

HIGH-RISK SEPARATIONS

Termination With a Complaint Trail

When to use: You are separating an employee who has filed, participated in, or been named in a complaint.

PAUSE AND ASSESS

- ☐ **1 Do not act until the separation has been reviewed.**
Temporal proximity to protected activity is the core risk.
- ☐ **2 Identify whether the employee recently filed, participated in, or was named in a complaint.**
- ☐ **3 Engage employment counsel before any decision is communicated.**

BUILD THE RECORD

- ☐ **4 Document the legitimate, non-retaliatory business reason.**
Ideally one that predates or is independent of the complaint.
- ☐ **5 Assemble the supporting record.**
Performance history, prior warnings, and progressive-discipline steps.
- ☐ **6 Check consistency against comparators.**
Treat similarly situated employees the same way; inconsistency is classic pretext evidence.
- ☐ **7 For a complainant, confirm the action is not a tangible employment action connected to the alleged supervisor harassment, which would make the defense unavailable.**
- ☐ **8 For a substantiated harasser, base the decision on the written investigation findings.**

EXECUTE CAREFULLY

- ☐ **9 Limit who knows and what is said.**
Share findings only on a need-to-know basis to manage defamation risk.
- ☐ **10 Prepare final pay and benefits/COBRA per state law and plan rules.**
- ☐ **11 If using a separation agreement, follow OWBPA rules for employees 40+.**
And never bar the employee from filing an EEOC charge or cooperating.
- ☐ **12 Do not use a pre-dispute NDA for a sexual-harassment matter.**
Void under the federal Speak Out Act; state NDA limits are often broader, so check them.

AFTER

- ☐ **13 Document the decision and rationale, and monitor for any retaliation claim.**