



Article 333

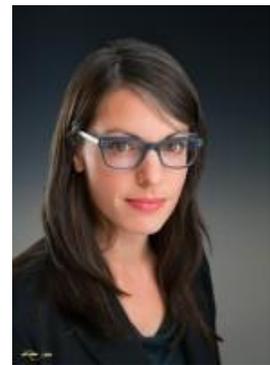
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Agreement Reduces Separation Anxiety When a Worker Leaves

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There are many circumstances under which an employee and employer part ways. An employee can choose to leave a job, or the company may make a unilateral decision to end the employment relationship. Whatever the case, the separation should be documented in writing to protect both parties.

For the employee's benefit, a separation agreement should detail in writing what the employer intends to provide at the parting. These might include the final paycheck, severance pay, pay-out of unused vacation or sick time and/or any continuation of coverage under the company's health-care plan.



For the employer, an agreement can help protect against some potential lawsuits and clarify what the employee agreed to provide the company when hired. These might include an agreement stating that the employee would not compete directly against the company for a predetermined period, agreements not to disclose proprietary or confidential information and promises to return company property, such as a company-provided laptop or car.

A separation agreement should identify the company and the exiting worker, and it should give the reasons for the departure. While this is especially important when the employee is fired for cause, it's just as critical when the employee initiates the separation.

The agreement should state the terms of the separation and what benefits or payments the exiting employee can expect to receive, including those required by law, such as temporary health benefits mandated by the Consolidated Omnibus Budget Reconciliation Act (COBRA).

A release of claims clause helps put the employer in a better position to be protected if the employee later asserts that the separation violated federal or state discrimination laws. Under the Older Workers Benefit Protection Act, workers 40 and older are entitled to consider a release of claims for three weeks after the separation and have seven days to revoke the agreement after they sign it. The company should inform eligible workers of this right in the separation agreement.

The separation agreement should also include two important clauses that serve to clarify the

employer's non-disparagement and non-compete expectations, if applicable. A non-disparagement clause gives the employer legal recourse if the former employee makes any public statements that prove to be detrimental to the company. A clause clarifying non-compete expectations will reaffirm a non-compete agreement previously entered into between employee and employer.

The separation agreement is also a good opportunity for the employer to articulate, generally, what the company will share about a former employee when called upon by a potential employer during a reference check.

Employers should be prepared to discuss the agreement with the exiting employee in order to ensure that the employee understands the expectations. Also, the employee may wish to negotiate certain terms, if appropriate. An employer's representative should be fully informed and ready to answer questions and should know which parts of the agreement are negotiable and which are not before entering into any discussions about the agreement with the departing employee.

Employers and employees can benefit from the experience and knowledge provided by attorneys who specialize in human resource matters. Visit www.montand.com for more information.

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