

A FORM FOR ALL SEASONS – And Especially For Terminations

By Barbara Cotter, Esq.

Personnel decisions are tough for most managers and supervisors, and especially so when the result is a termination. Delivering the bad news is equally daunting. No matter how gently or sympathetically the message is conveyed, “we don’t need you anymore” is difficult to say.

In light of the anxiety that frequently accompanies a layoff or termination, many managers look to put the decisions behind them as quickly as possible. It is easier, after all, to dwell on positive news.

Notwithstanding the impulse to move beyond a termination, however, managers should be urged to take the time to memorialize the events that led to the termination and the specific event that triggered the termination itself. Absent such writing, a company will have difficulty defending the decision. Memories fade, and become distorted over time. Managers may leave or face terminations themselves. Witnesses to the termination decision inevitably forget critical details.

Ideally, a standardized form should be used to document the decision. The form should direct the decision maker to explain the key facts leading to and causing the termination. The form should require the decision maker to answer three basic questions:

- (1) What are the grounds for the termination?
- (2) What specific facts and circumstances led to the decision? and
- (3) Who is knowledgeable of these facts?

Preprinted forms are useful tools not only because they help to ensure proper documentation, but also because they are user friendly. Most people are accustomed to filling out forms. Answering carefully crafted questions is easier than staring at a blank piece of paper or computer screen.

Moreover, when used on a consistent basis, such forms facilitate proper decision making. They direct managers to justify their decisions. They allow such decisions to be reviewed and monitored by counsel, human resources personnel and/or others in the management structure.

Forms are equally beneficial in connection with personnel actions other than terminations. An “Employee Discussion” form should be used to document any substantive communications regarding performance issues. The form should direct the manager to summarize the basic facts: What was discussed? When? Who was present? What conclusions were reached? Who will follow up and how?

An “incident form” that asks the basic questions (who, what, where, and when) should be used to document a significant event or action.

All such forms should be reviewed with the subject employee and be maintained in his/her personnel file.

In sum, although businesses cannot avoid making difficult personnel decisions, they can at least establish procedures that help guide managers to make the decisions carefully and justifiably. Such procedures include the use of pre-printed personnel forms. ❖