Checklist for Making an Informed Termination Decision

The decision to terminate an employee can raise many legal issues. While there is no way to guarantee an employee will not bring an action against an employer, using this checklist can alert the employer to potential legal challenges. As appropriate, identified problems can then be **discussed with legal counsel before terminating the employee**.

Please provide the basis for the termination, complete and sign the checklist, and then return it to your HR Specialist. If the termination is approved, a termination payroll check can be generated and delivered. Please remember that a terminated employee must receive a final check at the time and place of termination. Failure to do this may result in significant fines and penalties. We advise that you keep a copy of this form on file for at least five (5) years.

Company:	**Employee under consideration (name):**
Employee's length of employment:	**Employee's role in the company:**
Employee's direct supervisor:	**Person completing this form:**
If you are not the Owner/President, have you discussed this with the Owner/President?	**Do you have authority to make the final termination decision?**
Please describe the reason for the termination:	

Consider Employment Documents or Contracts	Y	N
Review any written employment documents that may limit the employer's right to terminate.		
Is there an offer of employment letter that limits the employer's ability to terminate?		
Is there a written employment contract that limits the employer's ability to terminate?		
Will this termination breach an oral or implied contract of employment?		
Consider State/Federal Laws Protecting Employees and Their Employment (Even the appearance of discrimination based on race; color; religion; national origin; ancestry; gender; pregnancy; citizenship status; gender identity; sexual orientation; marital status; age; service member status; disability; medical conditions; genetic information, as well as any other category protected by federal, state, or local laws is dangerous.)		
Has the employee requested an accommodation for a physical or mental disability?		
Is the employee being treated differently than other employees in similar situations?		
Have other employees been given more chances before being terminated for the same or similar reasons as this employee?		
Has the employee made any accusations that he has been treated in a discriminatory manner?		
Has anyone closely associated to the employee recently been the subject of an adverse employment action?		
Consider Past or Future Leaves of Absence		
Is the employee pregnant?		
Has the employee recently taken or is the employee planning to take a protected leave of absence? (California Paid Sick Leave, FMLA, CFRA, Kin Care, Military Spouses Leave, etc.)		
If so, is the employee's absence one of the factors contributing to the termination?		
Consider Workers' Compensation Claims		
Has the employee previously filed a workers' compensation claim? (Terminating an employee who has filed a claim, intends to file a claim, or has testified in a worker's compensation hearing could be considered workers' compensation discrimination.)		

Consider Whistle-Blower Protection	Y	N
Has the employee reported, or threatened to report, any alleged illegal activity of the company to a state or federal agency, or made any complaints about safety or the work environment? Even if the company is not in fact acting illegally, the termination could be seen as retaliation for "whistle-blowing."		
Consider Investigations		
Has the employee participated in any official investigation of the employer (i.e., wage, safety violation, harassment complaint) or testified against the employer in an unemployment insurance or other hearing?		
Consider Protected Personal Rights		
Is the termination related to the employee's exercise of protected personal rights, such as freedom of speech or political activity?		
Consider Other Protected Activity		
Acting as a spokesperson on behalf of other employees regarding terms and conditions of employment.		
Consider the Personnel File		
Is there anything in the file, or elsewhere, that might support a claim of an unlawful termination? For example, a supervisor has written a warning that an employee's pregnancy was causing her to be absent too often.		
Is there anything in the file that contradicts the reason for the termination? For example, a pattern of glowing performance reviews for an employee being terminated for performance issues.		
Is there a lack of sufficient documentation regarding the problem? For example, the employee is being terminated for tardiness but there is neither documentation of the dates and times the tardiness occurred nor any counseling regarding this issue.		
Consider the Employee's Eligibility for Unemployment Insurance		
A terminated employee may be eligible for unemployment insurance unless the termination is for refusal to perform suitable work or for misconduct. Mere inability to perform the duties of the job is not considered misconduct. The cost to the unemployment insurance reserve account may be far greater than the cost of providing the employee with necessary training or performance counseling. Is further counseling or training a consideration?		
Consider the Legal Ramifications of Not Terminating the Employee		
Failing to terminate an employee who has been violent or threatened violence could result in harm to others and lead to employer liability. Termination of an employee who has sexually harassed other employees may be necessary to fulfill an employer's legal obligations under sexual harassment laws. Does continued employment present a legal risk to the organization?		
Making the Final Decision		
After reviewing the checklist above, are you confident that this termination decision is based on legal reasons, and is the best course of action for this employee and the company?		

If you answered YES to any of the checklist considerations, please provide additional details. Your HR Specialist will call and speak with you further about the termination decision.

If termination is not the best step, what course of action may we support you with regarding this employee?
(Options: No action, performance evaluation, training, counseling session, written warning, final written warning.)

Date:
Name of decision maker:

Signature of decision maker:

X _____