

April 2010



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with/without  
cause.....with/without notice

## The IRS Announces President Signs the HIRE Act

From the DOL newsletter -- President Obama signed the HIRE Act — a jobs bill that will encourage businesses to hire and help put Americans back to work. "I'm signing it mindful that, as I've said before, the solution to our economic problems will not come from government alone," said President Obama. "But what we can do is promote a strong, dynamic private sector — the true engine of job creation in our economy. We can help to provide an impetus for America's businesses to start hiring again." The new law will make a difference in several important ways, including forgiving payroll taxes for businesses that hire someone who's been out of work at least two months; permitting small businesses to write off investments they make in equipment this year; reforming municipal bonds to encourage job creation by expanding investment in schools and clean energy projects; and maintaining investments in our infrastructure.



but remember.....the employee also has the right to sue you at any time..... with/without cause and with/without notice!!

Properly preparing for a termination will be important if the termination goes sideways and it starts with getting the paperwork in order – look at performance evaluations, disciplinary action forms, attendance sheets, etc., and make sure that the documentation shows that a case can be built that supports a proper reason to fire the employee. Documentation is important in helping make the decision in the first place but, more importantly, it serves to back up the decision should the matter prompt a lawsuit.

Consistency in the documentation is key. Harmony between the employer's story for why the firing took place and the documentation on the employee's history can mean the difference between a simple parting of ways and a prolonged and messy legal battle, and all good employment attorneys know this! If an ex-employee's attorney sees a lack of consistency in the employee's personnel files or a lack of records at all, consider that blood in the water.

## “It's a Dirty Job, But.....” Terminations – Not Fun

How an employee termination or layoff is handled on the front-end can make all the difference in the world on how the potential fallout on the back-end. A well executed, carefully planned termination can avoid a serious stir in the workplace. A poorly executed, shoot-from-the-hip approach, on the other hand, can cost an employer dearly in terms of productivity and morale, as well as financially if the ex-employee fires back with a lawsuit.

Because you all live in “at will” states, unless you have a contract with your employee(s), both the employee and the employer can terminate the employment

## Protected classes of employees

Another very important consideration is whether an employee slated for possible termination is a member of a protected class. Federal law prohibits discrimination based on a number of factors such as race, color, religion, national origin, sex, pregnancy, age, disability, or citizenship. State and local laws also can provide additional protection..... For example, no federal law currently protects against discrimination based on sexual orientation, but 23 states prohibit such activity within their borders.

Below is a list of the **Federal** employment laws which create protected status for certain employees:

- Americans with Disabilities Act
- Age Discrimination in Employment Act
- Title VII of the Civil Rights Act of 1964
- COBRA
- Civil Rights Act of 1866, Section 1981
- Employee Retirement Income Security Act
- Fair Labor Standards Act
- Family and Medical Leave Act
- National Labor Relations Act
- Occupational Safety and Health Act
- Older Workers Benefit Protection Act
- Pregnancy Discrimination Act
- Rehabilitation Act
- Sarbanes-Oxley Act
- Uniformed Services Employment and Reemployment Rights Act
- Worker Adjustment and Retraining Notification Act

## Other considerations

Terminations can lead to a number of other important issues. As every human resources professional knows, just because an employee no longer works there doesn't mean that all ties have been severed completely.

Unemployment compensation is one such issue that can leave the specter of a former employee haunting your office long after he/she was fired. Again, having good documentation that shows your employee was

fired for misconduct can be critical in an unemployment compensation hearing. Winning in these hearings can save your company big bucks in the long run.

COBRA and severance pay are two more issues with which you may have to deal.

- Under Federal COBRA laws, if you offer a group health insurance plan and you have more than 20 employees, you must make an employee aware of his/her rights under COBRA for continuing to stay on the company's health insurance program.
- Severance agreements can offer some peace of mind that the ex-employee won't sue, but there will be an added cost. Yet, putting a severance package on the table isn't always a solid insurance policy against a lawsuit. If an exiting employee still feels that he/she was wrongfully terminated, the possible reward of a lawsuit may outweigh any severance dollars you put on the table.

Terminations are one of the more unpleasant of duties of an HR professional and are rarely simple. If you have questions or concerns, please call.

**These articles should not be construed as legal advice or as pertaining to specific situations. Consult with your legal counsel for further information.**

## Stay "in the know" in 2010 –

### Educational Seminars

We have a variety of educational seminars planned for 2010. Most will be held at the office of our partner in Campbell:

Leavitt Pacific Insurance Brokers  
695 Campbell Technology Parkway, Ste 250  
Campbell, CA 95008

### April Educational Session

This April, we welcome Dr. Ryan Krch to address "Wellness" in the workplace. This session is ideal for employers wishing to find ways to help employees make healthier life choices with regard to fitness and food choices. Healthier employees could influence the bottom line medical costs. Be there – April 29<sup>th</sup> in Campbell at 10:00 AM. You can register here [Wellness Register](#).

### OHR's quarterly Harassment Prevention Training for Managers

As a service to your business we have a quarterly Harassment Prevention Training. Those sessions occur each quarter on the last Thursday of the month at 1:00 PM. Mark your calendars for March, June, September and December. We also do individual sessions for your offices, including Managers and Supervisors and non supervisory employees.

The next OHR Harassment Prevention Training for Managers session is scheduled for June 24<sup>th</sup> at 1:00 pm in Campbell, CA. To register please RSVP to [Harassment Prevention Training](#)

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