TERMINATION CHECKLIST: CALIFORNIA EMPLOYERS

§17.93 A. Termination Checklist

\_\_\_ 1. Should an employment lawyer be consulted about the termination decision or process?

\_\_\_ 2. Is the employee a union employee, motion picture employee, railroad worker, fisherman, or seasonal farm worker? If so, special rules may apply to certain aspects of the termination process.

\_\_\_ 3. Is there credible evidence to support the termination decision, documented as fully as possible? Is it consistent with other information in the employee’s personnel file?

\_\_\_ 4. Is the termination consistent with the way other employees have been treated under similar circumstances in the past, in order to help ensure that no claims of discrimination will be successful?

\_\_\_ 5. Is the employee terminable at-will or subject to a contract or collective bargaining agreement which would prohibit, or at least incur employer liability for, early termination? Has a termination-for-good-cause-only provision been explicitly or implicitly added to the employment relationship by any contract, document, letter, course of dealing, or oral communication? If good cause is required to terminate, does it exist?

\_\_\_ 6. Have the company’s termination policies (e.g., in the employee manual) been followed?

\_\_\_ 7. Is there sufficient basis to justify an immediate termination, e.g., for violence or threatening violence, theft, falsification of company records (such as a résumé or timecard), or destruction of property, or should a written warning, reassignment, demotion, transfer, pay cut, or other action be taken instead?

\_\_\_ 8. Does the termination potentially violate any state or federal statutes prohibiting discharge under the present circumstances?

\_\_\_ 9. Is this a layoff of a group of employees potentially triggering state or federal mass layoff or “WARN” act requirements?

\_\_\_ 10. Is the employee likely to claim discrimination? Is the employee a member of a protected class, such as an older worker, a woman, a racial or religious minority, or a disabled worker? If the employee is disabled, has reasonable accommodation of the disability been provided?

\_\_\_ 11. Is the employee likely to claim retaliation? For example, for the employee’s filing of a workers’ compensation claim, union organizing activity, use of sick leave or family or disability leave, or whistle-blowing?

\_\_\_ 12. What will the employee’s last day be? If the employee is resigning, will his or her requested last day be honored or will he or she be terminated earlier? If the employee is being terminated, will he or she be provided advance notice or only on the day of termination?

\_\_\_ 13. Is the last pay check ready or will it be ready on time? Be sure to include vested, accrued, unused vacation and paid time off (PTO) pay and commissions and expense reimbursements due and pay by paper check only (no direct deposit). If expense reimbursements are outstanding, request the final expense report at the time of termination and set a reasonable deadline for its receipt, if a deadline is not already spelled out in the employee’s employment agreement or the employer’s employee handbook (or if it is, then remind the employee about the deadline).

\_\_\_ 14. Has the Notice of Change in Employment Status been prepared? Be sure to include the required EDD pamphlet regarding unemployment insurance benefits and to have the employee sign an additional copy acknowledging receipt and then retain this copy in the employee’s personnel file.

\_\_\_ 15. For employers providing group health insurance coverage, are the appropriate COBRA and Cal-COBRA notices ready or will they be ready on time? Consult with your health insurance plan administrator.

\_\_\_ 16. Will an exit interview be utilized? If so, when will it be held, who will conduct it, and what topics will be discussed? Be sure nothing discriminatory is said during the interview and that the employee’s statements, concerns, and any threats and/or accusations are documented in writing. Allowing the employee to understand and express his or her feelings regarding the termination may help prevent litigation. If problems are expected or develop, consider having more than one employer representative present. If possible, collect all of employer’s property that is in the possession of the employee, including all keys, key cards, passes, badges, parking passes, company radios, cell phones, and tablets, and the like during the interview.

\_\_\_ 17. Will the Severance Agreement be utilized? If so, prepare and customize it as necessary and decide what severance compensation to offer the employee in return for signing it. Both the employee and the employer should receive a fully-signed copy. See the general Instructions for more information about Severance Agreement timing requirements.

\_\_\_ 18. The employer should, when providing an authorized reference, provide both positive and negative truthful information, as applicable, and should avoid conclusions and instead stick to the facts. It is best to respond only to written reference requests and to only respond in writing, so as to keep a paper trail. Some employers choose not to disclose or verify any information to third parties without the employee’s consent. If using this approach, which is not required by law but may help avoid lawsuits, have the employee sign the optional Release and Authorization authorizing the release of certain reference information. It is also a good idea to discuss the nature of the reference that will be provided (e.g., positive, negative, neutral, confirmation of employment dates and position only) to avoid misunderstanding later. Note that California Civil Code Section 47 provides qualified immunity from defamation claims for employers responding to reference requests.

\_\_\_ 19. Has an unemployment, disability, or workers’ compensation insurance claim been filed by the employee? If so, is the claim justified and if not, strongly consider contesting it.

Possible additional questions/concerns:

Has payroll been contacted to prepare for changes in payment schedules?

Has access to important information been limited or rescinded (login information, access points closed)?

Has a plan been created for moving the employee’s work to others (succession plan)?

If a confidentiality agreement was previously signed then a copy should be provided to the employee at termination. If one was never signed then typically it would be signed with a severance package as consideration.

Notification of other employees of the firing should match what was agreed to by the parties as part of the termination if it was agreed to characterize the termination in a certain way. If nothing was decided then it is typically best to leave out details and keep only need to know information in the notice to staff.

After termination the employee’s name should be removed from sites, mailing lists, and any relevant documents.