

# 5 Ps of Termination<sup>TM</sup>

## Considerations for Firing Municipal Employees

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### 1. POLICY

- (a) **Existence:** Does the city have a personnel policy?
- (b) **Enactment:** Did the City Council actually approve the personnel policy?
- (c) **Authority:** Under the city's policy, who has the power to fire the employee?
- (d) **Steps:** Does the policy mandate any particular process for terminations?
- (e) **Consistency:** Does the city routinely follow the personnel policy?
- (f) **Appeal:** Does the policy provide a grievance procedure or right to appeal?

### 2. PROGRESSIVE

If the City has a policy of progressive discipline, has the city considered options other than termination, such as:

- (a) Training
- (b) Reprimand
- (c) Probation
- (d) Suspension/ Administrative Leave
- (e) Demotion
- (f) Reassignment
- (g) Resignation

### 3. PROTECTIONS

Here are potential land mines you want to identify and (hopefully) rule-out prior to termination:

- (a) **Age:** Is the employee over the age of 40? If so, beware of the federal Age Discrimination in Employment Act.
- (b) **Gender:** Are there any sexual harassment or gender discrimination issues you should know about?
- (c) **Race:** Is the employee a racial or ethnic minority?
- (d) **Religion:** Has the employee exhibited any religious practices that have drawn criticism or abuse?

- (e) **Military Service or Civic Duty:** Is the employee on active-duty with the Armed Services, or away on militarily approved or required training? Was the employee involved in jury duty/selection or voting in a public election?
- (f) **Workers' Compensation:** Has the employee recently applied for or received Workers' Compensation benefits for an injury?
- (g) **Whistle Blower:** Has the employee reported any possible unlawful acts by the City to a law enforcement agency?
- (h) **Contract:** Does the employee have an Employment Agreement with the City?
- (i) **Term:** Was the employee hired for a definite duration, or is there a statutory term of office (such as for municipal judges)?
- (j) **Charter:** If the employee works for a home-rule city, does the charter provide any limitations or procedural hurdles to terminations?
- (k) **Free Speech:** Has the employee made any public statements or comments to the media that may be afforded First Amendment protection?
- (l) **Complaints against Police:** If the pending termination stems from complaints against police officers, have the officers been given copies of the complaints as per statute?
- (m) **Civil Service:** Has the city adopted a civil service system or form of collective bargaining?
- (n) **Retaliation:** Is there evidence that the employee is being retaliated against for exercising a statutory or constitutional right or obligation?

### 4. PROCESS

- (a) **File:** Has the city documented the employee's transgressions so that the discharge is supported by the file? Can the city show that the employee violated a policy or provision of the city's personnel policy, or law?

- (b) **Investigation:** Is the alleged transgression worthy of an investigation? If so, should the inquiry be internal or external? Does the city's personnel policy allow/require an internal investigation? What is the scope of the fact-finding activity?
- (c) **IRP:** If the city is covered by TML-IRP, there is a *Call Before You Fire* program.
- (d) **Notice-Public:** If it takes Council action to discharge an employee, has the agenda been worded adequately?
- (e) **Notice-Personal:** Will the city provide the employee with personal service notifying the employee of the pending termination and basis?
- (f) **Meetings:** If it takes Council action to discharge an employee, will the Council want to deliberate in executive session? If so, has the employee exercised the right to open session? Will the city's legal advisor be attending? Will the employee's lawyer attend?
- (g) **Hearing:** Is the city required to, or considering, allowing citizens to speak? Does the employee have a right to a public hearing?
- (h) **Equipment:** How will the city facilitate the employee's return of all city-issued keys, I.D. badges, uniforms, equipment, phones, credit cards, files, or vehicles?
- (i) **Access:** Has the city taken the necessary steps to discontinue the employee's access to files, e-mail, computer server, or safety-sensitive areas on municipal facilities?
- (j) **Belongings:** How will the city allow the employee to collect personal items?
- (k) **Last Check:** When will the employee receive the final paycheck? Are there any direct deposits or auto-drafts that must be canceled? Was the city garnishing the employee's wages pursuant to a court order?
- (l) **Memo:** Should the city provide the employee with a memo explaining the termination?
- (m) **References:** Is there reason to establish if / how the city will handle reference checks on the employee in the future?
- (n) **Waiver/Release:** Is there any need to negotiate a mutual release or waiver of potential liability?
- (o) **Back-Fill:** How will the city handle replacing the terminated employee (short/long term)?

- (p) **Recruitment:** What decisions must be made immediately regarding finding a replacement?
- (q) **PR:** Should the city prepare a Press Release informing the public about the termination?

## 5. PRACTICALITIES

- (a) **Politics:** Should the City Council be informed in advance of the termination? Are they onboard with the termination? Does anyone anticipate political fallout from letting the employee go?
- (b) **Public:** How does the citizenry feel about the employee? Will there be much public sentiment one way or another? Broad public support may affect the manner and location of the termination proceedings.
- (c) **Leave:** Has the employee accrued any untaken vacation time, compensatory time, sick leave, or other form of paid time off? If so, what is the city's policy on pay-out?
- (d) **Unemployment:** Does the city want to discharge the employee in a manner that allows the employee to file for unemployment compensation?
- (e) **Insurance:** Will the city continue to pay any portion of the employee's health insurance for a period of time? Does the city fall under COBRA? If so, make sure the proper notices go out to the employee.
- (f) **Severance:** Is the city willing to offer any form of severance pay?
- (g) **References:** How will the city handle inquiries from the terminated employee's prospective future employers?
- (h) **Safety:** Does the city have reason to anticipate that the termination would pose a safety threat to the employee, the employee's family, or municipal personnel?
- (i) **Pending Matters:** Is the employee working on any projects that the city needs to reassign and take control over prior to the termination?