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Michael S. Lavenant  
1970 - 2012

***The Art and Science of Terminating Employees  
Without Being Sued***

***“Why You Should Consider an EPLI Policy”***

**April, 2015**

***Presented By:***

***San Fernando Valley Location:***

Roxana E. Verano, Esq.  
Jennifer Raphael Komsky, Esq.

***Ventura County Location:***

Christopher L. Moriarty, Esq.  
Marie D. Davis, Esq.

***Guest Speaker: Michele Epstein will speak briefly on EPLI and the  
importance of the right to choose counsel***



***This program has been approved for 1.75 hours (California)  
recertification credit hours toward PHR, SPHR & GPHR through the  
HR Certification Institute.***

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met the HR Certification Institute's criteria to be pre-approved for  
recertification credit."***

*The attached material must not be considered legal advice. The sample forms and policies are for educational purposes only. We strongly recommend that you consult with legal counsel before adopting or implementing any of the attached sample forms and policies so as to avoid potential liability.*

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# LANDEGGER BARON LAW GROUP, ALC

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Exclusively Representing Employers

January, 2015

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Re: Employment Practice Liability Insurance Update:  
The Importance of Choice of Counsel

Dear Clients and Friends:

In 2015 we will continue to see an increase in litigation in the areas of sexual harassment, disability discrimination, failure to reasonably accommodate employees with disabilities, violations of FMLA/CFRA, wrongful termination in violation of public policy (whistleblowers), and wage and hour claims including class action cases. Many of the discrimination cases are frivolous at best. In the wage and hour class action cases, opposing counsel prey on our clients for technical violations. What happens to all of these cases? Are these cases decided by judges and juries? No. They are settled. In my experience even the most frivolous discrimination case ends in a settlement between \$30,000 and \$60,000. The wage and hour cases settle for substantial sums. Why are these cases settled? Sometimes, employers do not want to risk their fate before a jury, or it is cheaper to settle than pay defense fees. These things are true in many cases, but not all. We are proponents of mediation and settlement when our clients have legal exposure and when, in our opinion, the risk of a verdict against our client is likely.

The vast majority of employment cases are covered by Employment Practices Liability Insurance policies and insurance carriers would rather settle for a reasonable sum than spend money on litigation defense, even if the case has no merit. The end result, in my opinion, is that this approach often increases frivolous litigation. In one case, one of our clients agreed to a \$100,000 settlement even though the client did nothing wrong. We were prepared to try the case, but the client was facing the insurance carrier's "hammer clause" whereby the carrier could get out of the case, and leave the client to fight on its own, if the client did not consent to the settlement. Our client made the difficult business decision to settle. Now we wait for the same attorney to look for new cases against our client. Would you have settled? The choices are difficult.

We value our relationship with many of the Employment Practices Liability Insurance carriers. We are panel counsel for several carriers and approved by many more. Many of the carriers understand employment litigation and are truly partners with our clients. There are other carriers that

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simply have acted in bad faith on claims. Several of our clients with claims were disappointed to discover that their policies were not renewed after having a claim that was costly in terms of settlement and defense costs. The solution is partnering with a responsible carrier at the beginning of the case to determine the potential exposure, developing a litigation budget and a strategy for early resolution by mediation. It is critical to determine very early in the litigation the amount of covered exposure v. uncovered exposure. This happens frequently when there are discrimination causes of action and also alleged wage and hour violations such as overtime, rest periods, meal periods and related penalties. When there are wage and hour violations, there may be coverage for defense but not the wages and penalties resulting from the alleged violations. Employers must be prepared to participate in the settlement beyond their deductible for these uncovered causes of action.

Do we recommend Employment Practices Liability Insurance? Yes. We also believe that our clients deserve to have their long term interests represented by counsel of their choice and not the attorneys assigned by the carrier. Most employers do not understand that they give up that choice because of policies that are "duty to defend" policies, which allow the carrier to assign defense counsel from their panel list. Therefore, we recommend that our clients have "choice of counsel" policies, or ask for a Special Endorsement to have our firm designated as counsel in the event of a claim. In the last year, several of our long term clients found themselves with major claims and our firm could not represent them in litigation because of the terms of the policy.

I was admitted to the California Bar on November 29, 1978. After practicing employment law for 35 years, the landscape has changed, and not for the better for employers. New and creative approaches to resolution of employment disputes, including termination of employees, must be adopted. Our focus must be the prevention of lawsuits and, in the event of litigation, strategies to discourage future claims. As always, I am available to discuss these issues with you and your trusted insurance brokers.

Sincerely,



Alfred J. Landegger

## **RULES OF DISCIPLINE**

1. **FAIRNESS.** Ask yourself the following question: Is it fair to discipline this employee based upon the quality and quantity of the facts before you?
  
2. **CONSISTENCY.** In the past has the Company imposed the same discipline in similar situations?
  
3. **UNIFORMITY.** The Company has an employee handbook, so employees know what is to be expected of them and what the Market provides for them for benefits. As a supervisor you must promote the understanding of such policies to each employee.  
  
Examples: Excessive absenteeism.  
Insubordination.
  
4. **HONESTY.** During discipline it is essential that you are candid and direct with the employee regarding performance and performance appraisals. Never tell any employee they are being laid off when performance is the real issue.
  
5. **BE OBJECTIVE.** To demonstrate validity and legality of actions.
  
6. **FOLLOW RULES 1, 2, 3, 4 and 5.** Be in a position to demonstrate all of the above. Imagine yourself in the witness chair. This is what you want to portray to the judge or the jury.

## **REGLAS DE DISCIPLINA**

**IMPARCIALIDAD.** Pregúntese a sí mismo la siguiente pregunta: ¿Es justo disciplinar a este empleado basado en la calidad y la cantidad de hechos que usted está considerando?

**CONSISTENCIA.** ¿En el pasado, ha impuesto el Mercado la misma disciplina en situaciones similares?

**UNIFORMIDAD.** El Mercado tiene un manual para empleados para que los empleados sepan lo que se espera de ellos y lo que el Mercado les ofrece en forma de beneficios. Como supervisor, usted debe promover el entendimiento de esas pólizas con cada empleado.

Ejemplos: Faltas excesivas  
Insubordinación

**HONESTIDAD.** Durante la disciplina, es esencial que usted sea franco y directo con el empleado con respecto al rendimiento de trabajo del empleado y la evaluación de ese rendimiento. Nunca le diga a un empleado que se le está dando “lay off,” cuando la verdadera razón es la calidad o el rendimiento de trabajo del empleado.

**SEA OBJETIVO.** Para demostrar validez y legalidad de acción.

**SIGA LAS REGLAS 1, 2, 3, 4 y 5.** Póngase en la posición de poder demostrar todas las reglas de arriba. Imagínese que usted está atestiguando. Estas reglas es lo que usted quiere poder demostrar a un juez o a un jurado.

ACKNOWLEDGMENT OF RECEIPT

I, \_\_\_\_\_, acknowledge that I have received  
(print name)

copies of the following documents:

Initials

\_\_\_\_\_ Federal Form W-4

\_\_\_\_\_ State Form DE-4 Employees Withholding Allowance Certificate

\_\_\_\_\_ Form I-9

\_\_\_\_\_ Workers' Compensation Benefits Statement and Physician Election Form  
(English and Spanish)

\_\_\_\_\_ State Disability Insurance Booklet-DE2515

\_\_\_\_\_ EDD For Your Benefit Booklet-DE2320

\_\_\_\_\_ California Paid Family Leave-DE2511  
(English and Spanish)

\_\_\_\_\_ Department of Fair Employment and Housing Sexual Harassment Pamphlet  
(English and Spanish)

\_\_\_\_\_ Company's Sexual Harassment Policy with Acknowledgment

Date: \_\_\_\_\_

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

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## Discipline and Employee Separations

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### *Discipline and Employee Separations*

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#### **I. At-Will Employment**

- A. Presumption in California (Labor Code §2922)
- B. Overcoming presumption of employer's right to terminate at will
  - 1. Statutory limitations on the employer's right to terminate
    - a. California Fair Employment and Housing Act ("FEHA") (Govt Code §§12900–12996) prohibits covered employers from discharging or disciplining employees because of their:
      - i. race
      - ii. religious creed
      - iii. color
      - iv. national origin
      - v. ancestry
      - vi. physical or mental disability
      - vii. medical condition
      - viii. marital status
      - ix. sex
      - x. age
      - xi. sexual orientation (Govt. Code §12940(a)), or
      - xii. pregnancy, childbirth, or related medical conditions (Govt. Code §§12943, 12945)
    - b. "Whistleblower" statutes prohibit covered employers from discharging or disciplining employees for reporting, among other things:
      - i. Discriminatory conduct (Govt Code §12940(h))
      - ii. Regulatory violations or illegal activity (Labor Code §1102.5)
      - iii. The employer's submission to the government of a false or fraudulent claim for payment or other fraudulent records (Govt Code §12653)
      - iv. Unsafe working conditions (Labor Code §§6310, 6312)

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### *Discipline and Employee Separations*

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- v. Industrial injuries (Labor Code §132a), and
    - vi. Patient abuse (Govt Code §12940(e))
  - c. California's Labor Code also protects employees from discipline or discharge because of
    - i. Jury duty (Labor Code §230), and
    - ii. Political activity (Labor Code §§1101, 1102)
- 2. Violation of public policy
  - a. A "fundamental" public policy expressed in a statute or a constitutional provision must be at stake
  - b. Policy must benefit public at large, rather than an individual employee or employer
  - c. Policy must apply to the defendant employer
  - d. Retaliatory terminations deemed to violate public policy
    - i. Termination because the employee refused to violate the law
    - ii. Termination because the employee was performing a statutory obligation
    - iii. Termination because the employee exercised a statutory right or privilege (*Note: an employer may not demote, suspend, or discharge an employee for lawful conduct during non-working hours away from the employer's premises (Labor Code §96(k).)*)
    - iv. Termination because the employee reported an alleged violation of a statute of public importance
- 3. Contractual limitations
  - a. Express contracts to terminate only for good cause
    - i. "Good cause" for termination is defined as a termination for a "fair and honest cause or reason, regulated by the good faith" of the employer.
    - ii. May be oral or written
  - b. Implied-in-fact contract not to terminate the employment relationship

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### *Discipline and Employee Separations*

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except for good cause

- i. The employer's personnel policies and practices
  - ii. The employee's longevity of service
  - iii. Other communications or actions by the employer assuring the employee of continued employment
  - iv. The practices of the industry in which the employee is engaged.
- c. Covenant of good faith and fair dealing

## **II. Disciplinary Actions**

### A. Handbook references

1. Disciplinary action may include, but is not limited to, the following:
  - a. Verbal warning
  - b. Written warning
  - c. Unpaid leave/suspension
  - d. Probationary period
  - e. Reassignment/demotion
  - f. Transfer
  - g. Termination
2. The choice of any disciplinary action is within the complete discretion of the company and will not alter the employee's at-will employment relationship with the company

### B. Uniformity

1. Try to be consistent

### C. Document, document, document

1. It is absolutely essential that there is sufficient documentation in the file to support a termination
2. Oral warnings should be memorialized

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### *Discipline and Employee Separations*

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- a. At the very least, document that oral warnings were given on particular dates
  3. Written warnings
    - a. Ask the employee to sign the warning. If the employee refuses to sign, supervisor should sign the memo and note, "refused to sign" and date it.
  4. Catch-up memos
    - a. May be used to rehash the prior 6 months or more of oral warnings that were never documented
  5. Supervisor/co-worker memos
    - a. Have supervisors memorialize the problems with a particular employee.
    - b. Co-worker memos and testimony are often effective at trial to counter an employee's claim of discrimination.
- D. Leaves of absence and disciplinary action
  1. Employers may discipline despite an employee threatening or actually being on a leave of absence
  2. Workers' compensation claims are often filed immediately prior to or after disciplinary action is implemented
    - a. Send the employee who is out on leave a letter indicating that disciplinary action was contemplated and that the issues will be dealt with when the employee returns from the leave
- E. Demotion
  1. Usually an effective alternative to termination
  2. An offer of a lesser position may make the company look more compassionate
  3. Employee may reject offer and resign
- F. May include a pay cut Probation
  1. Prepare a 5-step memo
    - (1) Identify specific incident or situation
    - (2) Identify the corrective steps required

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### *Discipline and Employee Separations*

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- (3) Suggest methods for achieving these goals
  - (4) Specify the time frame for improvement
    - Include language that you need to see immediate and sustained improvement during the probationary period, or it will end early and termination will occur
  - (5) Specify possible result
    - Termination if no sufficient improvement
    - Extension of probation
    - Off probation
2. Include language at the end of the memo noting that “putting an employee on probation (or any other disciplinary action) does not change the at-will employment relationship between an employee and the company.”

### **III. Termination**

- A. If it's a termination, don't call it a “layoff,” especially if only one employee is affected
- B. Severance Agreements
  1. In exchange for a release of all potential claims
- C. Checklist of items to consider
  1. Have all company procedures been followed?
  2. Wages owed? (Same day vs. 72 hours)
  3. Paid time off, vacation or sick leave
  4. Written employment contract
  5. Advances, loans, negative vacation bank
  6. Stock options
  7. Pension plan or “golden parachute”
  8. Is the employee also an officer or director?
  9. Unpaid expenses, commissions, bonuses or other perks?

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### *Discipline and Employee Separations*

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10. Deductions from final check
  - a. Loans
  - b. Advances
  - c. Overpayment
  - d. Unreturned equipment
11. Discrimination, disability or whistle-blower issues
12. Workers' compensation
13. Severance package & release
14. Consistent with prior reviews? Is review now due?
15. Sufficient documentation?
16. Confidentiality or non-compete agreement?
  - a. Does employee have proprietary information regarding the company?
  - b. In California, covenants not to compete are generally prohibited
  - c. Alternatives:
    - i. Choice-of-law provisions
    - ii. Negative covenants
      - (a) Employee may be prohibited by contract from working for anyone other than his former employer
      - (b) Employee's services must have a "special, unique, unusual, extraordinary, or intellectual character" giving them "peculiar value." (Civil Code §3423(e))
    - iii. Financial disincentives
    - iv. Non-solicitation covenants
      - (a) An employee non-solicitation covenant prohibits a former employee from soliciting his former co-workers from leaving their jobs to work for his or her new employer.

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- (b) A customer non-solicitation covenant prohibits a former employee from soliciting his former employer's customers for their business.
    - v. Confidentiality agreements
      - (a) A former employee may not disclose or use his employer's (past or present) trade secrets. (The Uniform Trade Secrets Act, Civil Code §§3426–3426.11)
  - 17. Company property retrieval (e.g. company car, computer, etc.)
  - 18. Damage control with customers/vendors
  - 19. Security issues
    - a. Retrieval of personal belongings
    - b. Change locks, passwords, etc. and prevent access to modem
    - c. Computer files
    - d. Security guard
- D. Exit interviews
  - 1. Timing
  - 2. Two people present (15 – 20 min.)
  - 3. Document the meeting
  - 4. Present basic reasons for termination and any supporting documents
  - 5. Determine if new job accepted and reasons for departure (if voluntary termination)
  - 6. Sign confidentiality acknowledgment
  - 7. Final pay and benefits
  - 8. Notifications
  - 9. Escort to office
  - 10. Return of company equipment including files
  - 11. Personal items

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### *Discipline and Employee Separations*

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12. Escort off premises
  13. Hope for the best!
- E. Post-termination issues
1. References
  2. Employee return to site to visit friends, etc.
  3. Retention of records
  4. Eligibility for rehire
  5. Compliance with terms of severance agreement
  6. Post-termination benefit administration (COBRA, retirement benefits, etc.)

#### **IV. Layoffs/Reductions in Force**

- A. Planning a Reduction in Force (“RIF”)
1. Do not substitute a “layoff” for a termination for cause
    - a. If it's a job elimination *and* performance issue, reference both in any relevant documents
  2. Consider alternatives to layoff and termination in exchange for a release of all claims
    - a. Early retirement plans
    - b. Severance plans
    - c. Enhanced benefit plans
  3. There is no prohibition against offering a more favorable severance plan to employees who sign releases or waivers of claims
  4. Establish neutral criteria for termination
    - a. Merit
    - b. Versatility
    - c. Seniority
    - d. Salary



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### *Discipline and Employee Separations*

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- e. Prohibited criteria
  - i. Age
  - ii. Sex, race, color, religion, or national origin
  - iii. Pregnancy
  - iv. Marital status
  - v. Sexual orientation
  - vi. A pension about to vest
  - vii. Disability
  - viii. Medical condition
  - ix. Injury in the course of employment or filing a claim for workers' compensation
  - x. The employee's exercise of a protected right, such as filing a discrimination claim or unfair labor practice charge, or reporting a suspected violation of the law.

#### B. Worker Adjustment and Retraining Notification Act ("WARN") (29 USC §§2101 - 2109)

- 1. Background
  - a. Enacted in 1988 in response to the great number of plant closures and mass layoffs through the 1980s
  - b. Provides employees, their families and communities to prepare for the plant closure of mass layoff by requiring the employer to provide advance notice of the decision
  - c. California's WARN statute is analogous to the federal WARN
    - i. California WARN defines a mass layoff as a layoff of 50 or more employees during a 30-day period, regardless of whether the layoff involves 33% of active employees
- 2. Who is covered?
  - a. Does not apply to federal, state or local governments and federally recognized Indian tribal governments

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### *Discipline and Employee Separations*

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- b. Employers that employ 100 or more employees (excluding part-time employees *unless* they work an aggregate of 4000 or more hours per week)
- 3. Triggering events
  - a. Plant closure
    - i. The permanent or temporary shutdown of a single site of employment that affects 50 or more employees
  - b. Mass layoff
    - i. Federal definition
      - (a) A reduction in force that results in an employment loss at the single site of employment during any 30-day period, for (1) at least 33% of the employees and at least 50 employees; or (2) at least 500 employees.
    - ii. California definition
      - (a) A layoff during any 30-day period of 50 or more employees at a covered establishment (no 33% layoff threshold)
- 4. Notice
  - a. Required recipients
    - i. Affected employees
    - ii. Employment Development Department
    - iii. Local Workforce Investment Board
    - iv. Chief elected official of each city and county government within which the termination, relocation or mass layoff occurs
  - b. Contents
    - i. The name and address of the employment site
    - ii. A statement of whether the plant closing or mass layoff is permanent or temporary
    - iii. The expected date or a 14-day period in which the terminations or layoffs are expected to occur

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### *Discipline and Employee Separations*

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- iv. An indication of whether bumping rights exist
      - v. The names and job titles of employees who will be affected, and
      - vi. The name and telephone number of a company official to contact for further information
    - c. Timing
      - i. At least 60 calendar days in advance of the first individual termination that is part of the plant closing or mass layoff
    - d. Service
      - i. Any reasonable means of delivery (e.g. first class mail, personal delivery, insertion into employee pay envelopes)
  - 5. Liability for violations
    - a. WARN provides stiff penalties for noncompliance
    - b. Employer may be forced to pay wages and benefits to each aggrieved employee for each day of violation, up to a maximum of 60 work days.
    - c. Failure to provide notice to the local unit of government subjects the employer to a civil penalty of up to \$500 per day
    - d. Attorneys' fees
- C. Continuing health insurance benefits
  - 1. The Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA")
    - a. Employers employing 20 or more employees must offer an election of continuing health care coverage to qualified beneficiaries when there is a "qualifying event"
  - 2. Cal-COBRA
    - a. Provides up to 36 months of COBRA coverage after the exhaustion of the 18-month coverage period provided under federal law
    - b. For employers not subject to federal COBRA, Cal-COBRA provides a 36-month coverage period for qualified beneficiaries, including the employee.

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### *Discipline and Employee Separations*

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- D. National Labor Relations Act (“NLRA”) compliance
  - 1. Special issues arise when the workforce involved in a plant closing, plant relocation or RIF is unionized
  - 2. Employer may have statutory duty to bargain with the union over its decision or the effects of its decision and whether it must satisfy any other obligations under its collective bargaining agreement
- E. Bankruptcy issues
  - 1. RIF often the result of financial difficulties
  - 2. Consult a specialist in bankruptcy law

# Record of Supervisory Discussion

.....  
Employee Name

.....  
Position

.....  
Dept

.....  
Supervisor

.....  
Date of occurrence

Describe the problem:

Frequency of the problem:     1st time     2nd time     3rd time     more than 3 times

Describe employee's response:

Action taken:    Discussion only     Verbal reprimand    Written reprimand  
                   Suspension: \_\_\_\_\_ days                     Discharge

Explain reason for action taken:

Further action(s) of a similar nature will result in additional disciplinary action up to and including termination of employment.

.....  
Supervisor's signature

.....  
Date

.....  
2<sup>nd</sup> level Supervisor's signature

.....  
Date

I have read and received a copy of this memo.

.....  
Employee's signature

.....  
Date

# Record of Disciplinary Action

.....  
Employee Name

.....  
Position

.....  
Dept

.....  
Supervisor

.....  
Date of occurrence

**Describe the problem:**

Frequency of the problem:     1st time     2nd time     3rd time     More than 3 times

**Describe employee's response:**

Action taken:  Written reprimand

Suspension: \_\_\_\_\_ days

Discharge

**Explain reason for action taken:**

Further action(s) of a similar nature will result in additional disciplinary action up to and including termination of employment.

.....  
Supervisor's signature

.....  
Date

.....  
2nd level Supervisor's signature

.....  
Date

I have read and received a copy of this memo.

.....  
Employee's signature

.....  
Date

**PRE-TERMINATION OF EMPLOYMENT  
CONSULTATION FORM**

To: LANDEGGER BARON LAW GROUP  
A Law Corporation  
15760 Ventura Boulevard  
Suite 1200  
Encino, California 91436  
(818) 986-7561  
[www.landeggeresq.com](http://www.landeggeresq.com)

Send: By Facsimile to (818) 986-5147 or  
By e-mail to [alfred@landeggeresq.com](mailto:alfred@landeggeresq.com)

From: Name of Company: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

This communication, including all attachments, is protected by the attorney client privilege and/or work product doctrine. The purpose of this communication is to seek a preliminary legal opinion concerning the potential termination of an employee. The review of this Form, the attached documents and our preliminary opinion will be at NO CHARGE to your company. This is being provided to you as a service of \_\_\_\_\_.

Landegger Baron Law Group will advise you if the termination creates a potential for legal exposure and whether you should seek additional legal advice. Our goal is to provide you with advice so as to avoid employment related claims. Landegger Baron Law Group cannot advise you whether this is a reportable event to your Employment Practices Liability Insurance carrier or Directors and Officers Insurance carrier. If this matter is beyond what we can do in this free consultation, we will so advise you. If you require additional legal advice, Landegger Baron Law Group can provide legal advice at our normal billing rates.

**Pre-Termination of Employment Consultation Form Cont.**

Please complete the attached form in its entirety. If you send an incomplete form, it will be returned to you prior to receiving a consultation. You will receive a return call as soon as possible from an attorney with Landegger Baron Law Group. We request that you submit this form at least twenty-four hours before expecting advice by telephone.

This form is not to be used to seek advice concerning any employee's complaint of harassment, including sexual harassment, and discrimination. If you receive such a complaint, Landegger Baron Law Group can assist you at our normal billing rates.

**PRE-TERMINATION OF EMPLOYMENT CONSULTATION FORM**

1. Name of Employee: \_\_\_\_\_

2. Date of Hire: \_\_\_\_\_

3. Current Position: \_\_\_\_\_

4. Rate of Pay: \_\_\_\_\_

5. State in detail the reason that you wish to terminate this employee:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Do you think that this Employee is likely to file a legal claim? If so, why?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Is the employee in any protected class? Please identify each applicable category and provide as much detail as is available.

Age (over 40): \_\_\_\_\_

Race: \_\_\_\_\_

Color: \_\_\_\_\_

National Origin: \_\_\_\_\_

Religion: \_\_\_\_\_

Sex: \_\_\_\_\_

Physical or Mental Disability: \_\_\_\_\_

HIV/AIDS: \_\_\_\_\_

Sexual Orientation: \_\_\_\_\_

Gender Identity: \_\_\_\_\_

Medical Condition (*cancer or genetic characteristics*): \_\_\_\_\_

Pregnancy Disability: \_\_\_\_\_

Marital Status: \_\_\_\_\_



**PRE-TERMINATION OF EMPLOYMENT CONSULTATION FORM**

8. Has the employee reported a work-related injury or have a record of a Workers Compensation claim?

Yes: \_\_\_\_\_ No: \_\_\_\_\_

*If yes, please attach available documents including DWC 1 Forms and doctor's notes.*

9. Has the employee requested or taken time off for medical reasons, military, Pregnancy Disability Leave or Family and Medical Care Leave?

Yes: \_\_\_\_\_ No: \_\_\_\_\_

*If yes, please attach available documents including LOA forms and doctor's notes.*

10. Has the employee received prior verbal or written counseling?

*If so, please attach.*

Yes: \_\_\_\_\_ No: \_\_\_\_\_

11. Has the employee violated a written rule or policy contained in your employee handbook? *If so, please attach a copy of the policy.*

Yes: \_\_\_\_\_ No: \_\_\_\_\_

12. Do you have an oral or written agreement with the employee concerning any term or condition of employment?

Yes: \_\_\_\_\_ No: \_\_\_\_\_

13. Do you have a formal or informal progressive discipline policy?

*If so, please attach or describe.*

Yes: \_\_\_\_\_ No: \_\_\_\_\_

14. Are there any additional facts or factors that are relevant to this proposed termination?

Yes: \_\_\_\_\_ No: \_\_\_\_\_

*Please state the additional facts or factors.*

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15. Have you considered a Final Written Warning, demotion, transfer or further training? If not, why? \_\_\_\_\_

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**PRE-TERMINATION OF EMPLOYMENT CONSULTATION FORM**

16. What type of discipline has been imposed on other employees involved in similar circumstance(s)? \_\_\_\_\_

I agree to the above terms and conditions and verify all of the above information is accurate and complete.

\_\_\_\_\_  
[Signature of person sending form]

**PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE**

**DISCRIMINATION ALLEGATION/EVENT REPORTING FORM**

**TO:** Alfred J. Landegger, Esq.  
**FAX NO.** (818) 986-5147  
**COMPANY:** LANDEGGER BARON LAW GROUP  
**FROM:** \_\_\_\_\_  
**DATE:** \_\_\_\_\_  
**CC:** \_\_\_\_\_

This form must be completed by the Branch Manager, Supervisor or by the corporate Human Resource Department no later than the next business day after any allegation of harassment or discrimination in the workplace.

**1 Please complete the attached First Report of Event or Circumstance. When interviewing the employee, do not feel compelled to ask the questions in the same order. Feel free to ask additional questions. Always be a good listener and take accurate notes. Never label the behavior, statement or allegation as “sexual harassment” or “discrimination”. Document the words used by employee.** No further investigation is to take place until instructed to do so by \_\_\_\_\_ and Landegger Baron Law Group;

**2 Attach a copy of the personnel file of the employee making the allegation of harassment or discrimination; and**

**3 Attach the personnel file of the employee(s) against whom the allegation of harassment or discrimination has been made.**

If you have any questions concerning this Discrimination Allegation/Event Reporting Form, or the attached First Report of Event or Circumstance, please contact Alfred J. Landegger, Esq. at (818) 986-7561.

**FIRST REPORT OF EVENT OR CIRCUMSTANCE**

**Date:** \_\_\_\_\_

1. Name of Employee Being Interviewed: \_\_\_\_\_

2. Name of Interviewer: \_\_\_\_\_

3. Name Facility or Location: \_\_\_\_\_

4. Tell Me What Happened: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Who was involved? \_\_\_\_\_

6. When did the incident(s) happen? \_\_\_\_\_

7. Where did the incident(s) happen? \_\_\_\_\_

8. Were there any other incident(s)? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

9. How did this incident make you feel? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. Was your work affected? \_\_\_\_\_

11. Was this the first time this had happened? \_\_\_\_\_

**(NOTE: Attach additional documentation as necessary.)**

**FIRST REPORT OF EVENT OR CIRCUMSTANCE**

**Page 3**

12. Were there any previous incidents of inappropriate behavior? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Have you kept any records, such as written notes, tape recordings or anything else?  
\_\_\_\_\_  
\_\_\_\_\_

**(If so, please attach.)**

14. Do you know of any other employee(s) who had similar experiences? \_\_\_\_\_  
Who: \_\_\_\_\_  
When: \_\_\_\_\_

15. Have you discussed this with anyone at work? \_\_\_\_\_  
Who: \_\_\_\_\_  
When: \_\_\_\_\_

16. Have you discussed this with anyone outside of work? \_\_\_\_\_  
Who: \_\_\_\_\_  
When: \_\_\_\_\_

17. Did you participate in the incident? \_\_\_\_\_

**(NOTE: Attach additional documentation as necessary.)**

**FIRST REPORT OF EVENT OR CIRCUMSTANCE**

**Page 4**

18. If yes, tell me how you participated: \_\_\_\_\_

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19. How would you describe your relationship with the employee about whom you are complaining? \_\_\_\_\_

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20. Are there any other issues we should discuss? \_\_\_\_\_

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21. Were any other facts or other information that you think I should know? \_\_\_\_\_

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22. Who do you think I should talk to? \_\_\_\_\_

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**(NOTE: Attach additional documentation as necessary.)**

**FIRST REPORT OF EVENT OR CIRCUMSTANCE**

**Page 5**

23. Do you have any suggestions as to how best to resolve the situation? \_\_\_\_\_

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\_\_\_\_\_  
Type/Print Name of Person  
Conducting Interview

\_\_\_\_\_  
Signature of Person Conducting Interview

Date: \_\_\_\_\_

**(NOTE: Attach additional documentation as necessary.)**