

Terminating employee? Don't forget appropriate notifications

Terminating employees is never easy. Not only do you have to think about the employee's reaction and those of co-workers who may be worried about their own jobs, you also have to worry whether the employee will sue and how to minimize the risk.

One area you have control over is making sure that every terminated employee receives legally mandated termination notices. Miss one and a lawsuit becomes more likely.

Your best bet is to establish a comprehensive checklist for every termination. Here's a quick guide.

New N.Y. WARN Act regs

If your organization plans on mass layoffs, you must comply with both the federal Worker Adjustment and Retraining Notification (WARN) Act and New York state's version.

There have been recent changes to the state law and the emergency regulations issued by the New York Department of Labor. The New York WARN Act requires some employers to provide 90 days' notice to employees, employees' unions and government agencies before implementing most large-scale plant closings, layoffs, reductions in force or furloughs.

First, the new regulations change the definition of the term "affected employee" by stating that it does not include officers, directors or shareholders. The initial regulation excluded only self-employed people, business partners or consultants and contract employees who have employment relationships with other employers.

According to the revised regulations, New York's WARN Act only covers employers with 50 or more employees on the date the first notice would be required to be given under the Act.

N.Y. WARN Act notification

The revised regulations also changed some of the required notifications.

Most significantly, the revised

regulations now apply the notice requirements to employer decisions rescinding a previously issued notice of a plant closing, mass layoff, relocation or covered reduction in hours.

In other words, when an employer has given notice of a layoff as required by the Act, but then determines that it will not need to cut staffing or hours, it must use the same notice process to inform affected employees, their unions and the government that it is rescinding its decision.

Finally, the regulations provide that when an employer relies on one of the statutory exceptions—unforeseeable business circumstances, a natural disaster or the "faltering company" exception—as a justification for not providing the 90-day notice, it must provide documentation to support the exception.

The revised regulations are still lengthy and complex. Any New York employer contemplating any form of reduction in employment, including a reduction in hours should carefully consider whether the regulations apply and, if so, how it will satisfy the regulatory requirements.

Notice of termination

Don't forget some of the other employee notifications the state of New York requires employers to provide. These have received less publicity but are still important.

For example, Section 195 of the New York Labor Law requires giving an employee written notice of the date of his or her termination, as well as written notice of the date when the employee's benefits will be cancelled. Notice must be provided within five working days of the date of the termination.

Note: This notification can come in handy should the employee later challenge the termination. Employees have just 300 days to file an EEOC or state discrimination action for most

forms of alleged discrimination, and the termination notification starts that clock ticking.

Benefits conversion notice

The Section 195 notice should also include information about employee conversion rights under the employer's group life insurance plan.

In New York, every group life insurance contract must include a conversion right for employees in the event that group coverage is terminated.

As a result, when group life insurance coverage will end because an employee is terminated, you should provide written notice that your former employee may have the option of converting the group coverage to individual coverage. An employer should advise the employee to contact the insurance provider for more information regarding any conversion rights under the policy.

Unemployment comp notice

New York employers must also provide written notice of an employee's right to file a claim for unemployment insurance benefits. The notice must include the employer's name, address and registration number. In addition, you must advise an employee to present the notice to the New York State Unemployment Insurance Division when he or she files a claim for benefits.

COBRA notice

Finally, don't forget notifications required by COBRA—the Consolidated Omnibus Budget Reconciliation Act, which allows former employees to purchase continuation health insurance coverage.

Under New York's "Mini-COBRA" statutes, employers with 20 or more employees have to allow continued medical insurance coverage for up to 36 months after termination. For details, go to www.ins.state.ny.us/cobra/cobra_prem.htm.