

PIERCE LAW GROUP LLP

9100 Wilshire Boulevard
Suite 225, East Tower
Beverly Hills, California
90212-3415

Telephone: (310) 274-9191 Facsimile: (310) 274-9151

Management-side employment law advice for the entertainment industry

Checklist For Terminating Employees: *How & When To Unload A Problem Employee - "Rightful Discharges"*

I. POOR PERFORMANCE DISCHARGE (*The employee just ain't cutting it*)

A. Keep it "NEAT":

Notice of problem or deficiency
Explanation of how to improve
Assistance in trying to improve
Time to improve

B. Ten Questions to Ask Yourself Before a Discharge Occurs:

- (1) Did the employee received a "NEAT" warning of the problem or deficiency?
- (2) Has the "NEAT" warning been documented?
- (3) Has the employee actually received the "Assistance" which was promised or needed?
- (4) Has the employee actually received the "Time" to improve which was promised?
- (5) Did the employee really know his/her job was at risk?
- (6) Did you consider any possible extenuating circumstances which would explain or excuse his/her job performance?
- (7) Has the same action been taken in similar situations in this department?
- (8) Has the same action been taken in similar situations in other departments in the Company (If not, identify valid reason for discrepancy)?
- (9) Will the termination seem fair to co-workers?
- (10) Will the termination seem fair to a jury?

II. RULE INFRACTION DISCHARGE (*News of an employee's conduct makes you fall out of your chair & scream "He did what?!"*)

- A. The Employee Handbook should support the idea that a rule infraction occurred.

B. Ten Questions To Ask Yourself Before Making A Rule Infraction Discharge:

- (1) Do I have ALL the facts?
- (2) Did the employee have the opportunity to tell his version of the story?
- (3) Have I personally interviewed all witnesses and other parties involved?
- (4) Do I have a written statement from all involved?
- (5) Did the employee know about the rule he violated?
- (6) Did I consider all possible extenuating circumstance which would explain or excuse the conduct?
- (7) Has the same action been taken in similar situations in the department?
- (8) Has the same action been taken in similar situations in other departments in the Company?
- (9) Will the termination seem fair to co-workers?
- (10) Will the termination seem fair to a jury?

III. DISCHARGE PROCEDURES (*Making the unpleasant as pleasant as possible*)

A. Utilize The "*Suspension Pending Outcome of Investigation*" Approach -- This will insure a reasoned decision based on all the facts and allows for volatile situations to be defused.

B. Consult with Legal Counsel if you might anticipate that the employee may attempt to file a discrimination or a wrongful termination claim, or if the termination may involve another legal issue.

C. Do not terminate the person on a holiday, birthday, anniversary or other important date, UNLESS a safety issue demands the termination to occur immediately.

D. Make sure all of your paperwork is fully completed. Honestly identify the specific conduct which led to the termination.

E. Conduct a *Security Risk Assessment* -- Is a possible workplace violence scenario likely to erupt from the termination? Is a possible sabotage or theft of company information or products likely to erupt from the termination?

F. Utilize an Exit Interview -- Explain why the termination is warranted, allow employee to express his views; Don't reargue the facts. Plan carefully what you will say: Opening, middle & close. Remain calm. Keep it brief.

G. Tie Up All Loose Ends -- Obtain keys, uniforms, Company property, equipment, etc. Have the employee's final pay check ready immediately.

H. Provide the employee with the opportunity to resign in lieu of firing.

I. Discharge With Dignity -- Avoid unnecessary arguments, attempt to handle the matter quietly and behind closed doors. Remember, bitterness gets companies and individuals sued.

J. Document All Comments and Events Surrounding the Discharge.