

October 2, 2013



Aaron J. Graf, Esq.

Questions
on this topic?
[CLICK HERE](#)

Using the Exit Interview to Your Advantage

By Aaron J. Graf

The separation of an employer and an employee for any reason can often lead to acrimonious feelings by one, or both, parties to the relationship. Whether the employee is being terminated for poor performance, is jumping ship for better pay, or there has been a reduction in force, someone is typically unhappy, and possibly very angry. In these situations usually the last thing either side wants to do is sit down in a room and talk about the employee's employment relationship with the company. Therefore, even if the company has a policy of conducting exit interviews, it is entirely common for an employee to be separated from the company with the exit interview conveniently forgotten. After all, what good could an exit interview really do?

In short, the exit interview can be a powerful and useful tool for the company in both avoiding future liability and providing a defense to future claims. Of course, there are the typical benefits such as learning from the employee what they felt was good and bad about the company in order to strengthen the company's best practices. However, there are even more powerful incentives and advantages. After all, it is the frontline employees that are often in possession of the most damaging, yet unknown, information.

First, the exit interview can be an excellent source to uncover any complaints about ongoing discrimination or harassment. During the course of an employee's tenure at a company, the company may prefer to take a "wait and see approach" rather than proactively seek out complaints regarding discrimination or the like. Perhaps this approach is well-founded given that retaliation complaints are

now the number one complaint filed with the Equal Employment Opportunity Commission ("EEOC.")

However, at the exit interview, after the employee has already been separated from the company, there could not be a better time to seek out such information from the former employee. The company typically need not fear a retaliation complaint from the departing employee as there is no action the employer could take at that point (short of giving a retaliatory job reference or refusing to rehire) that could lead to liability for the company. This is the best time for the employer to have the employee lay it all on the table.

Second, and even more importantly, proactively seeking out information from the employee can only lead to highly positive results. For example, the employee may report acts of discrimination or harassment or of unsafe practices that could lead to company liability. While no company likes to hear such information, it will allow the employer to investigate and end any such issues **before** other current employees become potential plaintiffs. It would also allow the company to assess the potential for future liability and the ability to utilize severance packages in exchange for a release of claims from the former employee.

Additionally, the exit interview may provide the employer with an excellent opportunity to develop a defense against any future discrimination claims if the employee provides favorable information. For example, the company may develop a list of 20 exit interview questions, ten of which, interspersed throughout, seek information regarding whether the employee believes he or she was treated fairly and appropriately while employed. This allows the company to probe, though perhaps not overtly, whether the employee was subject to discrimination or harassment during their employment.

Thus, the exit interviewer could ask, among other questions, the reason for the employee's departure, whether the employee liked his or her co-workers and supervisor, whether the employee was treated professionally, whether the employee felt he or she was compensated fairly, whether anyone ever treated the employee poorly or inappropriately, whether the employee ever saw a co-worker treating someone else unfairly, whether the employee ever saw a supervisor treating someone else unfairly, etc. At the end of the interview, the interviewer can ask the employee to sign the questionnaire or similar form, confirming the substance of the responses. If the employee provides favorable responses regarding their treatment at the company but later decides to bring a claim of discrimination, the signed form will be front and center in the company's defense.

Third, it will also provide the company with advance warning of

whether the former employee is likely to bring a claim against the company. While no company likes to be sued, it is safe to say that if a lawsuit is on the horizon, having as much advance notice as possible is certainly preferable.

Finally, the exit interview also provides an excellent opportunity for the company to wrap up loose ends with the employee. This may include providing the employee with a copy of any non-compete agreement, reviewing any applicable clauses that may require the employee to reimburse the company or any payouts due to the employee, returning any company property, or the like. Addressing these issues immediately can save many future headaches in having to chase down the former employee after separation.

While the separation process between an employer and employee is typically unpleasant, there are many advantages to be gained by routinely requiring exit interviews from separated employees. Companies should seek to incorporate this best practice to assist in uncovering potential issues before they lead to serious liability and to head off any claims before they are filed.

The 60-Second Memo® is a publication of Gonzalez Saggio & Harlan LLP and is intended to provide general information regarding legal issues and developments to our clients and other friends. It should not be construed as legal advice or a legal opinion on any specific facts or situations. For further information on your own situation, we encourage you to contact the author of the article or any other member of the firm. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.



[Forward this issue](#)

Copyright 2013 Gonzalez Saggio & Harlan LLP. All rights reserved.

Arizona | California | Florida | Georgia | Illinois | Indiana | Iowa | Massachusetts
New Jersey | New York | Ohio | Tennessee | Washington, D.C. | Wisconsin

www.gshllp.com