**HR Solutions**

**Performance Management/Termination**

**Employment-At-Will**

* Ohio is an Employment-At-Will state which means that either the employee or employer can terminate employment for any reason that is not contrary to law.
* However, the Ohio Supreme Court has recognized several exceptions to the Employment-At-Will Doctrine. State and Federal Law impose statutory limits that supercede the doctrine.
* An employee who is terminated in violation of statute, public policy, or the terms of an express or implied contract is considered to have been wrongfully discharged. Wrongful discharge complaints brought against employers can result in expensive legal fees as well as back pay, compensatory and punitive damages. There is also the risk of damage businesses reputation & employment brand.

**Best Practices for Avoiding Wrongful Discharge Claims**

* **Follow your Employee Handbook**. Ohio courts have ruled that handbooks can create contractual obligations. If your handbook includes a progressive discipline policy make sure that you review and follow the process outlined in your handbook. Always make sure your handbook and policy changes have been reviewed by an Attorney.
* **Understand Public Policy** **Exceptions** Employers can be sued for a violation of public policy. Examples include firing an employee because they have court ordered child support deductions, voting, serving jury duty, seeking an attorney, or providing truthful testimony that was unfavorable to the employer.
* **Follow Federal and State Antidiscrimination Laws.** Ohio laws are more strict and apply to employers with four or more employees. It is against the law to discriminate against an employee on the basis of race, color, religion, sex, military status, national origin, disability, age, or ancestry. Acts of discrimination can occur in hiring, termination, promotion, and compensation processes.
* **Understand Other Statutory Exceptions**. An employee may not be discharged for:
	+ Exercising rights regarding minimum wage or overtime
	+ Refusing to take a lie detector test
	+ Having a criminal or juvenile record that has been sealed
	+ Engaging in protected union activity under the National Labor Relations Act (NLRA)
	+ Filing a complaint under the Occupational Health & Safety Act (OSHA)
	+ Filing health, retirement, or disability claims that are protected under (ERISA)
* **Document, Document, Document –** The most important step you can take is to provide clear performance expectations and document all performance coaching conversations. Proper documentation will help prove a termination decision was based on performance and not a discriminatory reason. **This document includes a template to document performance conversations.**
* **When in Doubt Consult an Attorney Before Taking Action.** Discrimination and wrongful discharge claims can be expensive. When in doubt it is always best to consult with an employment law attorney before proceeding with a termination decision.

**Progressive Discipline**

* The goal of the progressive discipline process is to change an employee’s behavior to align with expectations.
* Following the discipline process outlined in your employee handbook is key to defending wrongful discharge claims as well as unemployment compensation claims.
* If an employee can reasonably argue they haven’t been provided clear performance expectations and/or had coaching conversations, it is recommended to start the progressive discipline process before moving straight to termination. The exceptions are clear violations of policy like theft, harassment, or violence.
* The best progressive disciplines discussions either lead to improvement or lead an employee to self- discovery that they are not a good fit for the position and might be happier in a different role. It’s a win if the employee finds a new job, resigns, or is terminated feeling like they were treated fairly.

**Best Practices for Documentation**

* Use a consistent form to document conversations
* Documentation should be objective vs. personal. Stay focused on the specific policies violated or goals not achieved. Avoid focusing on perceived attitudes or personal feelings toward the employee. The best way to stay objective is to focus on the impact of behaviors

Example

Emotional - The employee is rude and hard to work with.

Rational – I observed the employee raising their voice to a customer. The behavior resulted in a complaint and a lost policy for the agency.

* Documentation should include clear expectations on the expected performance moving forward.

Examples

 The employee will make 20 sales calls and schedule 2 consultations per week with prospective clients.

 The employee will save a copy of discussion notes in the Policy Admin system 100% of the time.

* Documentation should be clear on what will happen if the employee does not meet their goals (i.e move to next step of the process or termination)
* Be sure to get the employee’s signature/acknowledgement. They don’t have to agree with all of your points, but they should acknowledge the discussion was held. It is always good practice to send the document in email to the employee to verify they received a copy of the documentation

**Termination Discussions**

* If you have followed a sound progressive discipline process the termination discussion should not be a surprise.
* The termination conversation should be short and to the point. Hold firm the decision is final. Its not a time for bargaining or providing additional clarification or justification.
* Make a list in advance of what needs to be collected (computers, keys, credit cards, home equipment)
* Schedule the conversation in a place that offers the most privacy.
* When possible have more than one person witness the conversation.
* Choose a room and situate yourself with easy access to a door in case the conversation escalates
* Use a termination checklist and provide the employee with a termination letter.

**Progressive Discipline Form**

**Date:**

**Employee Name:**

**Progressive Discipline Action (Adjust to match your employee handbook)**

* Verbal Warning
* First Written Warning
* Second or Final Written Warning
* Termination

Management maintains discretion to skip one or all the steps in the process based on severity of the performance concerns.

**Statement of the Performance Concern:**

**Impact of the behavior/performance gap:**

**Corrective Action Steps to Be Taken:**

**Consequences of failure to improve:**

**Support Provided:**

**Employee Feedback/Input:**

Employee Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Supervisor Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_