**Separation from Employment Checklist, LMC Model Form**

*League staff thoughtfully develops models for a city’s consideration. Models should be customized as appropriate for an individual city’s circumstances in consultation with the city’s attorney. Helpful background information on this model may be found in* [*Chapter 3*](https://www.lmc.org/resources/hr-reference-manual-chapter-3-discipline-termination/) *of the League’s Human Resource Reference Manual discussing discipline and termination.*

**This icon marks places where the city must customize the model. They offer additional provisions, optional language, or comments for your consideration. The icon, and language you do not wish to include, should be deleted from this model before use. Make other changes, as needed, to customize the model for your city.**

Use this checklist of items the city must consider or complete before and during an employee’s separation from employment, whether that is resignation, retirement or involuntary discharge. In each of these situations there are a variety of laws, practices and polices the city will want to consider. You may wish to add city-specific practices or delete items that do not apply to you to create a custom list for your city.

|  |
| --- |
| **Authority to Terminate Employment** |
| ❑ | The city understands the authority and role of staff and council as dictated by the form of government under which the city operates. |
| ❑ | The city understands who has the authority to discharge or accept the resignation of an employee under its policies and form of government. |
| ❑ | If the position is covered by a collective bargaining agreement, we have followed procedures and provisions in the contract. |
| ❑ | If the position covered by a civil service system, we have followed the provisions and procedures called for by the civil service system. |
| ❑ | If the person being terminated has an individual employment agreement (often a city manager or city administrator will have such an employment agreement) or contract that sets limits on the city’s authority to end the employment, we have complied with those provisions. |
| ❑ | If the person being terminated is a veteran, we have reviewed and followed procedures for termination set by state law. |

|  |
| --- |
| **Organizational Issues** |
| ❑ | We have followed our city’s personnel policy provisions about discipline and termination. |
| ❑ | We have followed our city’s personnel policy provisions about required notice or leaving in good standing. |
| ❑ | We have followed provisions of our city’s personnel policy, if any, about using paid or unpaid leave in the final weeks prior to resignation or retirement. |
| ❑ | If our city does not have a written personnel policy, we have reviewed past practices and been consistent with them. |

|  |
| --- |
| **Payroll and Benefits Issues** |
| ❑ | We have followed the law concerning timely issuance of final paychecks after an employee has terminated employment. |
| ❑ | We will pay the balance of any compensatory time to terminating employees classified as nonexempt. |
| ❑ | We have reviewed our city’s personnel policy, union contracts or employment agreements (as applicable) to determine whether the employee is entitled to payment of sick leave or vacation. |
| ❑ | Our city has prepared the required notices under federal COBRA law, the Minnesota Continuation Law, and/or law requiring cities to allow early retirees to continue on the city’s health and dental group plans, if applicable. |
| ❑ | Our city has taken steps to continue its contribution toward health insurance for police officers and firefighters who take a duty-related disability retirement. |
| ❑ |  Our city has offered any appropriate continuation for an employee’s balance in either a medical spending account or daycare account. Generally, a special continuation coverage period applies under COBRA to most health FSAs if three conditions are met: (i) the maximum benefit under the plan does not exceed two times the employee’s salary reduction election for plan benefits for the year or the employee’s salary reduction election for plan benefits for the year plus $500; (ii) all employees eligible for the plan must have other medical coverage available through the employer that is subject to HIPAA portability and the other medical coverage must allow enrollment at least on an annual basis; and (iii) the maximum annual COBRA premium for continuation coverage under the plan is equal to or greater than the maximum annual plan coverage amount. |
| ❑ | The employee has been notified about how to contact PERA for a refund of contributions. |
| ❑ | The city has been careful to avoid giving tax advice to employees leaving the city as they make decisions on leave payouts, continuing benefits or any other compensation by noting in correspondence to employees language such as the following: “the information provided represents a general summary of [employee benefits] and is not intended to represent any form of tax advice or legal opinion. The city is not a tax advisor; therefore, it is the employee’s responsibility to consult with a tax specialist and/or independent legal counsel before taking any action(s) relating to this document.” |
| ❑ | We have notified the employee about how to contact the administrator of any deferred compensation or post-retirement health care savings plans, if applicable. |
| ❑ | In the case of an employee who was terminated by the city but then later reinstated to the job and awarded back pay, the city has considered benefits and salary changes that occurred during the interim (e.g., automatic step increases, benefit contribution increases, vacation and sick leave accruals, etc.). |
| ❑ | In the case of the death of an employee, the city has notified the beneficiary of any benefits he or she is entitled to. Those benefits may include:* Life insurance
* COBRA or other benefit continuation rights
* Flexible spending account balances
* Return-of-premium (e.g., long-term care insurance)
* Survivor benefits (e.g., long-term disability insurance)
* PERA benefits
* Deferred compensation balance(s)
* Post-retirement health care savings plan balance
* Payout of sick leave, vacation leave, compensatory time
 |

|  |
| --- |
| **Process Issues** |
| ❑ | Our city has followed its own personnel policy with regard to disciplinary procedures and terminations. |
| ❑ | Our city has followed its own grievance procedure policy for nonunion employees and met all the timeframes for response. |
| ❑ | Our city has followed procedures to ensure the employee is given due process (e.g., notice of the reasons for discipline and an opportunity to respond) |
| ❑ | Our city made a good faith effort to address performance issues through additional training, coaching, and other supervisory assistance before making a decision to terminate. |
| ❑ | If our city has access to an employee assistance program, we have informed the employee its availability at some point in the disciplinary process in case personal problems are distracting him or her from work. |
| ❑ | Our city has followed good management practices in administering discipline and documenting disciplinary actions. |
| ❑ | Our city has examined its past practice with regard to similar situations to ensure the employee is not being treated differently or being discriminated against. |
| ❑ | Our city has asked itself the seven questions outlined in the “Before administering the discipline”subsection under the Discipline and Termination section of this chapter to see if the discipline is likely to be upheld in arbitration or in court. |
| ❑ | The city has considered potential problems with the Fair Labor Standards Act if it administers an unpaid suspension to an exempt employee for reasons other than major safety violations. |
| ❑ | Our city has a program in place to regularly (at least annually) evaluate the performance of all of its employees. |
| ❑ | Our city considers using a work plan for an employee who is experiencing performance problems. |
| ❑ | Our city has developed a checklist to use when employees leave the city so that the employee returns all city property; computer and other security issues are addressed; and the employee receives the information they need on wages, benefits, and insurance. |
| ❑ | Our city has an exit interview/exit questionnaire procedure. |

|  |
| --- |
| **Discipline and Termination: Legal Issues** |
| ❑ | Our city reviewed what notices may be applicable (Tennessen, Garrity, Peace Officer Discipline Procedure Act) before interviewing the employee during an investigation. (Remember to use Garrity notices sparingly and only after seeking legal advice.) |
| ❑ | Our city considered all applicable discrimination laws throughout the disciplinary process if the employee being terminated a member of a protected group (e.g., race, gender, national origin, disability, sexual orientation, etc.) |
| ❑ | Our city has not knowingly permitted conditions in the workplace that are so intolerable (e.g., discrimination, harassment, etc.) that a reasonable person subject to them would resign. |
| ❑ | The city has considered offering an employee being terminated the opportunity to resign in lieu of a discharge. |
| ❑ | If the employee being terminated, demoted, or laid off is a veteran the city has followed proper notice procedures. |
| ❑ | Our city continues to pay a veteran continued wages if he/she has been terminated or demoted for misconduct or incapacity until one of the following is true:* The veteran fails to respond by the end of the 30 days after having received written notice of his/her right to appeal.
* The veteran responds to the notice stating that he/she does not want a hearing.
* A settlement agreement is worked out between the city and the veteran in which the veteran waives his/her right to a hearing.
* The hearing is held, and a decision is rendered upholding the termination
 |
| ❑ | In the case of a position elimination involving a veteran, while no continuing pay is required, our city acts in good faith and gives the required written notice. |
| ❑ | In the case of a veteran, our city considers whether the employee meets the criteria to be considered a department head and is therefore exempt from the statutory protections. |
| ❑ | Our city consults with an attorney about the possibility of multiple remedies available if the veteran is also union member.  |
| ❑ | The city considers offering the veteran a settlement in lieu of a hearing, as appropriate. |
| ❑ | The employee is allowed to take any leave under the Family and Medical Leave Act that he or she might be entitled to prior to termination. (This is usually applicable in situations where the employee is being terminated due to physical inability to perform the duties of the job.) |
| ❑ | Our city explores the option of reasonable accommodation for employees who are being terminated due to a physical or mental disability. |
| ❑ | If the city is proposing a termination agreement with the employee, we consult an attorney and we follow all of the legal requirements (such as the seven-day revocation period under the Age Discrimination in Employment Act). |
| ❑ | If the city offers severance pay, the amount complies with the limits set forth by Minnesota law. |
| ❑ | If an employee is being discharged involuntarily and has requested a written statement of the reason for the termination, the city responds with the truthful reason within 10 working days following receipt of the request as required by Minnesota law. |
| ❑ | If the employee is being terminated for a positive drug or alcohol test, he or she is given an opportunity to participate in a rehabilitation program. |
| ❑ | If the employee is being terminated for a positive drug or alcohol test, the city has followed the required procedures for a confirmatory re-test. |
| ❑ | If the employee who is being terminated is working under an immigrant visa, the city follows the required procedures of the United States Citizenship and Immigration Services (USCIS) |
| ❑ | Our city follows all applicable Open Meeting Law procedures if the termination is being done by the city council. |
| ❑ | Our city follows all requirements of the Peace Officer Discipline Act when investigating allegations or preparing to administer discipline to a licensed peace officer. |
| ❑ | If the employee being disciplined or terminated is pregnant, we treat her consistently with other employees with similar abilities or limitations. |
| ❑ | The city considers provisions of the whistleblower law before disciplining or discharging an employee who has reported a violation of policy or federal or state law. |
| ❑ | Before taking action against an employee who recently filed a first report of injury, the city understands that workers’ compensation law prohibits retaliation against an employee for reporting a work-related injury and filing a first report of injury. |
| ❑ | Our city considers the implications of the workers’ compensation law, the Americans with Disabilities Act, and the Minnesota Human Rights Act if offering or denying light-duty work or alternative jobs to an employee. |

|  |
| --- |
| **Union Issues** |
| ❑ | When it involves a serious discipline or termination situation, our city consults with an attorney about the requirements for grievance arbitration under the law and under the rules of the Bureau of Mediation Services. |
| ❑ | Our city complies with the timeframes associated with a grievance as described in our union contract. |
| ❑ | If the union contract has no grievance procedure, our city knows it is subject to the grievance procedure established by the commissioner of the Bureau of Mediation Services. (Note that in the BMS default grievance procedure, the employee “wins” if the city fails to respond in a timely manner.) |
| ❑ | Our city knows that an employee covered by both a civil service system and a union contract may pursue a grievance through either process, but not both. |
| ❑ | The city has double-checked the union contract language on the issue being grieved. |
| ❑ | The city has double-checked the facts of the situation, including city policies and witness testimony, before responding to a grievance. |
| ❑ | Our city checks the timeframes and actually counts the calendar or working days as appropriate. |
| ❑ | Our city keeps its written decisions brief and to the point, knowing that the document will probably be public information. |
| ❑ | Our city consults with an attorney or a labor relations consultant to determine whether the issue at hand is grievable. |
| ❑ | The individual responding to a grievance consults up and down the chain of command before composing the response. |
| ❑ | Our city considers settling the grievance prior to arbitration. |
| ❑ | Our city consults with an attorney if it questions the appropriateness of an arbitration award. (Generally, the award can only be challenged on the basis of whether the arbitrator exceeded his or her authority and whether the award violates a law or public policy.) |

|  |
| --- |
| **Security Issues** |
| ❑ | Our city deletes the employee’s computer passwords and changed or deleted codes on security access cards. |
| ❑ | Our city adequately monitors the removal of personal property and the removal or deletion of electronically stored information on city computers and other devices (i.e., tablets, smart phones). |
| ❑ | Our city arranges to have at least two management representatives at the meeting where the employee is told of his or her termination. A best practice is to require personnel to contact local police in advance of any terminations or suspensions when they believe the behavior may escalate into violence.  |
| ❑ | After terminating an employee who may have violent tendencies, our city notifies any employees who need to know (e.g., receptionist, security guards, etc.) of the termination so they can help watch for that person entering the building. |

|  |
| --- |
| **Layoffs** |
| ❑ | Our city follows its own personnel policy or the union contract with regard to layoffs and other reductions in work. |
| ❑ | Our city documents its business reasons for choosing certain positions to layoff. We have considered the impact of proposed layoffs on protected status employees and/or our affirmative action plan. |
| ❑ | The city built a record showing how it made the decisions about which programs to cut for purposes of protecting its discretionary immunity. |
| ❑ | Our city considers using a hiring freeze, an early retirement incentive, or a voluntary termination program before doing layoffs. |
| ❑ | Our city follows the requirements under the federal Age Discrimination in Employment Act as well as the guidelines established by the Equal Employment Opportunity Commission (EEOC) for an early retirement program to be considered voluntary. |
| ❑ | The city implements staff reduction programs on an across-the-board basis (e.g., the entire city, an entire department, or an entire job class). |
| ❑ | The city establishes parameters and limitations around any early retirement incentive programs (e.g., limits on dollar amounts, limits on who can participate, windows of opportunity to participate, etc.). |
| ❑ | Our city avoids tying early retirement incentives directly to age to avoid claims of age discrimination. |
| ❑ | Our city considers the impact of losing a substantial number of experienced employees all at once. |
| ❑ | In drafting a voluntary termination program, our city has:* used an attorney,
* included a waiver of rights,
* offered an additional severance benefit (one that is not available under ordinary circumstances), and
* included all the legal requirements under anti-discrimination laws. (E.g., the Age Discrimination in Employment Act requires a waiting period during which the employee can change his or her mind, and both state and federal law provide for a limited rescission period allowing an employee to back out of an agreement even after she has given written approval.)
 |
| ❑ | The city considers using other programs such as voluntary or involuntary work hour reductions or leave programs. |
| ❑ | Before implementing a reduction in hours or voluntary leave program, our city carefully considers the possible impact on the exempt status of participating employees. |
| ❑ | Our city has considered whether to use, and how to define, seniority for purposes of layoffs. We reviewed our city personnel policy or union contract for language addressing this issue. |
| ❑ | Our city considers the impact of unemployment compensation benefits on the salary savings associated with layoffs (e.g., as “reimbursement” employers, the city generally pays benefits on a dollar-for-dollar basis). |
| ❑ | Our city considers whether there are any other “hidden costs” associated with layoffs, such as contractual obligations to continue paying health insurance or legal obligations to allow laid-off employees to continue in group insurance plans. |
| ❑ | If our city is considering subcontracting a function currently performed by union employees, we consult a labor attorney to determine whether we have the authority to subcontract during the term of the union contract. |
| ❑ | We consider the impact of layoffs on employees who are out on various types of leave (e.g., military leave, Family and Medical Leave Act leave, or other leaves of absence). |
| ❑ | Our city checks union contracts, personnel policies, and civil service rules, as applicable, to determine whether there is any language giving employees “bumping rights” in the event of a layoff. |
| ❑ | Our city checks other contracts to determine if staff layoffs will affect the city’s ability to fulfill its contractual obligations (e.g., contracts with the Minnesota Department of Building Codes and Standards). |
| ❑ | Our city considers whether the layoff of any employee who is a veteran meets the good faith standard. |
| ❑ | Our city has considered the liability issues surrounding using volunteers to do the work of employees who have been laid off (e.g., qualifications, insurance protection, etc.). |
| ❑ | Our city has considered taking steps (e.g., using an employee assistance program or outplacement services, building a list of resources to help employees, assigning a single contact person, etc.) to help employees through the emotional, financial, and morale difficulties of layoffs. |

|  |
| --- |
| **Resignations** |
| ❑ | Our city has the employee’s resignation formally accepted by the employee’s supervisor or by the appointing authority (generally, city council for Standard Plan A forms of government; city manager for Plan B forms; the rules of their charter for charter cities). |
| ❑ | Our city follows its policy about resigning in “good standing”, (e.g. two weeks’ notice), and any associated penalties for non-compliance. |
| ❑ | Our city understands that employers are prohibited from entering into arrangements with employees resulting in an employer agreeing not to contest an unemployment claim or failing to submit paperwork regarding an employee’s unemployment claim in exchange for an employee’s resignation, leave of absence, temporary or permanent leave from the employer, or a withdrawal of a grievance or termination. |
| ❑ | Our city believes a resignation can be considered truly “voluntary” if challenged. (A coerced resignation where the alternative is termination may be considered a constructive discharge or, in the case of a veteran, it may be considered a removal from position that would trigger the statutory requirements for notice and hearing. A less-than-voluntary resignation may also be used against the city in an employee’s application for unemployment benefits). |

|  |
| --- |
| **Reference Checks and Release of Information** |
| ❑ | Our city checks the status of any requested information (public, private, confidential) under the Minnesota Government Data Practices Act when releasing data about the employee or former employee to a prospective employer. |
| ❑ | Our city requires a consent form signed by the employee or former employee before releasing any information that is considered private data under the Minnesota Government Data Practices Act to prospective employers. |
| ❑ | Our city checks the status of information requested by the employee (public, private, confidential) on him- or herself under the Minnesota Data Practices Act before releasing it to the employee. |
| ❑ | Our city knows it is legally required to share information that would otherwise be private data under certain circumstances, such as:* background information for applicants for police officer and firefighter positions,
* reporting a crime committed by an employee or sharing information to assist law enforcement with investigation of a crime committed by an employee.
* assisting with application for unemployment benefits,
* disciplinary information for union employees when the union needs it to prepare for grievance arbitration and
* private or confidential information to the Minnesota Department of Human Rights pursuant to a subpoena issued by the Commission of Human Rights.
 |