

EMPLOYMENT,
LABOR &
WORKERS'
COMPENSATION

ADVICE
SOLUTIONS
LITIGATION

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A L A W C O R P O R A T I O N

“THE BIGGEST MISTAKES EMPLOYERS MAKE AND END UP WITH A LAWSUIT”

Employment Law Workshop

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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 to avoid potential liability.

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Employment Practices Liability Insurance/Choice of Defense Counsel and Other Issues

For many years, I have attended the annual American Conference Institute Employment Practices Liability Insurance conference to meet with the insurance carriers and panel counsel. The issues and challenges facing our clients that purchase Employment Practices Liability Insurance are significant.

It is no surprise that California leads the nation in employment litigation, including wage and hour class actions. Several insurance carriers have left the market, others have left California, deductibles have increased, premiums have shot up 100% for a new policy and 50% for a renewal policy. Many companies find that the carrier will not renew if they have had even a single claim.

The relationship between the company and the carrier should be a partnership designed to avoid claims and resolve claims when appropriate. More frequently, the company's goal in litigated claims is different from the carrier. More frequently, carriers are willing to settle frivolous claims for substantial sums to the dismay of our clients. As long as the settlement is less than the cost of defense, then the carrier may wish to settle. However, not all carriers are alike. There are good carriers that back up our clients with a vigorous defense and there are other carriers that have a more shortsighted approach to claims - settle for less than the cost of defense even if the case is frivolous. Our firm has partnered with and is panel counsel for many carriers that look at the relationship between the company, the carrier and defense counsel as a partnership. Many other carriers approve us on a case by case basis because of our reputation and creative approaches in litigation.

In the last year our firm has had many successes, including (1) prevailing in a judge trial for violation of state and federal family care leave, (2) the granting of a motion for summary judgment in a complex case alleging national origin, age and hostile work environment claims, (3) dismissal of a frivolous discrimination case by termination sanctions, and (4) a plaintiff agreed to dismiss a frivolous sexual harassment lawsuit after the employee's first day of deposition. Not a penny was paid to plaintiff. In many other cases, we have negotiated reasonable settlements when there was significant potential exposure, including many dangerous wage and

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hour class action cases. Our firm is very clear that we represent our client the employer and not the insurance carrier who may have a different goal.

In the last year, many of our clients have been sued by former employees for frivolous claims only to find out that our firm could not represent them. Clients and their insurance brokers based their decisions on coverage and price but failed to consider choice of counsel. Choice of counsel is essential if there is to be that successful relationship between company, carrier and defense counsel. Employment Practices Liability Insurance policies are usually "duty to defend" policies, which means that the carrier will choose defense counsel. If our firm is not on the panel list, then the client will have to ask permission for our firm to handle the claim. The better practice is to request our firm by Special Endorsement to the policy at the time of purchase or renewal.

We encourage you to share this newsletter with your trusted insurance brokers so that we can continue to work together in this litigious environment. Remember, if you want us to help you with your legal claims, please ask for our firm to be designated as counsel in the event of a claim by Special Endorsement.

By: Alfred J. Landegger, Esq.

EMPLOYEE RELATIONS POLICY WITH ACKNOWLEDGMENT

A. POLICY AGAINST DISCRIMINATION.

_____ (the "Company") is committed to providing a work environment that is free of discrimination. In keeping with this commitment, the Company maintains a strict policy prohibiting unlawful discrimination. This policy applies to all employees of the Company, including supervisors and non-supervisory employees. The policy also, applies to non-employees of the Company including clients, customers, vendors and any other person doing business with the Company.

All aspects of employment with the Company will be governed on the basis of merit, competence and qualifications and will not be influenced in any manner by an individual's race, ancestry, color, religion, national origin, marital status, sex (including sexual harassment and gender identity), sexual orientation, disability (physical or mental including HIV/AIDS diagnosis), pregnancy, medical condition (cancer and genetic characteristics), age or exercising the right to any legally provided leave of absence in the application of any policy, practice, rule or regulation.

All decisions made with respect to recruiting and hiring, evaluations and promotions for all job classifications will be based solely on individual qualifications as related to the requirements of the position. Likewise, all other personnel matters such as compensation, benefits, transfers, lay offs, training, educational opportunities and programs will be administered free from any illegal discriminatory practices.

B. POLICY AGAINST HARASSMENT, INCLUDING SEXUAL HARASSMENT.

The Company is also committed to providing a work environment that is free of harassment, including sexual harassment.

Sexual harassment includes:

1. Unwanted sexual advances;
2. Offering employment benefits in exchange for sexual favors;
3. Making or threatening reprisals after a negative response to sexual advances;
4. Visual conduct: leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters;
5. Verbal conduct: making or using derogatory comments, epithets, slurs, and jokes;

6. Verbal sexual advances or propositions;
7. Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations; and
8. Physical conduct: touching, assault, impeding or blocking movement.

C. COMPLAINT AND INVESTIGATION PROCEDURE.

Any form of discrimination or harassment, including sexual harassment, is absolutely prohibited. Any incident of possible discrimination or harassment should be brought immediately to the attention of the Human Resources Department of the Company which will thoroughly investigate the matter in confidence. After reviewing all the evidence, the Company will make a determination concerning whether reasonable grounds exist to believe that harassment has occurred.

Disciplinary action, up to and including discharge, will be taken against any employee who is found to have engaged in harassment.

No employee shall be subjected to any form of retaliation for reporting any violation of this policy truthfully and in good faith.

HARASSMENT BY NON-EMPLOYEES.

In addition, the Company will take all reasonable steps to prevent or eliminate sexual harassment by non-employees including customers, clients and suppliers who are likely to have workplace conduct with our employees.

**EMPLOYEE RELATIONS POLICY ACKNOWLEDGMENT
EMPLOYEE RELATIONS POLICY ACKNOWLEDGMENT**

I have read and received a copy of the Company's Employee Relations Policy, including the policies against discrimination and harassment, including sexual harassment, and fully understand my obligations and responsibilities as outlined therein.

Signed: _____ Date: _____

Signed: _____ Date: _____

Witness: _____ Date: _____

POLÍTICA DE RELACIONES DE EMPLEADOS CON RECONOCIMIENTO

A. POLÍTICA CONTRA LA DISCRIMINACIÓN

_____ (la (Compañía”) está comprometida a proveer un ambiente libre de discriminación. Para cumplir con este compromiso, la Compañía mantiene una política estricta prohibiendo la discriminación ilegal. Esta política se aplica a todos los empleados de la Compañía, incluyendo supervisores y empleados que no son de supervisión. La política también se aplica a personas que no son empleadas por la Compañía, incluyendo clientes, suministradores y cualquier otra persona que tenga contacto de trabajo con la Compañía.

Todo aspecto de empleo con la Compañía será gobernado a base de mérito, aptitud y capacidades y no será influenciado de ningún modo por raza, ascendencia, color, religión, origen nacional, estado civil, sexo (incluyendo acoso sexual e identidad de género), embarazo, orientación sexual, incapacidad (física o mental incluyendo diagnóstico de HIV/SIDA), condición médica (cáncer y características genéticas), edad o por ejercer el derecho a cualquier ausencia legal en la aplicación de cualquier política, práctica, regla o regulación.

Todas las decisiones hechas acerca de reclutamiento y empleo, evaluaciones y promociones para todas las clasificaciones de trabajo serán basadas solamente en las capacidades individuales relacionadas a los requisitos de la posición. Igualmente, todos los demás asuntos del personal como compensación, beneficios, transferencias, despido temporal, entrenamiento, oportunidades y programas educativos serán administrados libre de cualquier práctica discriminatoria ilegal.

B. POLÍTICA CONTRA EL HOSTIGAMIENTO, INCLUYENDO ACOSO SEXUAL

La Compañía también esta comprometida a proveer un ambiente de trabajo libre de hostigamiento, incluyendo acoso sexual.

Acoso sexual incluye:

1. Avances sexuales no deseados;
2. Ofrecer beneficios de empleo a cambio de favores sexuales;
3. Hacer o amenazar de represalias después de recibir una respuesta negativa a un avance sexual;
4. Conducta visual: mirada de reojo lasciva; hacer gestos sexuales; desplegar objetos o retratos, caricaturas o carteles sexualmente sugestivos;
5. Conducta verbal: hacer o usar comentarios, epítetos, calumnias o chistes derogatorios;
6. Avances o proposiciones sexuales verbales;
7. Abuso verbal de una manera sexual, comentarios gráficos verbales acerca del cuerpo de un individuo, palabras sexualmente degradantes usadas para describir a un individuo, cartas, notas o invitaciones obscenas o sugestivas; y
8. Conducta física: tocar, asaltar, impedir u obstruir el movimiento.

C. PROCEDIMIENTO DE QUEJA E INVESTIGACIÓN

Cualquier tipo de discriminación o hostigamiento, incluyendo el acoso sexual, es absolutamente prohibido. Cualquier incidente de posible discriminación o hostigamiento debe ser llevado de inmediato a la atención del Director de Recursos Humanos, o cualquier otro miembro de la administración, quién investigará completamente el asunto en confianza. Después de revisar toda la evidencia, la Compañía determinará si existen motivos razonables que indiquen que el hostigamiento o acoso sexual ha ocurrido.

Acción disciplinaria, hasta e incluyendo despido del trabajo, será tomada en contra de cualquier empleado que se determine ha participado en hostigamiento o acoso sexual.

Ningún empleado será sujeto a alguna forma de represalia por reportar honestamente y en buena fe cualquier violación de esta política.

HOSTIGAMIENTO O ACOSO DE PARTE DE NO-EMPLEADOS

Adicionalmente, la Compañía tomará todos los pasos razonables para prevenir o eliminar el hostigamiento o acoso sexual de parte de personas que no son empleadas por la Compañía, incluyendo clientes y suministradores quienes tengan contacto de trabajo con nuestros empleados.

RECONOCIMIENTO DE LA POLÍTICA DE RELACIONES DE EMPLEADOS

Yo he recibido y leído una copia de la Política de Relaciones de Empleados de la Compañía, incluyendo la política en contra de la discriminación y el hostigamiento, incluyendo el acoso sexual, y entiendo completamente mis obligaciones y responsabilidades bajo esta política.

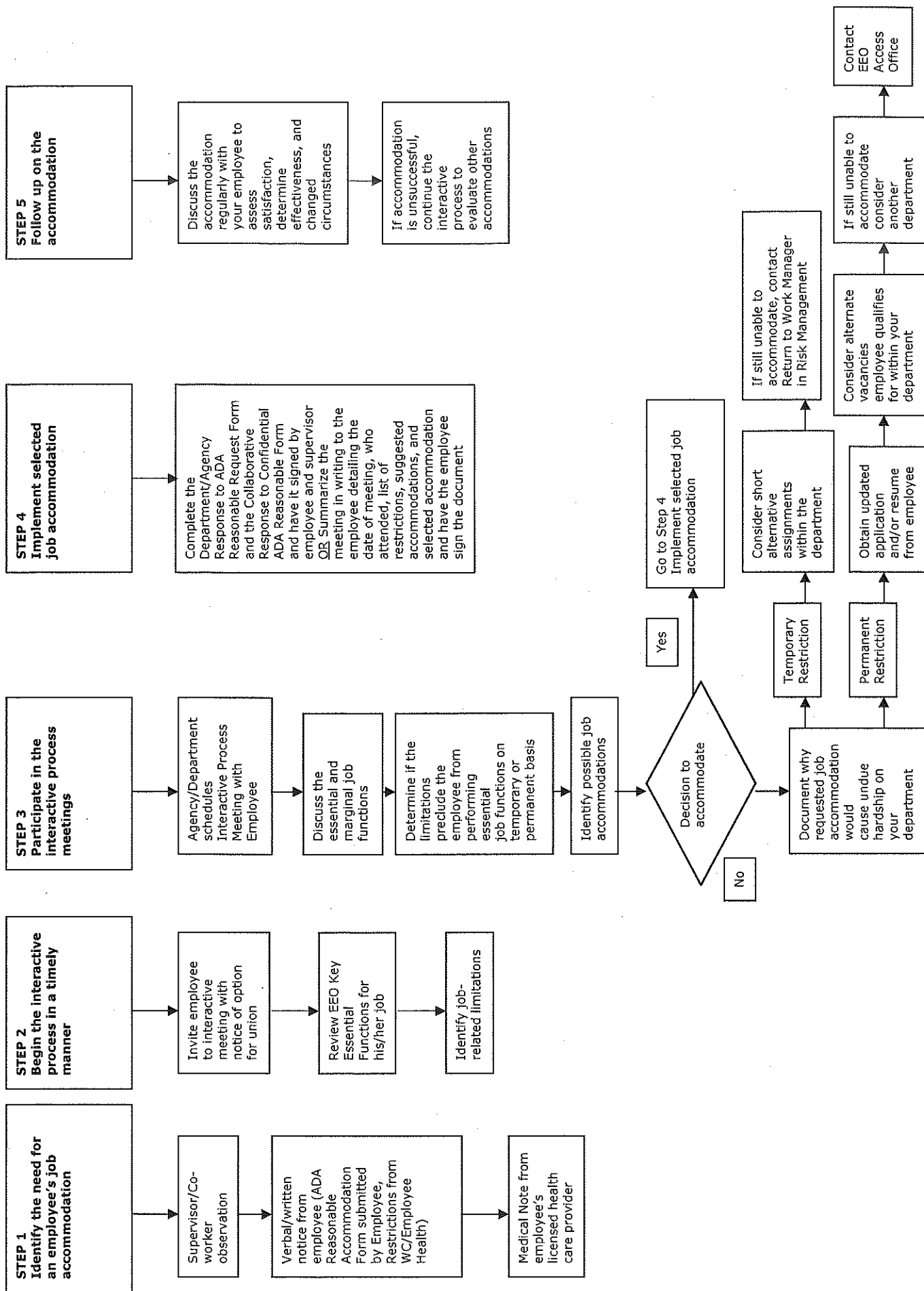
Firma: _____

Fecha: _____

Testigo: _____

Fecha: _____

Interactive Process Guidelines Chart



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.

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

.....
2nd 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

PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE

DISCRIMINATION ALLEGATION/EVENT REPORTING FORM

TO: Alfred J. Landegger, Esq.

COMPANY: Landegger, Baron, Lavenant & Ingber

FAX NO. (818) 986 - 5147

FROM: _____

DATE: _____

CC: _____

This form must be completed by the 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, Lavenant & Ingber;**
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 _____ at _____ or Alfred J. Landegger, Esq. at (818) 986-7561.

FIRST REPORT OF EVENT OR CIRCUMSTANCE

Date: _____

4. Name of Employee Being Interviewed: _____

5. Name of Interviewer: _____

6. 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? _____

(NOTE: Attach additional documentation as necessary.)

FIRST REPORT OF EVENT OR CIRCUMSTANCE

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11. Was this the first time this had happened? _____

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: _____

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

20. Are there any other issues we should discuss? _____

(NOTE: Attach additional documentation as necessary.)

FIRST REPORT OF EVENT OR CIRCUMSTANCE

Page 5

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

22. Who do you think I should talk to? _____

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

Type/Print Name of Person
Conducting Interview

Signature of Person Conducting Interview

Date: _____

(NOTE: Attach additional documentation as necessary.)

**PRE-TERMINATION OF EMPLOYMENT
CONSULTATION FORM**

To: LANDEGGER, BARON, LAVENANT & INGBER
A Law Corporation
15760 Ventura Boulevard
Suite 1200
Encino, California 91436
(818) 986-7561
www.landeggeresq.com

Send: By Facsimile to (818) 986-5147 or
By e-mail to 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, Lavenant & Ingber 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, Lavenant & Ingber 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, Lavenant & Ingber 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, Lavenant & Ingber. 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, Lavenant & Ingber 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.

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

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]