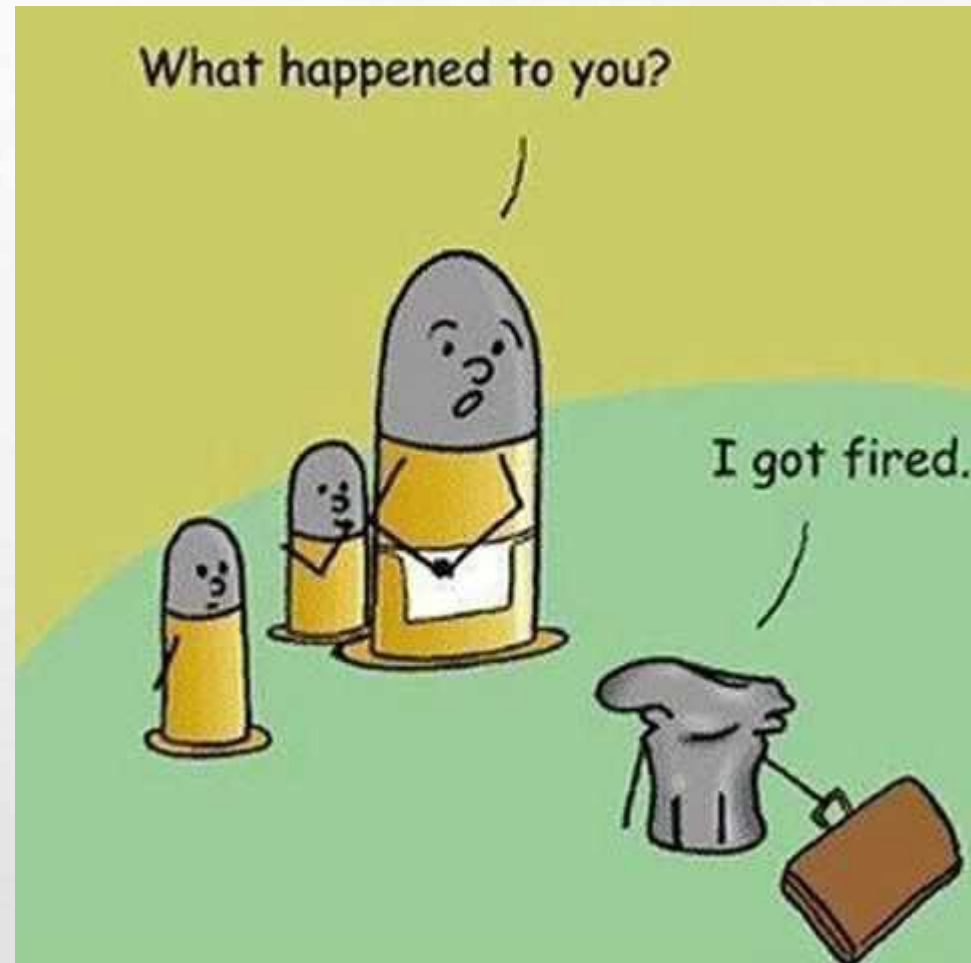
SEVERANCE AGREEMENTS

- **USE WHEN YOU ARE AT RISK OF BEING SUED**
- **DO NOT DRAFT YOURSELF OR COPY ONE ONLINE**
- **NEED TO DECIDE TO TERMINATE WITH OR WITHOUT THE SEVERANCE AGREEMENT**
- **OVER 40? SPECIAL RULES APPLY**
- **HAVE AN UPDATED 2020 VERSION...NEW RULES.**



WHAT HAPPENS IF THE EMPLOYEE TURNS DOWN THE SEVERANCE?

- **HAVE A PLAN WITH ALL OPTIONS**
- **BE PREPARED TO TERMINATE, DEMOTE, OR PUT ON A PERSONAL IMPROVEMENT PLAN**
- **EMPLOYEE CAN SUE IF THEY TURN DOWN THE SEVERANCE**
- **WATCH OUT FOR EMOTIONAL SITUATIONS**



**I PAID MY EMPLOYEE A
MONTH OF EXTRA PAY
WHEN WE FIRED HER.**

AM I PROTECTED?



**I KNOW I OWE MY
EMPLOYEE BACK WAGES.
CAN I PAY HER A
SEVERANCE OF LESS THAN
WHAT I KNOW I OWE?**

**AN EMPLOYEE CANNOT WAIVE A CLAIM FOR
ACTUAL WAGES OWED, BUT CAN RELEASE
CLAIMS FOR DISPUTED WAGES, PENALTIES,
INTEREST, AND ATTORNEY'S FEES.**



LIMITATIONS ON SEVERANCE AGREEMENTS

- **EMPLOYEES CANNOT WAIVE RIGHT TO FILE A CHARGE WITH THE EEOC, DFEH OR ANY OTHER AGENCY**
- **NO AGREEMENT BETWEEN EMPLOYEE AND EMPLOYER CAN LIMIT AN EMPLOYEE'S RIGHT TO TESTIFY, ASSIST OR PARTICIPATE IN AN INVESTIGATION, HEARING OR PROCEEDING CONDUCTED BY THE EEOC UNDER THE ADEA, TITLE VII, THE ADA OR THE EPA.**
- **EMPLOYEE CAN AGREE TO NO DAMAGES FOR ANY AGENCY COMPLAINT.**
- **BAN ON NO-REHIRE AGREEMENTS...BUT ADD IN LEGITIMATE NONDISCRIMINATORY REASON WHY EMPLOYEE IS NOT ELIGIBLE FOR REHIRE.**

MY EMPLOYEE QUIT.

**I'M TOTALLY OFF THE
HOOK FROM BEING
SUED RIGHT?**



EDD – UNEMPLOYMENT INQUIRIES

- **BE CONSISTENT WITH WHAT YOU SAY**
- **EDD RECORDS CAN BE OBTAINED IN A LATER LAWSUIT**
 - **ALLOWING EDD BENEFITS DOES NOT MEAN YOU CONSENT TO LIABILITY IN A CIVIL CASE**
- **DENYING EDD BENEFITS CAN CAUSE AN EMPLOYEE TO SEEK OUT COUNSEL**

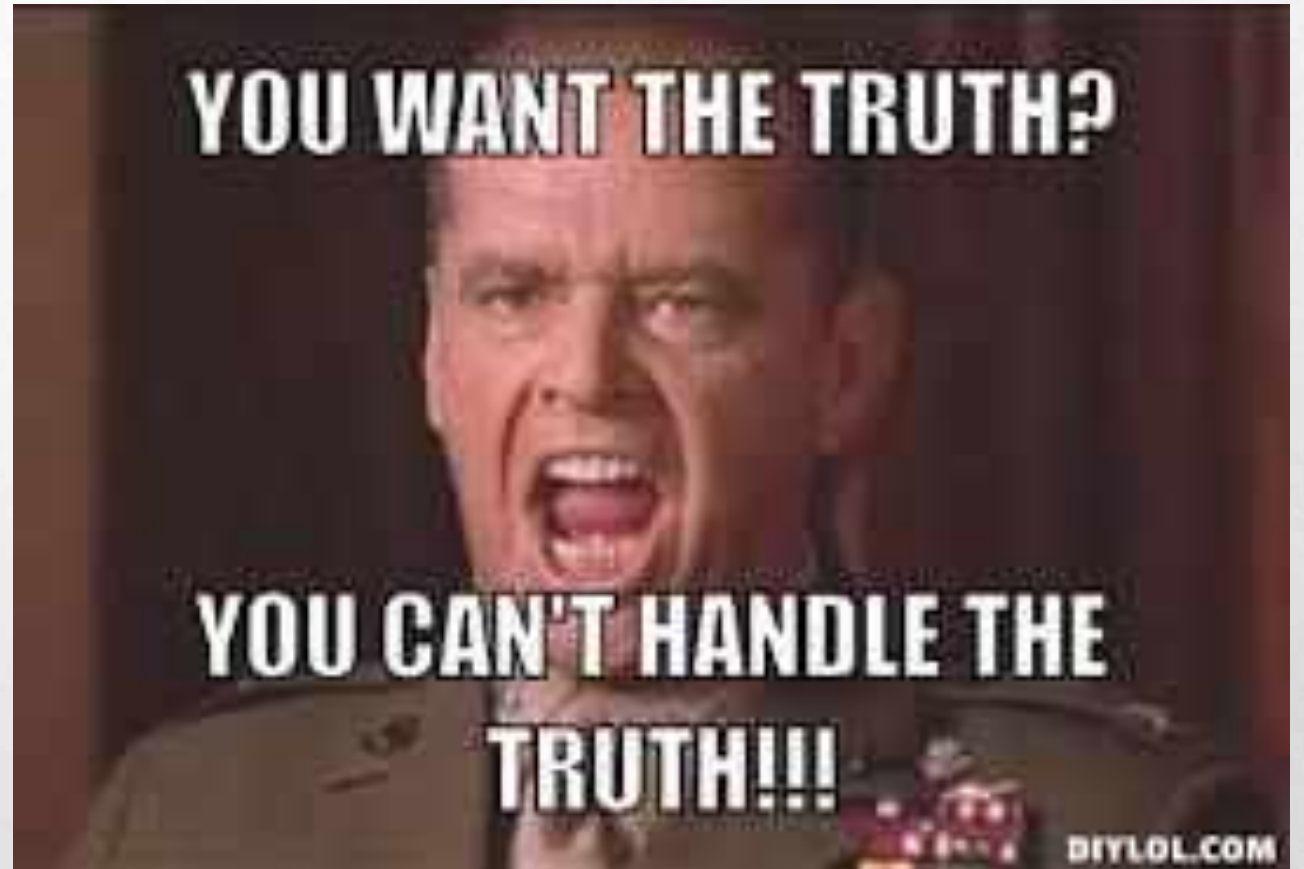


**WE HAVE A THREE
DAY NO CALL, NO
SHOW POLICY.
CAN I TERMINATE?**



**I'VE HEARD IT IS
BETTER NOT TO GIVE A
REASON FOR
TERMINATION.**

ANY ISSUES?





PRESENTED BY: ERICA L. ROSASCO, ESQ.

1217 PLEASANT GROVE BLVD. SUITE 120

ROSEVILLE, CA 95678

916.672.6552

ERICA@MCKAGUEROSASCO.COM

WWW.MCKAGUEROSASCO.COM

QUESTIONS?

LEGAL DISCLAIMER: SEMINAR MATERIALS AND THIS PRESENTATION ARE NOT INTENDED AS LEGAL ADVISE AND ARE NOT LEGAL ADVISE. THESE MATERIALS CANNOT SUBSTITUTE FOR LEGAL ADVISE. YOU SHOULD CONSULT AN EXPERIENCED EMPLOYMENT ATTORNEY IF YOU HAVE QUESTIONS ABOUT YOUR BUSINESS, POLICIES OR YOUR PARTICULAR CIRCUMSTANCES.