

**“EFFECTIVELY EXECUTING THE TERMINATION PROCESS:  
A STEP BY STEP GUIDE”**

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**PREPARATION FOR TERMINATION MEETING**

**The employer has the opportunity to be proactive, so the employer should utilize the time prior to the meeting to make preparations to handle the specific situation optimally.**

The following considerations should be taken into account when setting up a termination meeting:

- Have one witness in the room the entire time, if possible. (The only exception to this general rule would be if the presence of the other individual would be viewed as highly disrespectful.) This witness may also be used as a note-taker to memorialize the content of the conversations in the meeting. Choose the *appropriate* people to attend the termination meeting.
- Decide *where* you are going to meet. It needs to be a private, respectful place. For example, a conference room in a discreet place might be a good idea, but a windowed conference room where others can see in would not. Similarly, try not to always use to the *same* place and time for termination meetings, lest a certain location be designated the “hatchet room.”



- Make arrangements to prevent any disruptions or interruptions during the meeting.
- Schedule the meeting at the end of the work day (after making the appointment in advance). This affords the Employee the opportunity to leave the work area without embarrassing him/herself or upsetting others in the Company.
  - If using an electronic appointment, choose your language for the appointment carefully (e.g., reference a follow-up to a prior performance-related discussion)
  - Be prepared for the employee to question what the scheduled meeting is about and have a prepared script for how to field any questions (e.g., “I want to talk about it in person and I don’t have time to do that right now; let’s wait until the scheduled time”)
- Advise building security (if any) that the Employee will no longer be with the Company. Do not tell security of the reasons for the termination, unless it is reasonably necessary to protect people or the property of others.
- Just prior to the meeting, advise others in management and/or key supervisory positions of the meeting and provide them a script of what to say in the event the Employee contacts them.
- Have the Employee’s final paycheck and/or other compensation made available at the time of the termination meeting.<sup>1</sup>
- Script the “Talking Points” and prepare for the most difficult questions the Employee may ask in the termination meeting. PRACTICE delivering the termination and fielding those difficult questions (unless you already have a great deal of experience).
- Organize the Employee’s “personnel record”, as that phrase is defined in Minn. Stat. § 181.961, to prepare to produce it, if requested. (Often, when employees are considering whether to commence an action against their employers, they request the truthful reason for discharge, pursuant to Minn. Stat. § 181.933, and/or a complete copy of their personnel file, pursuant to Minn. Stat. § 181.960, et seq.) **Attachment A** is a letter we use letting our clients and friends know what should and should not be maintained in an employee’s personnel file. In some industries, there are additional/different requirements for the contents of employees’ personnel files (e.g., Minn. Rule § 9503 sets

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<sup>1</sup> If the Employee is a “**Transitory Employee**,” which requires an employee to change the employee’s place of abode while performing the service required by the employment, then the wages or earnings of the Employee **must be paid within 24-hours** of the end of the employment relationship. Minn. Stat. § 181.11. With respect to Transitory Employees, penalties start accruing if the employer fails to pay within two business days after termination. Id. Penalties include payment of wages in the amount of two times the Transitory Employee’s daily rate of pay until the payment is made in full. Id. For all other employees, the wages or commissions actually earned and unpaid at the time of discharge **are immediately due and payable upon demand of the Employee**. Minn. Stat. § 181.13. With respect to these other employees, if the employee’s earned wages and commissions are not paid within 24 hours after demand, the discharged employee is entitled to collect the amount of the employee’s average daily earnings for each day payment is not made, for up to 15 days. Employers are also responsible for the employee’s reasonable attorneys’ fees, costs (including witness fees) and disbursements in an action to enforce the provisions of Minn. Stat. §§ 181.11 and/or 181.13. Minn. Stat. § 181.171, subd. 3.

forth special requirements for the personnel files of employees in the early childhood education arena). Obviously, consult legal counsel about your particular industry.

- Compile a list of all Company property that you will need to get back from the Employee.<sup>2</sup>
- Determine how to convey the situation to other employees. Although this message is not going to be delivered until *after* the employee leaves the termination meeting, employers should be preparing for that process *before* the termination meeting.
- Determine whether the Employee poses a threat for potential workplace violence and plan accordingly.<sup>3</sup>

**[Talking Points] The “Talking Points” are a pre-determined script of key points that the employer should communicate during the course of the termination meeting.**

The following is a non-exhaustive example of the “Talking Points” that should be considered in a termination meeting:

- Start with a clear explanation of why the Employee is there: “As you know, we have had concerns about your job performance over the past several months and we have talked with you on several occasions about these concerns.”
- Explain that the Company has attempted to improve the performance of the Employee through a Performance Improvement Plan: “As a result of our ongoing concerns about your performance, we placed you on a formal Performance Improvement Plan at the beginning of \_\_\_\_\_ 20\_\_\_\_\_ to turn this around.”
- Explain that Performance Improvement Plan had specific guidelines for the Employee to meet: “The Plan outlined for you the specific areas that needed to improve for you to be able to continue your employment with the Company.”
- Explain how the Company has attempted to help the Employee meet the expectations of the Plan: “Because it is our assessment that you did not improve your job performance on a consistent basis, however, we gave you an opportunity to turn it around and some specific directions and suggestions on improving your work and set forth our expected time table in the Performance Improvement Plan dated \_\_\_\_\_.”
- Explain how the Employee has failed to meet the expectations as set forth in the Plan: “Since that time, you have failed to consistently meet our performance expectations that we have outlined for you. I am giving you a copy of a memo I prepared that summarizes several continuing performance problems in the last week or so. I’m also giving you a letter from \_\_\_\_\_ that explains the decision in more detail.”

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<sup>2</sup> A departing employee checklist is attached to this outline as **Attachment B**.

<sup>3</sup> Conduct an assessment of risk factors in accordance with **Attachment C** of this outline.

- [HAND THE EMPLOYEE THE TERMINATION LETTER] Explain to the Employee that s/he does not have to read the documents now: “You are welcome to read the documents now, or, you may want to take the documents home and read them there.”
- [HAND THE EMPLOYEE THE FINAL PAYCHECK] Explain to the Employee what it is and what it covers: “I’m also giving you your final paycheck. This paycheck covers your last day of work and your accrued but unused PTO in accordance with Company policy.”
- Explain to the Employee that s/he must leave the building: “We understand that you are probably taking this all in right now, and so we ask that you go home now and not go back to your office.”
- Explain to the Employee that s/he will be provided an opportunity to come to the office to pick up his/her belongings: “We would like to schedule a time when you can come in either before or after business hours to get all of your personal things and bring in any Company property you may have. Please call \_\_\_\_\_ to arrange that time.”
- If possible, try to end the meeting on a good note: “Please let us know if there is something the Company can do to help you or assist you during this transition.”

**[Potential Questions] It is important to prepare and practice delivery of answers in advance for the most difficult questions that the Employee may ask.**

The following is a list of examples of scripted answers for potentially tough questions:

<b>If the Employee asks:</b>	<b>Then answer:</b>
What about severance? Are you going to pay me severance?	If you have a severance plan, specifically outline the provisions of the severance plan. If the Employee is bringing up the issue of severance when s/he has no entitlement to it, do not accept or reject the request for severance. Rather, you might say: “If you have any requests, I ask that you put them in writing and we’ll consider them and respond promptly.”
What about the continuation of my health insurance? Are you going to pay for that?	If you have an employer-paid health care continuation plan, specifically outline the provisions of that health care continuation plan. If the Employee is bringing up the issue of the employer paying for health care continuation benefits when s/he has no entitlement to it, do not accept or reject the request. Rather, you might say: “You will be

	receiving information about COBRA coverage to continue your health insurance within the time periods proscribed by law. If you have any additional requests, after reviewing that correspondence, I ask that you put them in writing and we'll consider them and respond promptly."
I thought I had good job performance; you <i>never</i> told me my job was in jeopardy, what's up with that?	Do not argue: "It doesn't make sense for me to try to persuade you of our position or to argue with you about this. The Company has made its decision based on its perception of the situation (and the job performance concerns previously discussed with you)."
What are you going to say to others about my performance?	"We will not be discussing your performance with others. Regarding your termination, we will merely state that you are no longer with the Company and are pursuing other interests."
Can I get documentation of the reasons for my termination?	"You may put any request in writing to me, and I'll respond to it."
Can I resign instead of being terminated?	"If you put your request in writing, I'll consider it and respond appropriately."
What about my unused vacation time?	Optimally, you would know what the Employee's accrued vacation (PTO) is prior to the meeting and how the Company's policy applies to the payment of accrued PTO upon termination, so you could answer this question with "according to our records, you have ___ hours of accrued vacation. Accordingly, under our policy, . . ." If you are not prepared to answer that question, you might say "You will receive benefits to which you are entitled under Company policy, this may include any unused vacation pay. We'll need to review that policy and let you know."
Will I get unemployment compensation?	"You are free to apply for unemployment compensation and the state will decide if you receive it. The state has its own criteria for assessing a former employee's entitlement to

	benefits.”
Will you give me a letter of reference?	“If you put together a draft of a neutral proposed letter of reference and send it to me, I’ll consider it and respond to your request for a letter of reference promptly” OR “We are not in a position to provide you a favorable reference” OR “We have a company policy of not providing letters of reference for terminated employees.”

**Other Employee Conduct that May Come up During the Meeting**

What if the Employee becomes emotional?                      Be empathetic. You might say something like “We know this is a tough time and are genuinely disappointed this did not work out.” You may also ask, “Would you like us to stay or step out of the room?”

What if the Employee becomes angry?                      You might respond, “Now, we’ve tried really hard to handle this as respectfully as possible and we are going to have to insist that you do so as well.” AND/OR “If you need some time to compose yourself, we can step out of the room to give you some time to collect yourself. You can let us know when you are ready to communicate respectfully with us and we can continue.”

\*\*\*You need to have a specific plan for workplace violence, should you have a concern about it.

THE BASIC THEME OF THIS ENTIRE DISCUSSION:

- ✓ BE DIRECT, BUT AS RESPECTFUL AS POSSIBLE;
- ✓ IN A TERMINATION FOR POOR PERFORMANCE, YOU WANT THE EMPLOYEE TO WALK AWAY THINKING YOU DIDN'T WANT IT TO GET TO THIS POINT, BUT IN YOUR VIEW YOU HAD NO CHOICE, BECAUSE OF THE EMPLOYEE'S CONDUCT
- ✓ DON'T ARGUE; AND
- ✓ DON'T COMMIT TO ANYTHING OTHER THAN WHAT YOU ARE REQUIRED TO DO PURSUANT TO THE LAW AND YOUR POLICY. MANY TIMES, YOU NEED TO HAVE LEVERAGE FOR NEGOTIATIONS LATER, SO YOU MAY NOT WANT TO COMMIT TO TOO MUCH FOR "FREE." IF YOU ARE GOING TO GIVE THE EMPLOYEE ITEMS TO WHICH S/HE IS NOT ENTITLED, YOU WILL WANT TO GET A RELEASE IN EXCHANGE FOR PROVIDING THOSE BENEFITS. (For example, we have been successful on occasion in getting a release in exchange for such nominal things as an agreement not to contest unemployment benefits and provide a neutral letter of reference.)

**[Follow Up] Handing the Employee his/her final paycheck does not relieve the employer of its obligations with respect to the Employee. Make sure to "Follow Up."**

The following is a non-exhaustive list of some of the considerations that should be made after the employee has been terminated:

- Make sure to send a follow-up letter. This letter should provide the Employee with a written record of the action taken.<sup>4</sup>
- Did the Employee sign confidentiality and/or non-competition and/or non-solicitation agreement(s)? If so, the employer should provide notice to the Employee of his/her rights and responsibilities with respect to the agreement(s) in the follow-up letter. If not, the employer may wish to have the Employee sign one in connection with a negotiation involving providing any additional consideration to the Employee upon termination.
- Does the Employee qualify for continued group medical coverage? If so, there are certain notice procedures that must be followed in order to remain in compliance with the law.<sup>5</sup>
- Has the Employee requested a truthful reason for termination? If so, this must be provided to the Employee.<sup>6</sup>

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<sup>4</sup> An example of a follow-up letter is attached to this outline as **Attachment D**.

<sup>5</sup> Under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), an employer of 20 or more employees must provide the terminated-employee with the appropriate COBRA notice. This notice must be provided by the employer to the plan administrator within 30 days after the effective date of termination. The plan administrator, in turn, has 14 days after receipt of notice from the employer to notify the employee of his/her federal COBRA rights. **Attachment E** of this outline is a sample COBRA notice for employees.

- Has the Employee requested a copy of his/her personnel file? If so, this must be provided to the Employee.<sup>7</sup>

Does the Employee pose a threat to the company or any of the Company's employees? If so, the employer should provide notice to the employees (especially potentially targeted employees) of the potential threat and the procedures to follow in the event of an emergency. In addition, take measures to heighten the level of security in and around the place(s) of employment at the time of the termination and thereafter.

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<sup>6</sup> In accordance with Minn. Stat. § 181.933, an employee who has been involuntarily terminated may, within 15 working days following such termination, request in writing that the employer inform the employee of the reason for termination. **Within ten working days** following receipt of such request, an **employer shall inform the terminated employee in writing of the truthful reason for termination.**

<sup>7</sup> In accordance with Minn. Stat. § 181.961, upon written request by an employee, the employer shall provide the employee with an opportunity to review the employee's personnel record no later than seven working days after receipt of the request if the personnel record is located in this state, or no later than fourteen working days after receipt of the request if the personnel record is located outside the state.

ATTACHMENT A



April 23, 2008

**OUR CLIENTS AND FRIENDS**

Re: Personnel Records

*Please note that effective January 1, 2008, employers must give all employees written notice of their rights under the Personnel Access Statute. We are recommending you hand out copies of the statute to all employees and then obtain the employees' signatures on an acknowledgment form, and place that form in their personnel files. With respect to new hires, we recommend you have the employees review the statute and sign the acknowledgment form as part of the orientation process. (If you would like us to draft the acknowledgment, let us know.)*

*The following are statutes in regard to the maintenance of personnel records.*

*Pursuant to Minnesota Statute §181.961, et seq., an employee may make a written request to obtain a copy of his personnel file, and the employer must provide a copy of that personnel file within seven (7) business days of receipt of the request, unless the file is stored outside Minnesota. In that event, the file must be produced within fourteen (14) business days of receipt of the request.<sup>8</sup>*

*According to Minnesota Statute §181.960, subd. 4, a personnel file should include the following:*

- 1. Any application for employment;**
- 2. Wage or salary history;**
- 3. Notices of commendation, warning, discipline or termination;**
- 4. Authorization for deductions or withholdings;**
- 5. Fringe benefit information;**

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<sup>8</sup> With respect to existing employees, they may review their Personnel Record once every six months. Minnesota Statute § 181.961, subd. 1.

6. **Leave records -- this does not include FMLA leave requests or disability leave records. Those records must be maintained in separate, confidential files.**
7. Employment history with the employer, including:
  - ✓ *Salary and compensation history;*
  - ✓ *Job titles;*
  - ✓ *Dates of promotions, transfers and other changes;*
  - ✓ *Attendance records;*
  - ✓ *Performance evaluations; and*
  - ✓ *Retirement records.*

*An employer should also include a copy of the employee's signed acknowledgment regarding receipt of the personnel policy handbook or manual and/or other important policies. Similarly, an employer should include a copy of the employee's acknowledgment of attendance at required training (i.e., safety or sexual harassment issues).*

*Minnesota Statute §181.960, subd. 4, also **prohibits** an employer from placing the following information in an employee's personnel file:*

1. **Written references regarding the employee, including letters of reference supplied to an employer by another person;**
2. **Information relating to the investigation of a violation of a criminal or civil statute by an employee or an investigation of employee conduct for which the employer may be held liable, unless and until:**
  - ✓ *The investigation is completed and, in cases of an alleged criminal violation, the employer has received notice from the prosecutor that no action will be taken or all criminal proceedings and appeals have been exhausted; and*
  - ✓ *The employer takes adverse personnel action based on the information contained in the investigation records.*
3. **Education records, pursuant to the Family Education Rights and Privacy Act of 1974 (20 U.S.C. § 1232 (g)) that are maintained by an educational institution and directly relate to a student;**
4. **Results of employer testing, except that the employee may see a cumulative test score for a section of the test or the entire test;**
5. **Information relating to the employer's salary system and staff planning, including comments, judgments, recommendations, or ratings concerning expansion, downsizing, reorganization, job restructuring, future compensation plans, promotion plans and job assignments;**
6. **Written comments or data of a personal nature about a person other than the employee, if disclosure of the information would constitute an intrusion upon the person's privacy;**
7. **Written comments or data kept by the employee's supervisor or an executive, administrative or professional employee, provided the written comments or data are kept in the sole possession of the author of the record;**
8. **Privileged information or information that is otherwise discoverable in a worker's compensation, grievance arbitration, administrative, judicial or quasi-judicial proceeding;**
9. **Any portion of a written or transcribed statement by a coworker of the employee that concerns the job performance or job-related misconduct of the employee that discloses the identity of the coworker by name, inference, or otherwise; and**

10. **Medical reports and records, including reports and records that are available to the employee from a health care services provider pursuant to Minn. Stat. § 144.335.**

*In addition, the following information should **not** be placed in an employee's personnel file for the corresponding reasons:*

1. **I-9 Forms.** Forms regarding immigration status. The Minnesota Human Rights Department has advised, on occasion, that it takes the position that the retention of I-9 forms in an employee's personnel files is evidence of national origin discrimination. These documents should be maintained in a separate folder, and all forms for all employees should be in this file, kept in alphabetical order, as it avoids the appearance of discrimination.
  - ✓ *It also avoids any potential litigation problems if there is an audit by the INS or Department of Labor.*
  - ✓ *Furthermore, it avoids the disclosure of any confidential information.*
2. **Medical records.** All medical records, or requests for reimbursement for medical expenses, should be maintained in a separate folder. The 1991 Amendments to the Civil Rights Act make it unlawful to store medical records in personnel files.
  - ✓ *By maintaining all medical records in a restricted, confidential file completely separate from the employees' personnel files, you avoid disclosing confidential information, and avoid any potential inquiries about your employment practices if audited by either the EEOC, the Minnesota Department of Human Rights or the Department of Labor.*
3. **Worker's compensation records.** These records should also be maintained in a restricted, confidential file separate from the employee's personnel file. Because there are typically copies of medical records regarding the employee's injury, you could place the worker's compensation records in the same folder with the applicable medical records. All of this, though, should be separate from the personnel file, and should be labeled "restricted and confidential."
4. **FMLA leave records.** Other than records for the days gone or absent from work, no FMLA leave records should be in the personnel file. Also, FMLA leave records should **not** be placed in the same file as medical records. Instead, any records relating to FMLA leave should be placed in a restricted, confidential file.
  - ✓ *For audit purposes, the FMLA leave records should identify only three things: (i) diagnosis and/or reason for FMLA leave; (ii) duration of leave; and (iii) expiration of leave.*
5. **Disability leave records.** These should also be maintained in a restricted, confidential file separate from employees' personnel files. As with medical records, retention of disability records in a personnel file could be viewed as evidence of disability discrimination.
6. **Benefits claim forms.** If related to medical records, these forms should be maintained in a restricted, confidential file separate from the employees' personnel files.
7. **Drug testing results.** This is similar to medical records, and should be maintained in a restricted, confidential file separate from the employees' personnel files.

*If a former employee requests a copy of his personnel file, the employer may **not** charge the person for the copying costs. See Minnesota Statute §181.961, subd. 2(d).*

*Finally, you should know Minnesota Statute §181.933, subd. 1, requires an employer to provide the written reason to a former employee for the reason of his or her involuntary termination **only if** that former employee makes a written request for such information within fifteen (15) working days after his or her termination. If such a request is made, the employer has ten (10) working days to respond to the employee's request. Former employees are entitled to a copy of their personnel file once per year, upon written request, for as long as the personnel file is maintained. Minnesota Statute § 181.961, subd. 1.*

I hope this adequately addresses the information we discussed. If you should have any further questions regarding this matter, please do not hesitate to contact the undersigned.

Very truly yours,

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**ATTACHMENT B**

**DEPARTING EMPLOYEE CHECKLIST:**

<b>Departing Employee Name</b>	
<b>Last Day of Employment</b>	

<b>Item (s):</b>	<b>Completed:</b>
<b>Cellular Phone / PDA / Pager (if company issued)</b>	
<b>Company Car / Car Keys</b>	
<b>Company Computer / Printer / Fax Machine</b>	
<b>Company Credit Card(s)</b>	
<b>Company Documents and other Confidential Information</b>	
<b>Company Dictaphone and / or Tapes</b>	
<b>Company Identification / Access Cards</b>	
<b>Company Keys to Office, Furniture, etc.</b>	
<b>Company Uniform</b>	

<b>Deactivate Computer Access and Change Password</b>	
<b>Deactivate ID</b>	
<b>Miscellaneous Office Equipment in Employee's Possession</b>	
<b>Notify Receptionist of Call Forwarding Instructions</b>	
<b>Obtain Employee's Home Address and Telephone Number for further communications and W-2</b>	
<b>Parking Pass / Permits</b>	
<b>Payment for Petty Cash / Cash Advances / Travel Advances</b>	
<b>Remote Log-Ins</b>	
<b>Remove / Change Telephone Extension or Voicemail and/or Email</b>	

## ATTACHMENT C

### EMPLOYEE RISK ASSESSMENT

The following is a non-exhaustive list of considerations that an employer should take into account when determining whether the Employee poses a potential threat of violence to the Company or any of its employees:

<b>Potential Warning Signs :</b>	<b>YES or NO</b>
Has the Employee threatened (directly or indirectly) the Company or any of its employees at any time during the course of employment?	
Does the Employee have a disregard for authority? (i.e., has the Employee had conflicts with managers, supervisors or fellow employees?)	
Has the Employee ever brought (or talked about bringing) guns, knives or other weapons into the workplace?	
Is the Employee a collector, or have a fascination, of guns or other weapons?	
Has the Employee attempted to physically intimidate, bully or harass other employees?	
Has the Employee ever indicated that s/he idolizes or identifies with perpetrators of violent crimes?	
Has the Employee ever talked about taking violent actions?	
Has the Employee ever been an abuser of Drugs and/or Alcohol?	
Has the Employee shown any dramatic changes of behavior? (i.e., mood-swings or depression)	

Has the Employee ever indicated a desire to commit suicide?	
Does the Employee have obsessive involvement in and/or attachment to the job?	
Is the Employee not receptive to criticism?	
Does the Employee have little tolerance of others?	
Is the Employee a non-communicator or loner?	

### **WORKPLACE VIOLENCE PREVENTION TECHNIQUES**

If, based on your evaluation of the above-mentioned considerations, you believe that the terminated Employee may pose a threat of Workplace Violence, it is important that you have an action plan in place for the safety of the Company and other employees. The following is a list of procedures that may be used to prevent or minimize any potential Workplace Violence by the terminated Employee:

- ✓ Be Proactive: View the termination meeting as an opportunity to diffuse any potential problems before they begin.
  - ✓ Determine who in management is best suited for handling this Employee in the termination meeting.
  - ✓ Potentially offer the Employee outplacement assistance.

- ✓ Attempt to script the meeting in such a way that the employee does not feel attacked or embarrassed.
- ✓ Do not have the Employee escorted out of the termination meeting by security or police, unless absolutely necessary.
- ✓ Assuming the behavioral problems were well-documented, this should not be a surprise to the employee.
  
- ✓ Maintain open lines of communication with all employees regarding the potential threat(s) of violence.
- ✓ Establish a reporting policy with employees, supervisors/management and security personnel.
- ✓ Inform employees about the potential “warning signs” and how to report them.
- ✓ If a threat of violence is imminent, inform all employees, security personnel and local law enforcement.
- ✓ Establish an evacuation procedure and educate employees on what to do in an emergency by the use of test drills.
- ✓ Establish procedures for locking doors to prevent the public from entering the private work area(s).
- ✓ Take all threats seriously and do not hesitate to call the police.

**ATTACHMENT D**

**SAMPLE FOLLOW-UP LETTER**

[DATE]

[EMPLOYEE NAME]

Re:

[EMPLOYEE NAME],

**[PROVIDE A BRIEF INTRODUCTION INDICATING THE REASONS FOR THE LETTER WITH A REMINDER OF THE EMPLOYEE'S OBLIGATIONS UNDER THE AGREEMENTS (IF ANY) THAT EXIST BETWEEN THE COMPANY AND THE EMPLOYEE]**

**FOR EXAMPLE:** I am writing to follow-up with you with respect to our meeting on [Date] and to remind you of your contractual obligations to [COMPANY NAME] that you agreed to by executing an Employment Agreement and a Non-Disclosure, Non-Solicitation, and Non-Competition Agreement.

**[PROVIDE THE EMPLOYEE WITH A REMINDER OF THE SPECIFIC PROVISIONS OF INTEREST BY SIMPLY CUTTING AND PASTING THE PROVISIONS OUT OF THE AGREEMENTS EXECUTED BY THE EMPLOYEE]**

**FOR EXAMPLE:** Pursuant to your Employment Agreement and Non-Disclosure, Non-Solicitation, and Non-Competition Agreement, dated [DATE] and [DATE] these obligations

include, without limitation, Surrender of Records and Property, Nondisclosure of Confidential Information, Non-Solicitation and Non-Competition, as follows:

### **15.3 Surrender of Records and Property:**

Upon termination of Employee's employment with Company, Employee shall deliver promptly to Company all Company property including, but not limited to records, manuals, books, blank forms, documents, letters, memoranda, business plans, minutes, notes, notebooks, reports, computer disks, computer software, computer programs (online files, documentation, testing materials and plans and reports), computer print-outs, member or customer lists, credit cards, keys, identification, products, access cards, designs, drawings, sketches, devices, specifications, formulae, data, tables, or calculations or copies thereof, and all other tangible or intangible property relating in any way to the business of Company that are the property of Company or any subsidiary or affiliate, if any, or which relate in any way to the business, products, practices or techniques of Company or any subsidiary or affiliate.

### **7. Nondisclosure of Confidential Information.**

Employee hereby acknowledges that the Confidential Information, as it may exist from time to time, is a valuable, special and unique asset of the business of the Company. Employee shall not, during or after his or her employment with the Company, make any use of any Confidential Information, or disclose any Confidential Information to any person, firm, corporation, associate, or entity for any reason or purpose whatsoever, other than in connection with the normal performance of Employee's duties for the Company. Employee agrees, upon request by the Company, to execute agreements as may be reasonably required to provide for the protection of Confidential Information. The obligations of this paragraph shall not apply (i) to any information that has been disclosed in publicly available sources of information; (ii) to any information, through no fault of Employee, hereafter disclosed by the Company in publicly available sources of information; or (iii) to any information generally related to and determinable in the technical fields of interest to the Company, but not specifically derived from the Company's research and development activities or the results of such activities (or that of the business whose assets are being acquired by the Company).

## **11. Non-Solicitation Obligations of Employee.**

During Employee's employment with the Company and for a period of one (1) year immediately following the termination of Employee's employment (the "Non-Solicitation Term"), regardless of the reason for or circumstances of such termination, Employee shall not directly or indirectly, alone or on behalf of any business entity, induce or attempt to induce, solicit or attempt to solicit, or encourage any Company employee, independent contractor, or person otherwise engaged with the Company to end his or her relationship with the Company. During the Non-Solicitation Term, Employee also shall not directly or indirectly, alone or on behalf of any business entity, hire or attempt to hire any Company employee, independent contractor, or person otherwise engaged with the Company. As used in this paragraph, Company employee, independent contractor, or person otherwise engaged with the Company includes any person employed by, independently contracted with, or otherwise engaged with the Company during the Non-Solicitation Term and any person who was employed by, independently contracted with, or otherwise engaged with the Company, or the business whose assets are being acquired by the Company, at any time during the twelve (12) months prior to the termination of Employee's employment with the Company. This provision is intended to protect the Company's goodwill with respect to its employees.

## **12. Non-Competition Obligations of Employee.**

### **a. Non-Competition.**

For a period of one (1) year immediately following the termination of Employee's employment (the "Non-Competition Term"), regardless of the reason for or circumstances of such termination, Employee shall not provide any services the same as or similar to a Company Product, including any services provided by the Company, to any Company client operating within a 50-mile radius of any of the Company's Offices. As used in this paragraph, Company client includes any person or business entity to whom the Company provides Company Product during the Non-Competition Term and any person or business entity to whom the Company, or the business whose assets are being acquired by the Company, provided Company Product at any time during the three (3) years prior to the termination of Employee's employment with the Company.

**[USE THE LAST PARAGRAPH(S) TO CIRCLE-BACK TO THE EMPLOYEE WITH RESPECT TO ANY UNRESOLVED ISSUES AND/OR TO ADDRESS ANY OF THE REMAINING CONCERNS THAT THE EMPLOYEE EXPRESSED DURING THE MEETING]**

**FOR EXAMPLE** In addition to the aforementioned reminders, I also wanted to address the questions you had with respect to your COBRA benefits. Information regarding COBRA benefits and a notice of your rights will be sent to you by the Plan Administrator under separate cover and should answer any of your questions. If, however, the documents provided by the Plan Administrator do not answer all of your questions, the Plan Administrator will be capable of answering your questions and/or directing you to someone who can. Contact information for the Plan Administrator will be provided with your COBRA materials.

**[CLOSE BY REMINDING THE EMPLOYEE THAT THE COMPANY TAKES VIOLATIONS OF THESE CONTRACTUAL OBLIGATIONS SERIOUSLY]**

**FOR EXAMPLE:** We take these contractual obligations seriously, and trust that you will comply with your obligations to [COMPANY NAME]. If you should have any questions or comments regarding this matter please contact me.

Very truly yours,

[COMPANY NAME]

By \_\_\_\_\_

**ATTACHMENT E**

**COBRA NOTICE**

**(For use by single-employer group health plans)**

[Enter date of notice]

Dear: [Identify the qualified beneficiary(ies), by name or status]

**This notice contains important information about your right to continue your health care coverage in the [enter name of group health plan] (the Plan).** Please read the information contained in this notice very carefully.

To elect COBRA continuation coverage, follow the instructions on the next page to complete the enclosed Election Form and submit it to us.

If you do not elect COBRA continuation coverage, your coverage under the Plan will end on [enter date] due to [check appropriate box]:

- |   |   |
|---|---|
| <input type="checkbox"/> <b>End of employment</b> | <input type="checkbox"/> Reduction in hours of employment |
| <input type="checkbox"/> Death of employee        | <input type="checkbox"/> Divorce or legal separation      |
| <input type="checkbox"/> Entitlement to Medicare  | <input type="checkbox"/> Loss of dependent child status   |

Each person (“qualified beneficiary”) in the category(ies) checked below is entitled to elect COBRA continuation coverage, which will continue group health care coverage under the Plan for up to \_\_\_ months [enter 18 or 36, as appropriate and check appropriate box or boxes; names may be added]:

- Employee or former employee*
- Spouse or former spouse*
- Dependent child(ren) covered under the Plan on the day before the event that caused the loss of coverage*

*Child who is losing coverage under the Plan because he or she is no longer a dependent under the Plan*

If elected, COBRA continuation coverage will begin on [enter date] and can last until [enter date].

[Add, if appropriate: You may elect any of the following options for COBRA continuation coverage: [list available coverage options].

COBRA continuation coverage will cost: [enter amount each qualified beneficiary will be required to pay for each option per month of coverage and any other permitted coverage periods.] You do not have to send any payment with the Election Form. Important additional information about payment for COBRA continuation coverage is included in the pages following the Election Form.

If you have any questions about this notice or your rights to COBRA continuation coverage, you should contact [enter name of party responsible for COBRA administration for the Plan, with telephone number and address].

a) COBRA Continuation Coverage Election Form

**Instructions: To elect COBRA continuation coverage, complete this Election Form and return it to us. Under federal law, you must have 60 days after the date of this notice to decide whether you want to elect COBRA continuation coverage under the Plan.**

**Send completed Election Form to: [Enter Name and Address]**

**This Election Form must be completed and returned by mail [or describe other means of submission and due date]. If mailed, it must be post-marked no later than [enter date].**

**If you do not submit a completed Election Form by the due date shown above, you will lose**

**I (We) elect COBRA continuation coverage in the [enter name of plan] (the Plan) as indicated below:**

Name            Date of Birth Relationship to Employee            SSN (or other identifier)

a. \_\_\_\_\_

[Add if appropriate: Coverage option elected: \_\_\_\_\_]

b. \_\_\_\_\_

[Add if appropriate: Coverage option elected: \_\_\_\_\_]

c. \_\_\_\_\_

[Add if appropriate: Coverage option elected: \_\_\_\_\_]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Relationship to individual(s) listed above

\_\_\_\_\_  
Print Address

\_\_\_\_\_  
Telephone number

***This is a general summary of the topics and is not a substitute for legal advice.***