SAMPLE TERMINATION REVIEW CHECKLIST

REASONS FOR TERMINATION
Is the decision to terminate based on legitimate, non-discriminatory, and non-retaliatory reasons:
☐ Unsatisfactory Performance ☐ Unacceptable Behavior ☐ Business Factors ☐ Other

EVIDENCE OF THE REASONS
Is there credible evidence substantiating each of the legitimate, non-discriminatory, non-retaliatory reasons for termination? ☐ Yes ☐ No

EVIDENCE OF C.A.R.E. | CLEAR EXPECTATIONS & CONSEQUENCES
Is there evidence establishing that the expected standards of performance or behavior were clearly communicated to the employee? ☐ Yes ☐ No

☐ Offer Letter ☐ Employment Contract ☐ Job Description ☐ Orientation Documentation
☐ Training Materials ☐ Training Log ☐ Handbook/Policy Receipt ☐ Performance Goals
☐ Performance Appraisals ☐ Performance Improvement Plan ☐ Coaching Documentation
☐ Counseling Documentation ☐ Disciplinary Documentation ☐ Final Warning ☐ Email
☐ Supervisor Log/File ☐ Communications ☐ Notes of Meetings ☐ Other

EVIDENCE OF C.A.R.E. | ADMINISTER & APPLY EXPECTATIONS CONSISTENTLY
Is there evidence establishing that the expected standards of performance or behavior were administered and applied consistently among similarly situated employees? ☐ Yes ☐ No

• Does evidence confirm applicable policies have been followed? ☐ Yes ☐ No
• Does evidence confirm applicable past practices have been followed? ☐ Yes ☐ No
• Do mitigating or exacerbating circumstances or other job or business related factors justify deviating from applicable policies, procedures, or past practices? ☐ Yes ☐ No
• Is there evidence of the mitigating or exacerbating circumstances or other job or business-related factors justifying deviation from policy or past practice? ☐ Yes ☐ No
• Have other similarly situated employees been treated the same or similarly under the same or similar circumstances? ☐ Yes ☐ No
• Do mitigating or exacerbating circumstances or other job or business related factors justify treating the employee differently than other similarly situated employees? ☐ Yes ☐ No

EVIDENCE OF C.A.R.E. | RECORDS OF KEY FACTS REFLECT OBJECTIVITY
• Do the records and other evidence of C.A.R.E. reflect that policies, procedures, and practices have been communicated and enforced objectively? ☐ Yes ☐ No
• Do any records contain unnecessary personal comments? ☐ Yes ☐ No
• Do any records contain overstatements that cannot be confirmed? ☐ Yes ☐ No
• Do any records reflect actions based on speculation or assumption?  Yes No
• Do any records reflect emotionally charged language?  Yes No
• Do any records appear incomplete in material respects?  Yes No
• Do any records appear incorrect in material respects?  Yes No
• Do any records reflect material inconsistencies?  Yes No
• Do any records reflect bias, prejudice, or favoritism?  Yes No
• Do any records suggest a conflict of interest or ulterior motive?  Yes No
• Do any records reflect actions based on legally protected characteristics?  Yes No
  □ Race □ Color □ Religion □ Sex □ Pregnancy □ Family Duties
  □ National Origin □ Citizenship □ Disability □ Military Status
  □ Age □ Sexual Orientation/Transgender Status □ Pro-Union □ Anti-Union
  □ Association with Protected Class Member
• Do any records contain references to protected opposition activity?  Yes No
  □ Internal Report or Complaint of Discrimination □ Support of Coworker
  □ Internal Report or Complaint of Harassment □ Other Opposition Activity
  □ Internal Report or Complaint of Retaliation
  □ Internal Report or Complaint of health or safety concerns
  □ Internal Report or Complaint of ethical issues or financial improprieties
• Do any records contain references to protected participation activity?  Yes No
  □ Filed Charge or Complaint with State or Federal Agency
  □ Testified as a Witness in an Investigation (Internal or Formal)
  □ Provided Evidence or Other Support in Connection with Investigation
• Does a comparison of the employee’s relevant records with the records of other similarly situated coworkers confirm the employee has been treated in a non-discriminatory and non-retaliatory manner?  Yes No
• Do the records reflect that behavioral grounds for termination related in any way to wages, hours, or working conditions (i.e., protected, concerted activity)?  Yes No
• Do the records reflect that performance, behavior, or other grounds for termination were handled in a timely manner?  Yes No
• Do the records reflect key decision-makers have received EEO training?  Yes No

EVIDENCE OF C.A.R.E. | EVALUATION & OBJECTIVE FINAL FILTER REVIEW
• Has the recommended termination received independent review?  Yes No
• Has the independent reviewer been trained in best practices for avoiding discrimination, harassment, and retaliation?  Yes No
• Is there an existing credible threat of legal proceedings?  Yes No
  ▪ Has a Legal Hold been issued to key players to preserve evidence?  Yes No
• Has the personnel file been fully updated and reviewed?  Yes No
• Have all supervisory files and notes been obtained and reviewed?  Yes No
• Did the manager recommending termination consult with HR or anyone else about any of the issues leading to the termination recommendation?  Yes No
• If so, have they been interviewed?  □ Yes □ No
• Do they possess relevant records (emails, etc.)?  □ Yes □ No
  ○ If so, have they been gathered and reviewed?  □ Yes □ No
• Has an adequate internal investigation of the facts been conducted?  □ Yes □ No
• Have others knowledgeable of the situation been interviewed?  □ Yes □ No
• Is their potential risk regarding protected class status?  □ Yes □ No
  □ Race □ Color □ Religion □ Sex □ Pregnancy □ Family Duties
  □ National Origin □ Citizenship □ Disability □ Military Status
  □ Age □ Sexual Orientation/Transgender Status □ Pro-Union □ Anti-Union
  □ Association with Protected Class Member
• Has the employee engaged in legally protected activity?  □ Yes □ No
  □ Internal Report or Complaint of Discrimination □ Support of Coworker
  □ Internal Report or Complaint of Harassment □ Other Opposition Activity
  □ Internal Report or Complaint of Retaliation
  □ Engaged in Any Form of Whistleblower Activities (Internally or Externally)
  □ Filed Charge or Complaint with State or Federal Agency
  □ Testified as a Witness in an Investigation (Internal or Formal)
  □ Provided Evidence or Other Support in Connection with Investigation
  □ Filed or Taken Any Steps to File a Workers’ Compensation Claim
  □ Engaged in Concerted, Protected Union-Related Activity
  □ Collaborating with Coworkers to Address Wages, Hours, or Working Conditions
• Does the timing of the protected activity and recommended termination create risk of an
  appearance of retaliatory intent?  □ Yes □ No
• Has the employee exercised or requested permission to exercise any leave-related rights in
  the recent past?  □ Yes □ No
  □ ADA-Accommodation Leave □ FMLA Leave □ Pregnancy-Related Leave
  □ Leave Due to Work-Related Illness or Injury □ Temporarily Totally Disabled
• Has the employee recently requested an accommodation for a sincerely held religious
  belief or for a physical or mental impairment that may be a disability?  □ Yes □ No
• Has the employee provided any genetic information (defined as including “family medical
  history” in connection with any employment-related issues (such as pre-employment or
  post-employment fitness-for-duty exam, return to work from an illness or injury, FMLA-
  leave, ADA-related purposes) without having been given a GINA Safe-Harbor Disclosure
  form?  □ Yes □ No
• Has the employee recently applied for admission to military service, recently participated
  in military service, or is currently participating in military services?  □ Yes □ No
• Will the employee vest in any ERISA-covered benefits in the near future?  □ Yes □ No
• Has the employee recently made an internal or external complaint about any wage-related
  issues?  □ Yes □ No
• Has the employee refused to take some action because the employee reasonably believes
  the refusal is required by applicable law or regulations?  □ Yes □ No
• Is there any evidence that tends to create the appearance that the termination is motivated in significant part by the employee’s refusal to violate law or regulation?  □ Yes □ No
• Has the employee engaged in some action because the employee reasonably believes the action is required by applicable law or regulations?  □ Yes □ No
• Is there any evidence that tends to create the appearance that the termination is motivated in significant part by the employee’s compliance with law or regulation?  □ Yes □ No
• Is there an employment contract that imposes limits on the employer’s ability to implement the termination?  □ Yes □ No
  • If so, have the contractual grounds for termination been satisfied?  □ Yes □ No
• Are there any communications with the employee that could be construed as creating an implied contract limiting the ability to terminate?  □ Yes □ No
• Has counsel been engaged in the discipline and discharge process?  □ Yes □ No

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