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## “40 TIPS TO CONSIDER BEFORE FIRING AN EMPLOYEE”

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The cliché “we are slow to hire and quick to fire” is well known and frequently used by landscapers. Its implication is that the company takes careful deliberation to find the best candidate before filling a vacancy, while at the same time not tolerating ineffective employee job performance. However, in today’s litigious employment environment, where companies are under constant assault from various wrongful termination claims (e.g., retaliation, discrimination, constructive discharge), sage landscapers would be well served to be “slow to hire and even slower to fire.”

Due to the extreme sensitivity and potential consequences of this serious personnel action, landscapers frequently contact me to verify that: (a) they have thought about all possible administrative, legal, or human resources issues capable of complicating an employee termination; (b) all “loose ends” have been sufficiently addressed; and (c) the termination should move forward. Needless to say, they are often overwhelmed with the number of items related to a termination that comes up during our discussion.

While no list is ever exhaustive, this is my current list of the Top 40 Tips that landscapers should consider before terminating an employee.

### TOP 40 LIST

- 1) Review the employee’s personnel file thoroughly, objectively, and carefully.
- 2) Does the employee have an employment contract with the company?
- 3) Will the termination violate public policy?
- 4) Is the employee a member of a labor union?
- 5) Does the company have a written at-will policy?
- 6) Does the employee handbook contain content supporting the termination?
- 7) Does the company have a corrective action policy, process, and system?
- 8) Does the company have a formal grievance procedure?
- 9) Did the employee sign the employee handbook acknowledgment form?
- 10) Did the employee sign the company arbitration agreement?
- 11) Did the employee sign the confidentiality and non-disclosure agreement?
- 12) Did the employee sign the non-compete agreement?
- 13) Did the employee receive and sign a formal performance appraisal within the past year?
- 14) Is the employee being terminated for poor job performance or a policy violation?
- 15) Is the employee a member of a federal or state protected class (e.g., race, gender, religion, national origin, color, age, physical or mental disabilities, pregnancy, veteran's status, genetics)?
- 16) Is the employee being terminated for demonstrating a protected concerted activity?
- 17) Is there any possible type of discriminatory pattern evident in the last 10-12 company terminations?
- 18) Is this termination consistent with previous terminations (e.g., severity, timeliness, issue)?
- 19) Has the employee filed a federal lawsuit (e.g., OSHA, EEOC, DOL) against the company?
- 20) Has the employee filed a state lawsuit (e.g., wage and hour, fair employment) against the company?
- 21) Has the employee filed a sexual harassment complaint while employed at the company?
- 22) Has the employee filed a workers’ compensation claim while employed at the company?
- 23) Has the employee filed an internal grievance against the company?
- 24) Is the company retaliating against the employee for any possible reason?
- 25) Does the employee have any whistle blower protections?
- 26) Has the employee recently been on a leave to serve on a jury?

- 27) Is there anything about this termination that is “personal”?
- 28) Has the employee had any administrative complications related to a federal leave of absence?
- 29) Has the employee had any administrative complications related to a state leave of absence?
- 30) Has the employee asked for a reasonable accommodation due to a disability?
- 31) Does the employee’s supervisor support the termination?
- 32) Is the employee close to vesting in a significant employee benefit, commission, or stock option?
- 33) Has a thorough and objective investigation been conducted on the termination-related issue?
- 34) Has the employee been formally coached on this issue about how to improve performance?
- 35) Does the company have sufficient documentation on the termination-related issue?
- 36) Is the employee on any federal protected leave (e.g., FMLA, USERRA)?
- 37) Is the employee on any state protected leave (e.g., Disability, Family Leave, Workers’ Compensation)?
- 38) Will the employee receive a separation agreement as part of the termination?
- 39) Does evidence exist that supports a potential wrongful termination claim by the employee?
- 40) Has the company contacted its EPLI provider regarding the details of termination-related issue?

**SUMMARY**

Termination is the endpoint of a company’s performance management system and must be conducted appropriately to maintain individual accountability, organizational performance, and legal compliance. With that point in mind, Landscapers must dutifully consider all direct and indirect facets of a potential employee termination, thereby avoiding any “rush to judgment” that may impact employees’ perceptions of procedural justice, company morale, and the likelihood of successfully defending a wrongful termination lawsuit.

*By-line at the conclusion of the article*

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