

**The Employment Process:  
Hiring, Retention and Discharge  
Robbie Alexander Hyde  
Webb & Eley, P.C.**

**HIRING**

**I. CONDUCTING THE INTERVIEW**

**A. Defining the Hiring Objectives**

Before seeking to fill a position, the supervisor must have defined the position by virtue of tasks to be performed or criteria for the position.

**1. Establish a Job Description**

In developing a job description, one must identify the primary functions of the position. The Americans with Disabilities Act describes these primary functions as “core components” and sets out that these functions are those parts of a job that are absolutely essential.

If a job description has already been developed for a position, it is imperative that the description is still accurate. For example, a job description for years may have read, “must be able to lift up to 40 lbs.” However, since the time the description was drafted, the county has purchased hand trucks for transporting heavy items. As a result, the lifting component is no longer part of the job and is therefore not a core component.

**2. Compile a List of Performance Criteria**

Another method for defining hiring objectives is to compile a list of performance criteria for the position. This method is probably most beneficial for higher-level positions, including managers and supervisors. For example, a county road department is seeking to fill the position of parts inventory manager. The county then decides that its inventory manager must develop

rapport with all parts suppliers and create an inventory system that will save money by preventing loss of parts and over-ordering parts.

## **B. Recruiting Techniques**

Recruitment practices, including interviewing applicants, are particularly susceptible to claims of discrimination. If applicants are denied access to employment opportunities on the basis of membership in a protected class, they may have a claim against the potential employer for discriminatory practice. Employment laws require that an employer not only recruit from a diverse pool but also design employment advertisements that will prompt applications from a diverse group. Even if an employer has no intent to discriminate, a recruitment practice could be unlawful because it adversely impacts one protected group.

Many employers simply hire friends of their current employees. This practice does not diversify the county's workforce, as people tend to associate with people who are like them. Methods for recruiting from a diverse pool include contacting training schools and trade schools; and calling the state unemployment service.

A county should draft its job announcements utilizing the current, updated job description and be careful not to specify any gender, age or other preference. It is illegal to discriminate in advertising, so you may even want to have several people read it over. People of different ethnic backgrounds may be offended by words or phrases that would not bother someone else. All requirements listed in an announcement should be job related and should contain no reference to the job being permanent, stable, or secure. An employer does not want to be perceived as offering a permanent position as opposed to employment at will.

Finally, a job announcement should end, at a minimum, with the language that the county is an "Equal Employment Opportunity Employer" or "an EO/AA Employer." Additional

positive language inviting applications from women, minorities, persons with disabilities, and Vietnam-era and special disabled veterans can be added. A county might also wish to include language regarding accommodations for persons with disabilities after its EO statement. For example: “Reasonable accommodation in the application and interview process may be requested by contacting the personnel director.”

### **C. Defining the Interview Objectives**

The two objectives of any interview are to obtain information so an employer can accurately decide whether the interviewee is suitable and to conduct some “selling” of the job to the candidate. An interview should result in the interviewer getting to know the candidate, verification or clarification of the information contained in the application or resume, and introduction of the candidate to the county.

Part of the discomfort that comes with interviews originates from the fact that most interviewers begin an interview without clear and realistic objectives in mind. An interview has always been part of the hiring process, and interviewers tend to just plunge into the interview process to get it concluded as quickly as possible. The result is that the interviewer wastes time and possibly creates legal liability for the county and possibly the interviewer.

### **D. Designing an Effective and Reliable Interview**

#### **1. Pre-employment Testing**

As a prelude to or as a part of the interview, pre-employment testing may be utilized.

##### **a. Medical Testing**

Medical testing must be left until after a conditional offer of employment is made. The exception to this rule is drug testing. If a county requires drug testing, it must test all candidates for the position and not just selected one(s). As a result, no candidate can claim that the county

tested him or her because of race, gender, or any other illegal factor. In addition, because counties are governmental entities, those charged with hiring must be careful as to what kinds of applicants are drug-tested as a condition for employment. Only those employees who will be performing jobs involving the public safety or the safety of other employees should be tested pre-employment. For example, a road department receptionist or clerk should not be tested as a condition of employment. However, a dump truck driver or heavy equipment operator can be tested and their employment based upon a clean test.

#### **b. Ability Testing**

Section 703(h) of the Civil Rights Act of 1991 provides that “notwithstanding any other provision of this subchapter, it shall not be an unlawful practice for an employer ... to give and to act upon the results of any professionally developed ability test provided that such test ... is not designed, intended or used to discriminate because of race, color, religion, sex or national origin.” Title VII does not prohibit employers from the use of intelligence, skills or integrity tests in the workplace. However, the statute is brought into play when an employer (1) uses tests to *intentionally* discriminate against protected groups or (2) the tests have an *adverse impact* on minorities.

### **2. Planning the Interview**

#### **a. The Interviewer(s)**

Deciding who will conduct the interview is the first hurdle to overcome. Interviewers should be carefully trained. If at all possible, more than one county representative should conduct the interview. One of those representatives should be the incumbent or the supervisor for the position as those individuals will have a day-to-day knowledge of the qualifications necessary for the position. Utilizing a panel of three or more for interviews is an even better

practice. Panels tend to be more focused and carefully adhere to the pre-determined interview questions, as panel members are accountable to each other. Panel members are aware they are being observed; therefore, questions tend to be more to the point, and personal biases are reduced. In addition, by participating simultaneously, all interviewers based their evaluations on the same interviewee behavior. The panel should be a diverse group as to diminish an appearance of illegal bias.

#### **b. The List of Questions**

In developing the list of questions to ask every candidate, the job description or job performance criteria should be utilized. As the interview progresses, the interviewer can write notes about the candidate's answers to the questions that will later be used to help determine who will get the job. Questions should be about specific job skills. "This job requires a great deal of typing, Mr. Jones, how fast can you type? Can you tell us how much of your time was spent typing at your last job?" Or questions like "Ms. Smith, Have you ever used a drill press?" "Mr. Doe, do you have a CDL license?"

The interviewer may also use questions to find out about the candidate's feelings. These should also be job or business related, "Tell us about the best job you ever had." "Why was it your favorite?" "Why do you want to work for the county?"

Each interviewer should have a list of the predetermined questions. Once everyone has seen the questions, and perhaps even practiced them, the interviewers are ready to meet the candidates.

The interviewers should ask each candidate every one of the questions in the same order. Interviewers can make notes and can ask for clarification of answers but should not ask any additional questions. The interviewer cannot allow himself or herself to be drawn into

discussions about race, gender, disability or other such problems. The interviewer should simply let the candidate know that the county is an equal opportunity employer and that the hiring decisions will be made only on the basis of ability to do the job.

One way to get in trouble fast is by not using the same interview process with each candidate. Each and every candidate should be asked the same series of questions. If a panel or round-robin interview process is being utilized, each interviewer must know their set of questions AND ask them of every candidate.

Well-defined behavioral interview questions can be included in the list of predetermined interview questions. Behavioral questions cause the candidate to reveal how they think and/or solve problems. The interviewer can pose a situation to the candidates so they can explain how they would address the situation. The key is that the interview and selection process be related to specific characteristics associated with a position and not a person.

Also, prior to the interview being conducted, a ratings chart can be developed. Interviewers can use the chart in the place of note-taking. Such charts can be useful evidence of objective hiring criteria should an employer's hiring decision ever be questioned.

## **II. EMPLOYEE SELECTION AND NOTIFICATION**

### **A. Legal Issues – Avoiding Discrimination During the Selection Procedure**

Avoiding liability in the employee selection procedure begins with the job announcement as discussed above. The second avenue for a potential discrimination lawsuit is found in the application. The form will generally ask for name, address, education, work experience; however, applications often inappropriately inquire about date of birth, nationality, marital status, or ethnicity. The same care employed in fashioning questions for interviews should be employed in creating the employer's application. Nevertheless, research has shown that

companies frequently violate guidelines promulgated by the EEOC regarding appropriate application questions. The areas of inappropriate inquiry most often relate to education and religious affiliation of the school, arrest records, physical disabilities, and age. Even the most innocuous remark may be inappropriate. For instance, an employer is advised not to ask questions regarding the name of the applicant, other than what it is as the inquiry may be perceived as national origin discrimination.

The following is a chart that sets out examples of inappropriate or illegal questions. If these questions can be asked in an acceptable manner, the option is noted.

INQUIRY AREA	INAPPROPRIATE QUESTION	APPROPRIATE QUESTION
National Origin	Are you a U.S. citizen?	Are you authorized to work in the U.S.?
National Origin	What is your native language?	What language do you speak/write fluently? (Note: these abilities need to be relevant to the performance of the job.)
Age	How old are you?	Are you over the age of 18 (or 19)?
Race	You should not ask any question that relates to race or color e.g. What race are you?	
Race National Origin	Have you ever been arrested?	Have you ever been convicted of a crime? (Note: the better course would be to ask about convictions of certain classes of crimes that are particularly relevant to the position. These questions can be discriminatory because some minorities have higher rates of arrests and convictions than others.)
Gender	What are your plans regarding having children?	
Gender	Are you married, divorced or single?	
Gender	Do you mind having a male/female supervisor?	
Religion	What church do you attend?	Do you have any problems with our work schedule? (Note: employers are obligated under Title VII to accommodate an employee's reasonable request for religious accommodation.)

Religion	What religious holidays do you observe?	Do you have any problems with our work schedule? (Note: employers are obligated under Title VII to accommodate an employee's reasonable request for religious accommodation.)
Disabilities	How many days were you sick last year?	How many days were you absent from work last year?
Disabilities	How is your and your families' health?	As part of the hiring process, after a job offer has been made, you will be required to undergo a medical exam. (Note: an employer should keep results confidential).
Disabilities	Have you ever completed any drug rehabilitation programs?	Are you currently using illegal drugs?
Disabilities	Do you have any disabilities?	Are you able to perform the essential functions of this job, e.g. lifting requirements? (Note: the interviewer should have already thoroughly described any physical requirements of the job.)

Inappropriate or per se illegal questions are not the only source of potential discrimination claims during the hiring process. In a recent study conducted by the Urban Institute, researchers found evidence from which they concluded that black applicants were treated more harshly during interviews than white applicants with identical qualifications. Researchers submitted pairs of applications of black and white applicants for available positions. The researchers found that blacks were treated more favorably than whites in 27 percent of the interview situations, while they were treated less favorably than whites in 50 percent of the interviews. Black applicants were made to wait longer and were interviewed for a shorter period of time. White applicants were found to be more likely to receive a job offer. This outcome occurred under controlled circumstances where the applications were kept equal in terms of qualifications and experience. An interview must, therefore, not only be nondiscriminatory in terms of the information solicited but also in terms of the process in which it is conducted so as

not to produce an adverse impact on a particular protected group.<sup>1</sup> Most courts have relied on the 80 percent rule as indicated by the EEOC's Uniform Guidelines on Employee Selection Procedures. According to this rule, adverse impact is established if the selection rate for any minority group is less than 80 percent of the rate for the group with the highest selection rate.

## **B. Reviewing Applications and Checking References**

### **1. Resumes**

The key to evaluating applications is to do so in small doses. An interviewer trying to evaluate more than 15 applications at once will most likely become overwhelmed and will have trouble keeping the information straight. Another strategy is to make three piles of applications: one of the candidates the interviewer definitely wants to interview; one of the candidates the interviewer might like to interview; and one of the candidates who the interviewer does not want to interview.

An interviewer must simply use good judgment when evaluating applications. The interviewer should consider both the requirements of the job as well as the less tangible aspects of the desired traits for the position. One should analyze both positive and negative flags. Is the application filled out neatly? Are there apparent gaps? The application provides the interviewer with objective information that can be utilized in buttressing an employment decision.

### **2. References**

Checking the applicant's background and references is how the employer discovers whether what is contained in the application and/or resume and what is said during the interview

---

<sup>1</sup> The term "adverse impact" has been mentioned several times in this seminar handout. The United States Supreme Court, interpreting the Civil Rights Act of 1964, determined that even though intent to discriminate was not shown, an employer's hiring policies could nevertheless be discriminatory if found to adversely impact a protected group. Griggs v. Duke Power Co., 91 S. Ct. 849 (1971). In Griggs, the employer required a high school education or a passing grade on a standardized intelligence test for particular positions; however, neither standard could be related to successful job performance. These hiring criteria, though facially neutral, violated Title VII, because of their adverse impact. Id.

are true. The *Small Business Report* found that 80 percent of job applications contain false information regarding prior work history, while 30 percent of the information related to educational background is false. On the other hand, as job responsibilities decrease, the employer is less likely to verify all of the information provided by the applicant. A check, therefore, is crucial to verify the information given on the application and in the interview.

An interviewer should approach checking references and contacting former employers somewhat like approaching the interview process. The employer should develop a form listing the areas of inquiry and record all information obtained on that form. Areas upon which to focus when interviewing past employers include reason for leaving, eligible for rehire, strengths/weaknesses, quality of work, communications skills, ability to function as part of a team, accomplishments, and peer opinions.

Most employers are hesitant to be forthcoming concerning former employees and are only willing to verify the employment dates. The hesitation to divulge information comes from a fear of being sued under a theory of defamation. Some states have statutes to protect former employers when they are participating in reference checks and providing information to prospective employers. Alabama does not have such a statute; however, the common law of this state offers some protection. Alabama law provides for a conditional privilege for a former employer who is providing information to a prospective employer. See, e.g., Hayes v. Wal-Mart Stores, Inc., 953 F. Supp. 1334, 1342-43 (M.D. Ala. 1996). In order to defeat this privilege, the plaintiff must prove that actual malice motivated the former employer's disclosures. Id.

In order to promote broader disclosure from former employers, the interviewer could request that the applicant sign a statement that sets out that former employers are released from

liability for offering information. In the course of making a request for a reference from those former employers, the release should be sent to the former employer.

### **C. Analyzing Information Gathered at the Interview and Comparing Candidates**

Most decision-makers hire employees based upon the interviewer's "gut feeling" experienced about the candidate within the first five minutes of the interview rather than based on a process that evaluates skills, behavior, attitudes, abilities and experience. Such "gut feelings" are hard to defend in a discrimination suit. The selection process should be based upon consistent treatment of applicants at all stages, consistent evaluation of applicants. In addition, the applicants' relative qualifications should provide the basis for the final decision instead of the aforementioned "gut feeling".

As the last step in the hiring system, it is recommended that the final candidate review process be conducted by a minimum of two individuals who know and understand the requirements of the position and were involved in the interview process. Using the data from the job description, the resume, the interview responses and the assessment results, these individuals will make the final determination that the candidate and the position are a good fit. This process eliminates individual biases and unilateral selection both of which can result in failing to hire the best applicant and creating legal liability.

### **D. Maintaining Records Generated during the Selection Process**

All documentation generated as a result of the selection process should be maintained resulting in a documented hiring decision. The files should contain copies of position announcements, applications and supporting materials, resumes (if received) and any supporting materials, forms generated during reference checks, record of any communication with applicants, record of screening and selection criteria and candidate assessments. Not only will

this documentation be useful in defending a hiring decision, retention of some of these records is required by law.

The Equal Employment Opportunity Commission has promulgated 29 C.F.R. § 1602.14 pursuant to Title VII of the Civil Rights Act of 1961. § 1602.41 requires that an employer keep applications for employment for a period of one year from the date of the making of the record or the date of the personnel action involved, i.e., hiring, whichever occurs later.

No federal statute or guideline requires that employers document the reasons for failing to hire any specific applicant. However, it may be in the best interest of the employer to articulate the reasons in order to avoid the presumption of inappropriate reasons. In addition, since a claim under Title VII or other statutes may come long after the decision was made, documentation will help an employer recall the particular reasons why a certain applicant was rejected so that she or he is not left, perhaps on the witness stand, to say, "I don't remember!" Moreover, the individuals who originally made the decision about this candidate may no longer be with the county. This paper trail may serve to prove that others who were similarly situated were treated the same way, not differently. For instance, in a gender discrimination action, the documentation may demonstrate that no one with a certain low level of experience was hired, male or female.

On the other hand, documentation may also serve to demonstrate facts to which an employer does not want to be bound. Once the reason for failing to hire is on paper, the employer is now bound to use that, alone, as the reason for the decision. The decision about whether to put on paper reasons for failing to hire is best left to individual employers who may choose to record this information, while instituting a monitoring system that will catch any areas of potential vulnerability.

## **E. Properly Notifying the Applicants**

In order to bring closure to the process the employer should communicate with unsuccessful applicants by sending letters. However, the communication should be brief as employers are under no obligation to discuss the selection process. Discussing the selection process with unsuccessful applicants could give them ammunition to question the hiring decision. If an unsuccessful applicant presses for reasons behind the selection decision, use language such as, “Another candidate was determined to be best *suited*.” However, do not explain that the successful applicant was “most *qualified*” or “best *qualified*”. If you refer to another candidate as “most” qualified, you could be waiving a later argument that the unsuccessful was not qualified at all. Never refer to the unsuccessful candidate as being “over-qualified.” Such a statement could give the unsuccessful applicant the impression that he or she did not receive full consideration.

## **RETENTION**

### **I. PURPOSE OF PERFORMANCE APPRAISALS**

Before beginning the process of evaluating employees, it is important to consider the purpose of the process. Some of the most important reasons for evaluating employees may include: assisting in improving employee’s performance, determining the employee’s eligibility for a raise, documenting a difficult employee’s shortfalls, and creating an atmosphere of accountability for performance.

### **II. CONDUCTING PERFORMANCE APPRAISALS**

Often, personnel policies include mandates regarding evaluations. The policies might set out when evaluations should be conducted, how often, and the areas of performance to be evaluated. Of course, supervisors should follow policies regarding evaluations as they are

designed to create uniformity in the county's workforce regarding how employees' performance is judged. A supervisor conducting evaluations should also keep in mind that it is necessary to discuss the evaluation with the employee. The employee should sign the evaluation form so that it can later be shown that the employee had been apprised of its contents.

**The most important thing to remember --- Be honest. Do not overlook problems to avoid confrontation. When you avoid addressing problem areas but eventually are forced to terminate a poor performer's employment, a supervisor could be incurring legal liability for him and/or the county.**

For example, a supervisor has an employee who is a poor performer and very temperamental. In order to avoid confrontation, the supervisor grades the employee's performance as satisfactory rather than below-standards because the supervisor did not want to put the time into explaining the shortfalls and did not want the employee to become angry. Later, the supervisor is forced to fire the employee because of poor performance. If the employee were to sue, he could use that evaluation form as evidence that he, in fact, was performing well, and that his termination was the result of unlawful discrimination. As a result, an inadequate evaluation can be key piece of evidence and create liability for the supervisor and the county.

### **DISCHARGE**

Supervisors should establish clear position descriptions, institute a system of evaluating job performances and use consistent discipline procedures, so that those basics will all be in place when it comes time to terminate an employee. As a result, supervisors can show that the employee knew what was expected of him or her and you will be able to spell out where the individual failed to meet those expectations.

When contemplating the termination of an employee, a supervisor should consider whether the employee is a member of a class of individuals protected on account of race, sex, religion, national origin, age or disability. A supervisor should be especially sure the termination is for cause — for a good reason — and that there is supporting documentation.

## **I. DUE PROCESS CONSIDERATIONS**

Many counties have personnel manuals that call for an employee's termination only for good cause. As a result, a supervisor must carefully follow the procedures set out in the personnel manual regarding terminations. Some county personnel manuals set out the timing of notices that discipline is being considered, the type of notices and the content of notices. It is very important for a supervisor to remember that an informal meeting should be conducted with the employee to allow the employee to present his side of the story before the supervisor decides to terminate the employee.

## **II. PRACTICAL CONSIDERATIONS**

Once the meeting with the employee has been held, the supervisor decides that termination is appropriate, and the moment comes to talk with the person who is being terminated, timing is an important factor. Although circumstances may not provide much flexibility, there are factors to take into account in choosing when to terminate an employee. A supervisor should not terminate anybody on their birthday, anniversary or right before a holiday. Terminations can be conducted, except in special circumstances, the day after. In addition, the most effective time is Monday or Tuesday, so that by the time the person has to be alone on the weekend there has been time for a lot of thinking, organizing and rationalizing.

When talking with the worker, the supervisor should focus on concrete examples of poor performance. It can be quality, quantity, even personality, but it must always be related to performance issues. If people feel discriminated against even if that is not the intent, they will consider taking legal action. When the person firing the employee cannot tell them why they were being terminated or when the employer says something like “I’m not really sure, but it’s just not working,” they will consider legal action.

Employers must be definite. Personnel manuals may require supervisors to give an effective date and may proscribe the effective date, whether that is today or two weeks later. The message has to be unequivocal that the employment ceases on such-and-such a date. Then follow up with a description of benefits, such as severance pay and vacation that has been earned but not yet taken. Keep the conversation short and to the point.

These instructions all presuppose that the supervisor has kept records in the employee's personnel file, so when the employee is fired, he is never hearing the reasons for the first time. The warnings don't have to be formal — just a note that you spoke to the employee about his tardiness. Of course, personnel manuals may dictate the form of employee counseling. A supervisor should have the employee sign the counseling form and file it.

The morale of the remaining employees should be taken into consideration by employers. Treating a departing employee humanely and gently will also help the employees who remain.

If a person is terminated rashly or abruptly, even if there is cause, it speaks volumes to employees about the employer. The better, the more adroitly you handle the termination, the more productivity you get from remaining employees.

The person doing the firing also must resist tears or begging from the terminated employee or word will spread and the employer will have difficulty terminating anyone else.

In addition to being direct and succinct in dismissing an employee, employers should also remain calm during a termination discussion. Lay out the reason for termination, and do not get into any shouting matches as to what is happening. Maintain a very professional setting, devoid of emotion.

Poor supervisory and communications skills can contribute to morale problems. Ensure that the expectations for the employee have been effectively communicated.

The employer has a responsibility to every employee not to allow one bad apple to spoil the whole barrel. If proper documentation is kept and proper procedures are followed, the supervisor should be able to think, "I didn't fire you, you did it yourself. I just kept the records."

Employee firing is not an enjoyable undertaking for the supervisor and the employee. However, terminating an employee's employment is a fact of business that every executive, manager, and supervisor will face someday. Terminated employees often retaliate by suing their ex-employer, usually for unfair treatment, claiming that they had no warning of their coming termination. Supervisors can do many things to ensure they treat their employees fairly and in doing so, greatly lessen the chance that an ex-employee will file a wrongful-termination lawsuit against them and the county.

All terminations should be viewed as a potential for liability and even a possible lawsuit. It is crucial that operators lay the proper groundwork before a termination situation arises. Supervisors should check to make sure there are no land mines hidden in

the employee handbook — sections that could be interpreted by a court to be a contract of employment.

### **III. WHEN TO FIRE AN EMPLOYEE**

The first step is to know when to fire an employee. Supervisors must know for sure that all other options have been taken before going ahead with the termination.

- Be sure you have given the employee all of the advantages that you promised in the hiring process. If you made no promises or promised no job security, then the decision to fire is much easier.
- Warn employees of unacceptable behavior and the likelihood that it will lead to termination if continued. Then document the warning on the employee's file and have the employee acknowledge the warning in writing.
- Avoid terminating an employee on the spur of the moment. An angry attitude by you will provoke an angry response by the employee.

Once you have made the decision to fire an employee, supervisors must choose your words and actions carefully in the termination meeting.

### **IV. WHAT TO SAY AND DO**

The key to proper employee termination is to be succinct and to have facts that justify the firing. As noted above, some counties have personnel manuals that make it imperative that certain procedures be followed in deciding to terminate an employee. Assuming that all procedures have been followed and the supervisor is now at the point when that actual termination will be conducted, the following items are tips:

- Give concrete examples of poor performance. Do not tell the employee, that it just is not working. Failure to give actual examples could be grounds for a wrongful-termination lawsuit.
- Tell the employee the effective date of the firing, whether it is that day or two weeks later.
- Tell the employee the benefits, severance pay and unused vacation time that he or she is entitled to, if any.

- Limit the conversation to a short amount of time.
- Resist tears and begging from employees, or else word will spread that you cannot fire anyone.
- Do not get into a shouting match with the employee.
- If you hold an exit interview, focus on facts that led to the dismissal, not on the individual. Conduct the exit interview in private and at the close of business.
- If you suspect the employee might turn violent, arrange to have law-enforcement personnel on standby.
- Treat the employee courteously and do not publicly embarrass him or her.
- Do not sugarcoat the termination; your words can come back to haunt you.

Following these steps will make termination easier.

## **V. CONSIDER THE LEGAL RAMIFICATIONS OF THE TERMINATION**

Botched firings can quickly escalate into a lawsuit. There are steps supervisors can take to prevent an employee from successfully suing for unlawful-termination:

- Review the employee handbook
- Do not tell new hires that they will be employed for as long as they perform satisfactorily, because that is essentially a promise of lifetime employment.
- Establish clear position descriptions.
- Properly conduct performance appraisals and be honest in evaluating job performance.
- Consider whether the employee is a member of a class or individuals protected on account of race, sex, religion, national origin, age or disability.
- Have a third party present at the termination who can serve as a witness, if necessary.