

## LEGAL CORNER

By: Jay A. Goldstein, OMB General Counsel

### APPROPRIATE TERMINATION PRACTICES

1. Avoid liability for failure to pay wages and required benefits.

As an employer, you may issue the final check at the time of termination, but you may also pay at the end of the regularly scheduled pay period. RCW 49.48.010. The final check must include any and all money owed.

2. Provide required statements of reasons for dismissal and required access to personnel files.

Washington law requires the employer, if requested, to provide the employee with the reasons for the termination. WAC 296-126-050(3) gives the employer ten working days after written request by the employee, setting forth the reasons for the discharge and the effective date.

Moreover, RCW 50.36.010 makes it illegal for an employer to provide the Department of Employment Security a different reason for the employee's separation from that given to the employee. Concealing the cause of discharge is a misdemeanor.

3. **Avoid tort liability based on actions, comments and references.**

Reasons for termination should be shared by the employer only on a strict need-to-know basis, and even then it should be worded with extreme care.

Defamation consists of: (a) false and defamatory statements; (b) unprivileged communication to a third party; (c) fault amounting to at least negligence on the publisher's part; and (d) either actionability of the statement or special harm caused by publication. There is a qualified privilege for employers to provide reasons for employee termination.

The privilege exists when it concerns a matter in which the publisher (the former employer) has an interest and has made to another whom it is reasonably believed has a corresponding interest (the prospective new employer). Proof of knowledge or reckless disregard as to the falsity of the statement is required to establish abuse of a qualified privilege.

Employers are advised to err on the side of caution when they rely on the qualified privilege. If the privilege depends on a jury resolution, the employer has already lost defense costs and could lose the claim.

4. Avoid breach of express or implied contract.

If an employer creates an atmosphere of job security with promises of specific treatment in specific situations, and an employee is induced thereby to remain on the job and not actively seek other employment, those promises are enforceable components of the employment relationship. Thompson v. St. Regis Paper Company, 102 Wn.2d 219, 230, 685 P.2d 1081 (1984). Sources of substantive grounds may be a written employment contract, collective bargaining agreements, offer letters, employee handbook and employer policies.

5. Avoid violating employee protection statutes.

Employees may fall into a protected status which gives them a cause of action for discrimination. Some of these laws include the Federal Civil Rights Act of 1964, the Americans with Disabilities Act, and the Washington Law Against Discrimination.

For a handy checklist on making the decision to terminate, call me.