



**AMC 2026**

**WALA Session 1**

**Legal Guidelines for  
Employee Termination:  
Ensuring Compliance and  
Minimizing Risk**

**Presented by:**

*Colin H. Hargreaves  
Ogletree Deakins, Minneapolis, MN*

## About the Presenter...

**Colin H. Hargreaves** is of counsel in the Minneapolis office of Ogletree Deakins, where he counsels employers on a wide range of employment law matters and represents clients in administrative proceedings and civil litigation. He earned his J.D. from the University of St. Thomas School of Law, receiving Dean's List honors multiple times and gaining hands-on litigation experience through moot court and clinical work, including arguing a motion before a Federal Bankruptcy Judge, and holds a bachelor's degree in Psychology from the University of Wisconsin–Stout. Colin began his career handling employee-side employment litigation before transitioning to employer-side practice at a large regional defense firm, giving him a unique, well-rounded perspective he brings to every representation. Known as a resourceful subject matter expert and passionate advocate, Colin is committed to helping employers navigate complex employment issues and achieve positive results. Outside the office, he enjoys exploring Minnesota, cooking, learning the game of Go, and spending time with his significant other and puppy.

# Legal Guidelines for Employee Termination: Ensuring Compliance and Minimizing Risk

Colin Hunter Hargreaves (Minneapolis)

Ogletree  
Deakins

1

# Who Am I?

Ogletree  
Deakins

2

## Who Am I?

- I am an Of Counsel in Ogletree Deakins' Minneapolis office.
- With nearly 10 years representing employers, I have handled numerous different disputes—wage & hour, discrimination, whistleblower, drug testing litigation, administrative, etc.
- I also help employers with numerous different advice and counsel matters, including reviewing handbooks, confirming compliance with state and federal law, drafting contracts, assisting with human resources matters, etc.
- I have represented employers around the country.
- Drug testing expert.

Ogletree  
Deakins

3

## Who is Ogletree Deakins?

Ogletree  
Deakins

4

# About the Firm

Ogletree Deakins is one of the largest labor and employment law firms representing management in all types of employment-related legal matters.

The firm has more than 1100 attorneys located in 60 offices across the United States and in Europe, Canada, and Mexico.

We represent a diverse range of clients, from small businesses to Fortune 50 companies.

Ogletree  
Deakins

5

Premier client service is a firm tradition and remains our top priority.

Our attorneys pledge to:

- Understand your business and objectives
- Focus on and anticipate your needs
- Collaborate to develop creative business solutions
- Harness technology and innovation to better serve your interests
- Communicate in a timely and effective manner
- Provide quality representation with exceptional value

Ogletree  
Deakins

Value  
Innovation  
Quality  
Collaboration  
Communication

**CLIENT PLEDGE**

6

# Our 60 Offices

Atlanta  
Austin  
Baltimore  
Berlin  
Birmingham  
Boston  
Buffalo  
Calgary  
Charleston  
Charlotte  
Chicago  
Cleveland  
Columbia  
Columbus  
Dallas  
Denver

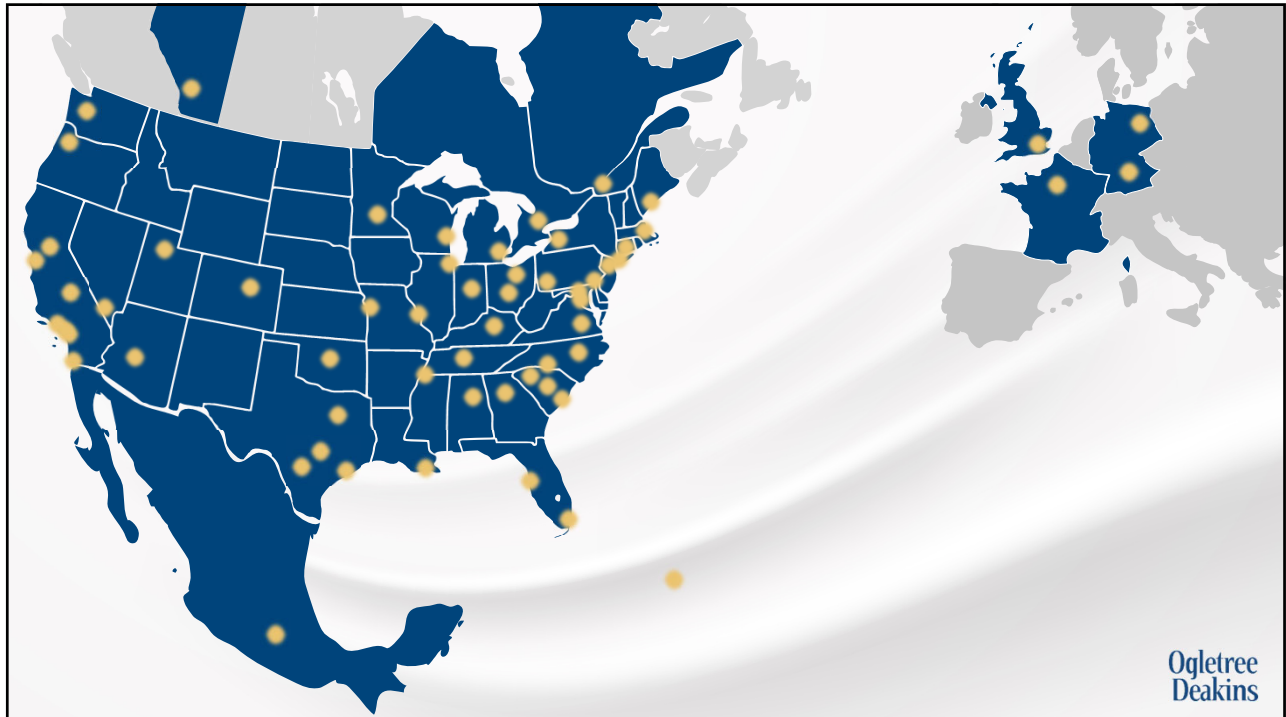
Detroit (Metro)  
Fresno  
Greenville  
Houston  
Indianapolis  
Kansas City  
Las Vegas  
Lexington  
London  
Los Angeles  
Memphis  
Mexico City  
Miami  
Milwaukee  
Minneapolis

Montreal  
Morristown  
Munich  
Nashville  
New Orleans  
New York  
Oklahoma City  
Orange County  
Paris  
Philadelphia  
Phoenix  
Pittsburgh  
Portland (ME)  
Portland (OR)

Raleigh  
Richmond  
Sacramento  
Salt Lake City  
San Antonio  
San Diego  
San Francisco  
Seattle  
St. Louis  
St. Thomas  
Stamford  
Tampa  
Toronto  
Torrance  
Washington, D.C.

Ogletree  
Deakins

7



8

# Agenda

1. DON'T Act Rashly.
2. DO Follow Your Policies and Practices.
3. DON'T Forget About Recent Protected Activity/Conduct or Statuses.
4. DO Document Effectively and Appropriately.
5. DO Discipline the Employee.
6. DO Provide Termination Rationale But DON'T Do So Improperly.
7. DON'T Forget About Performance Evaluations.
8. Do Consider Offering Severance/Separation Agreement.
9. DO Review Any Applicable Contracts/Employment Agreements.
10. DO Plan the Termination Meeting Ahead.

Ogletree  
Deakins

9

# DON'T Act Rashly

Ogletree  
Deakins

10

## Don't Act Rashly

- Often, a situation erupts quickly and employers may act ever quicker and without reviewing the full situation.
  - For example, an employee talks back to a manager, and the manager says “You’re Fired!”
- As we will discuss more shortly, it is imperative that rash, knee jerk decisions are not made.
- Don’t let pride or emotions take control.
- Train supervisors and decisionmakers on the disciplinary process—they are agents of the employer and can subject an employer to liability!

Ogletree  
Deakins

11

## Don't Act Rashly

- Get all the facts.
- Work with HR/Legal.
- Cool down before meeting with the employee—never meet with the employee while you are angry.
- Try to be positive and calm, not accusatory or blaming.
- Have a witness present!

Ogletree  
Deakins

12

## Don't Act Rashly

### Be Cool-Headed!

- Don't let your anger or personal feelings lead you into making a rash decision.
- At first blush, the conduct may appear to support your decision.
  - But there may be mitigating circumstances.
  - You may not have all the facts.
  - The facts you have may be inaccurate.

Ogletree  
Deakins

13

## DO Follow Your Policies and Practices

Ogletree  
Deakins

14

## What Does Your Handbook Say?

- Review your handbook and/or other applicable policies—what do they detail regarding employee discipline?
- Levels of disciplinary action include (but are not limited to):
  - Verbal warning.
  - Written warning.
  - Suspension/Performance Improvement Plan.
  - Final Warning.
  - Termination.
- Does your handbook or policies allow upward departure of discipline/discretion?
  - If so, know when to use your discretion or to escalate.
- Does the employee know about handbook? Have they acknowledged it?

Ogletree  
Deakins

15

## What About Your Practices?

- Do we follow our handbook and policies with every employee equally, fairly, and non-discriminatorily/non-retaliatorily?
- Have we encountered the same type of situation previously?
  - If so, how did we handle?
- Who is typically involved in disciplinary decisions? HR? Legal? Supervisor?
- Can the supervisor unilaterally issue discipline?
  - If possible, secret manager discipline without any corresponding documentation should be avoided.
  - Ensure managers know how to document any discipline and where to keep said documentation—this is important if litigation develops!

Ogletree  
Deakins

16

# DON'T Forget About Recent Protected Status/Conduct

Ogletree  
Deakins

17

## DON'T Forget About Recent Protected Status/Conduct

### Protected Categories/Traits

- Race/color (any)
- Age
- Religion
- Disability (actual, record, or believed)
- National origin (any)
- Gender (stereotypes/sexual orientation, gender expression)
- Genetic information
- Veteran status
- Pregnancy
- State protected categories

### Protected Conduct/Activities

- FMLA (usage or request)
- Request or receipt of an accommodation
- Complain of discrimination or harassment
- Complain of wage and hour violations
- Workers' compensation (apply or suffer an injury)
- Whistleblower (internal or external)
- Military service
- Workplace safety complaint
- Disclosure of medical condition/disability

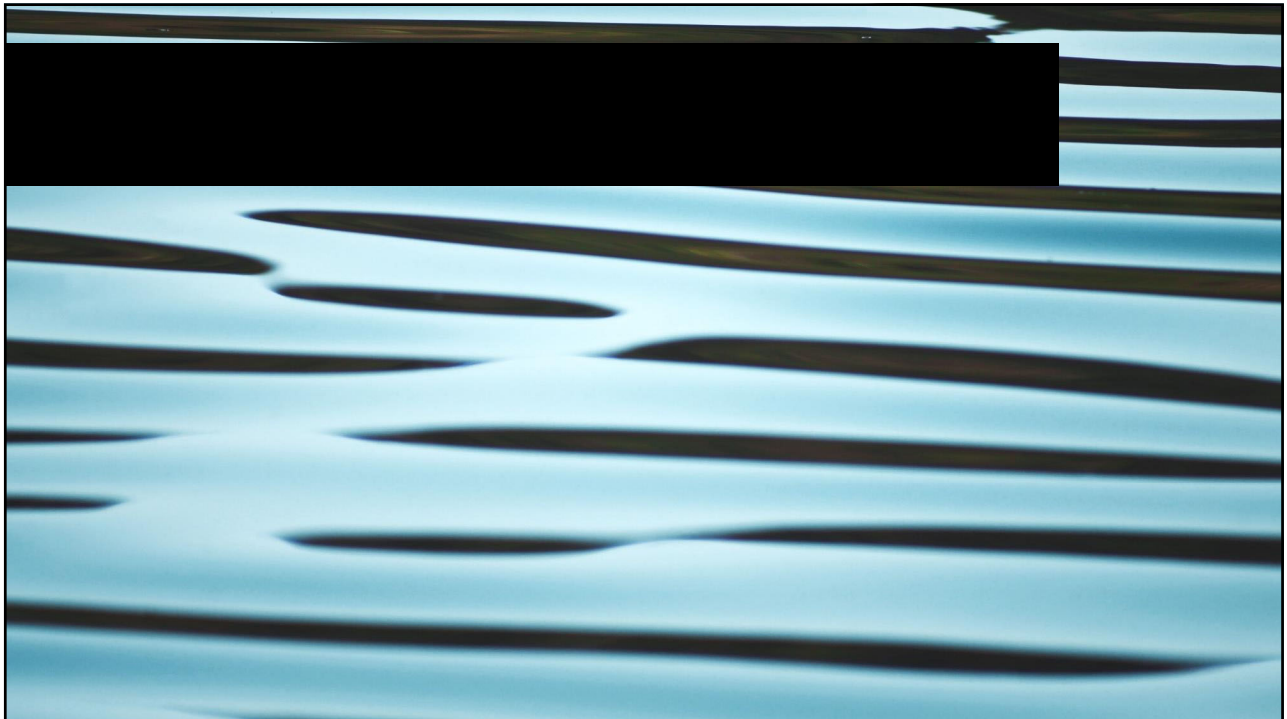
18

## Protected Statuses

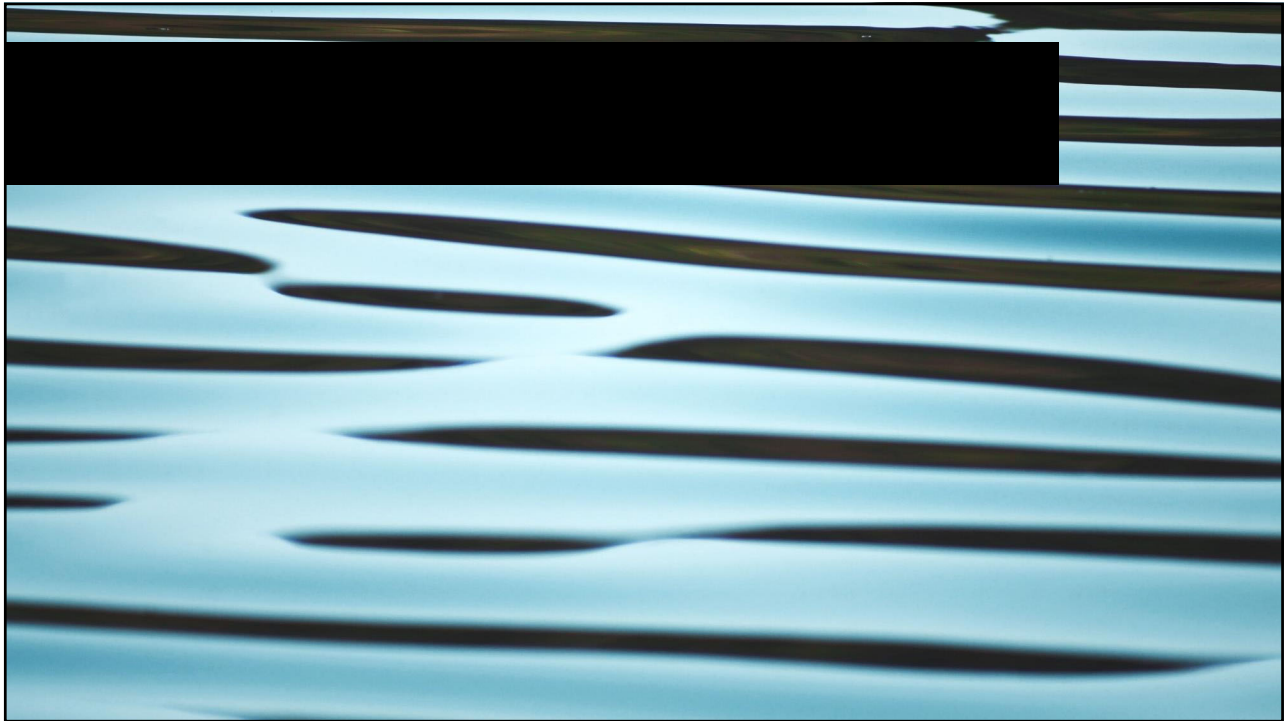
- Don't forget about some of the new categories that are spreading around the US—natural hair, medical marijuana patient, public assistance, etc.
- Stay aware of legislative updates.
- This is a recent trend and additional states will continue to be pass legislation on protected traits/statuses.

Ogletree  
Deakins

19



20



21



Employees often try to “shield” themselves from discipline and/or termination by engaging in protected conduct—**BE MINDFUL AND EXERCISE CAUTION!**

**Investigate!**

Ogletree  
Deakins

22

## DO Document Effectively and Appropriately

Ogletree  
Deakins

23

## DO Document Effectively and Appropriately

- BE DETAILED AND KEEP ALL DOCUMENTATION!
- Counsel and discipline employees when applicable.
- Involve HR and/or legal.
- Take time to assess all of the facts, any valid reasoning, and make an informed decision.
  - Listen to what the employee has to say!
  - Talk to pertinent witnesses.
  - Check the employee's file for previous feedback/discipline.
- Identify the conduct you believe requires discipline.
  - Concentrate on the conduct, not on the personality or personal feelings toward the employee.
- Be fair and consistent.
- Be reasonable and objective.

Ogletree  
Deakins

24

## DO Document Effectively and Appropriately

- How do you take notes during meetings?
- Do you have a document retention policy?
- Do employees know about the document retention policy?
- Do you know how to implement a hold on your systems?
- Who is in charge of implementing holds?
- Do employees know where to store important documentation/records?
- Emails?

Ogletree  
Deakins

25



## Types of Documentation

- Performance reviews/evaluations.
- Written disciplinary documents (e.g., write ups, PIPs, final warnings, etc.).
- Emails with the employee or HR/legal.
- Notes on performance or any issues.
- Feedback to the employee.
- Disparate impact analysis (for RIFs).
- Personnel record with the standard documents.
- Communications with or about the employee concerning conduct or other issues.
- Handwritten notes.
- And more!

Ogletree  
Deakins

26

## Practical Examples for Written Documentation

- **Wrong:** *“Your work is too sloppy and must improve.”*
- **Correct:** *“You must meet the production quota of 12 units per hour.”*

Ogletree  
Deakins

27

## Practical Examples for Written Documentation

- **Wrong:** *“You must improve your attendance and punctuality.”*
- **Correct:** *“In any six-month period, you may not have more than one unexcused absence and you may not have more than two unexcused instances of tardiness.”*

Ogletree  
Deakins

28

## Practical Examples for Written Documentation

- **Wrong:** *“We expect you to be more of a team player.”*
- **Correct:** *“When dealing with co-employees and supervisors, provide a short, written response to all co-worker requests within one day, specifying how the request will be met. You should follow through with all commitments made in the written response.”*

Ogletree  
Deakins

29

## Practical Examples for Written Documentation

- **Wrong:** *“You have a poor attitude.”*
- **Correct:** *“On March 21, I saw you yell at your supervisor in front of customers. This is not appropriate conduct.”*

Ogletree  
Deakins

30

## Practical Examples for Written Documentation

- **Wrong:** *“Your performance is substandard.”*
- **Correct:** *“Your production level in the third week of June was only at 50% of average.”*

Ogletree  
Deakins

31

## Practical Examples for Written Documentation

- **Wrong:** *“Your performance is improving; keep up the good work.”*
- **Correct:** *“Last review, you were asked to reduce errors by 10%. You have exceeded this standard and have reduced errors by 15%. You need to maintain this error rate. Please let me know what I can do or what tools we can provide to allow you to perform even better.”*

Ogletree  
Deakins

32

# DO Discipline The Employee

Ogletree  
Deakins

33



Discipline is a critically important part of the employer/employee relationship!

It helps correct potential conduct (and hopefully improving it), documents (in case of litigation), and reduces costs (of hiring and re-hiring).

Ogletree  
Deakins

34

## Seven Steps to Effective Discipline

1. Objective observation of behavior. BE SPECIFIC!
2. Determine the behavioral cause and the potential gravity of the issue.
3. Provide constructive discipline to the employee to correct the conduct/cause. Explain, clearly, what must be done to correct the conduct.
  - Avoid ambiguities and vagueness!
4. Create improvement plan that documents the consequences for failure to comply with the requested improvement.
5. Involve employee in plan.
6. Confirm/acknowledge plan.
7. Enforce commitment to plan.

Ogletree  
Deakins

35



## Disciplining Employees

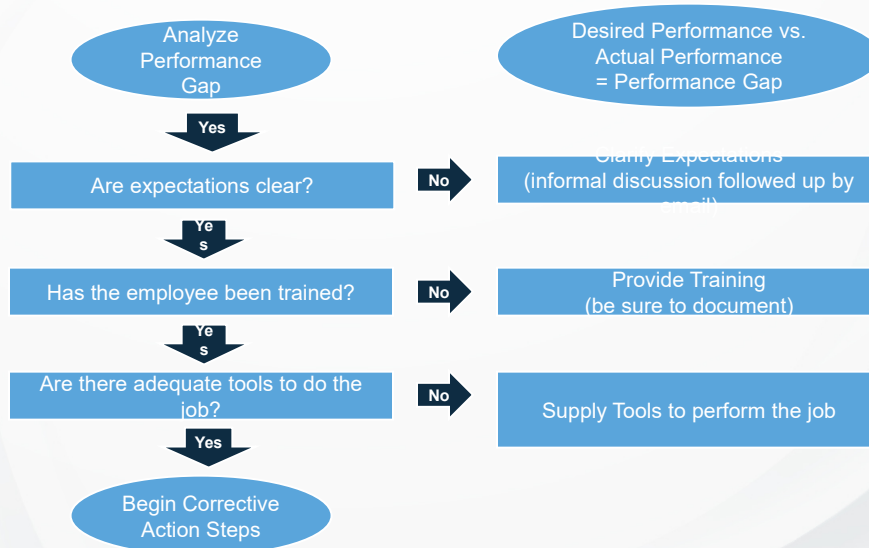
Determine the Appropriate Level of Discipline:

- ✓ Be consistent and fair
- ✓ Be reasonable and objective
- ✓ Discipline in steps unless the conduct justifies a stronger response

Ogletree  
Deakins

36

## When Employee Performance Falls Short



Ogletree  
Deakins

37

## Make Sure to Document The Discipline!

- Helps ensure there is a record of documentation, which can be legally significant.
  - It is typically high on evidentiary proof scale.
  - It is also high on the credibility scale.
  - It is also high on the jury appeal scale.
- This documentation comes into play early! It is important in administrative/agency proceedings as well as civil actions.
- It can also impact potential defenses.
  - For example, if a relevant document is not contained in a personnel record you may not be able to use it.

Ogletree  
Deakins

38

# DO Provide Termination Rationale but DON'T Do So Improperly

Ogletree  
Deakins

39

## DO Provide Termination Rationale but DON'T Do So Improperly

### Appropriate

- Be truthful.
- Ensure reason is defensible.
- Provide a brief reason with rationale supporting the reason.
- Consistency!

### Inappropriate

- Going into too much complex detail, which may lock an employer into a position.
- Including any impermissible motive.
- Including any unlawful reason.
- Departing from prior conversations on the same, including new information, being unfair

40



## DO Provide Termination Rationale but DON'T Do So Improperly

- Be mindful that some states have statutes that require employers to provide the truthful reasons for termination.
- The reason should mirror the reasons provided to the employee.
- Any departure, addition, etc., may create issues if any civil actions arise.

Ogletree  
Deakins

41

## DON'T Forget About Performance Evaluations

Ogletree  
Deakins

42

## Performance Reviews/Evaluations

- Review performance evaluations before electing to terminate.
- Often, performance evaluations are viewed as unimportant.
  - But, reviews/evaluations can be critical evidence in any administrative/agency proceedings or civil actions.
- Managers generally avoid/ignore problematic areas and do not include any references to areas of improvement.
  - Managers must be trained to be candid, honest, and direct in reviews.
- Look at trends.
- Be impartial.

Ogletree  
Deakins

43

## DO Consider Offering Severance/Separation Agreement

Ogletree  
Deakins

44

## DO Consider Offering Severance/Separation Agreement

- Severance/separation agreements offer clarity regarding the future—if an employee signs, they will release the employer from potential legal claims stemming from their employment.
- Great for “high risk” terminations, but can be used for any termination.
  - Although, it creates a cost discussion given that the employer will have to offer valid consideration (i.e., money).
- Of course, this will depend on the type of termination and past precedent.
  - Some employers outline any severance to departing employees—make sure to follow if so!


Ogletree  
Deakins

45

## DO Review Any Applicable Contracts/Employment Agreements

Ogletree  
Deakins

46



If there is an employment contract, it may impact how you terminate the employee—  
**ALWAYS CHECK!**

Ogletree  
Deakins

47



### DO Review Any Applicable Contracts/Employment Agreements

- Does the employee have an employment agreement? Is it at will?
- Does the employment agreement have any term language?
- Does the employment agreement have notice provisions?
- Consideration of pros/cons of early termination in comparison to potential contractual rights/damages

Ogletree  
Deakins

48

## DO Review Any Applicable Contracts/Employment Agreements

- Generally, termination provisions are more of an antiquated provision that is no longer included in typical employment agreements.
- However, this still commonly arises in the executive context.
- In addition, it also commonly arises in medical provider (physician) roles, tech-related roles, or other important roles.
- It is critical to understand the employee's position and whether they are subject to any potential employment agreement.
- This removes any liability of an employer not following the correct notice/termination procedure.

Ogletree  
Deakins

49

## DO Plan the Termination Meeting

Ogletree  
Deakins

50

## Plan the Termination Meeting

- Plan the termination meeting carefully.
- Determine:
  - Who will be attendance?
  - Who will be speaking?
  - Who say what?
  - What documentation will be provided?
- Draft termination script.
- Review relevant documents, agreements, offers, job description, pertinent personnel policies (if applicable) with the employee and have copies available.
- Take notes!
- Don't leave anything up to chance!

Ogletree  
Deakins

51

## The Termination Meeting

- In person, if possible
- Meeting at an appropriate time of day
- Find a private, quiet location
- Have a witness present
- Beware of recordings
- Do not record the meeting
- Avoid emotions
- Do not apologize
- Be brief and do not debate the decision
- Do not overpromise
- Recover company property
- Avoid “perp” walks

Ogletree  
Deakins

52

## Concluding Thoughts

Ogletree  
Deakins

53

### Top “Ten” (Or Fourteen) Factors in a Bad Termination (Jim Weliky, noted Boston Plaintiff’s Lawyer)

- Sudden threats of termination and/or termination for performance problems where no prior communications to the employee about those problems
- Absence of contemporaneous documentation of performance problems
- Failure to follow established evaluation procedures
- Inconsistent application of established practices or policies
- Contradictory, embellished or inconsistent statements of reasons for adverse actions

Ogletree  
Deakins

54

## Top “Ten” (Or Fourteen) Factors in a Bad Termination (Jim Weliky, noted Boston Plaintiff’s Lawyer)

- In reductions-in-force, retention of younger, less experienced co-workers for no defensible reason
- In reductions-in-force, sudden transfers of younger, less experienced co-workers shortly before announcement of layoffs
- One or two person “reduction-in-force”
- Sudden intensive scrutiny where none previously and/or where no prior indication of work difficulties
- Punishing the victim in harassment cases, e.g. putting the accuser on leave rather than the accused, transferring the accuser out of the accused’s department
- Manipulation of the promotion or hiring process so that only desired candidates “qualify”
- Demanding detailed health records to document disability and providing them to supervisor and/or supervisor asking employee if she/he has a disability

Ogletree  
Deakins

55

## Find Us Online



[www.ogletree.com](http://www.ogletree.com)



[twitter.com/ogletreedeakins](https://twitter.com/ogletreedeakins)



[linkedin.com/company/ogletree-deakins](https://linkedin.com/company/ogletree-deakins)

Ogletree  
Deakins

56

Thank you!

Ogletree  
Deakins