

# **HUMAN RESOURCES AUDIT FOR CONNECTICUT EMPLOYERS**

**Prepared by:**

**Kainen, Escalera & McHale, P.C.  
21 Oak Street, Suite 601  
Hartford, CT 06106  
Telephone: (860) 493-0870  
Facsimile: (860) 493-0871  
Website: [www.kemlaw.com](http://www.kemlaw.com)**

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## **INTRODUCTION**

Kainen, Escalera & McHale, P.C. has designed this audit tool to help Connecticut employers identify and correct possible labor and employment law vulnerabilities before they become costly problems. If after reading any item your answer is “no” or you are unsure of whether you are in compliance, you should consider addressing the issue as soon as possible by seeking guidance from one of our labor and employment law attorneys.

### **I. GENERAL GUIDELINES**

1. Are required state and federal employment law posters displayed where employees can review them (such as, depending on the size and type of employer, posters pertaining to the Federal Fair Labor Standards Act; Federal Equal Employment Opportunity; Federal Occupational Safety and Health Act; Federal Family and Medical Leave Act; Federal Uniform Services Employment and Reemployment Rights Act; Federal Polygraph Protection Act; CT Sexual Harassment; CT “Discrimination is Illegal”; CT Workers’ Compensation; CT Unemployment Compensation; CT “Notice of Electronic Monitoring”; CT “Notice of Privacy Protection”; CT Paid Sick Leave; CT “Pregnancy Discrimination and Accommodation in the Workplace Notice”; CT Wage and Workplace Standards; and CT Paid FMLA Insurance Benefits)?
2. Is the employer registered in the unemployment compensation system and contributing to same through a system of payroll taxes?
3. Does the employer have workers’ compensation insurance in place?
4. Does the employer have Employment Practices Liability Insurance (“EPLI”) in place?
5. If the employer is a federal or state contractor, does the employer comply with affirmative action obligations?
6. Does the employer file and maintain EEO-1 forms and VETS-100 forms annually (as applicable)?
7. Does the employer provide equal opportunity in compliance with all applicable laws, including by making all employment-related decisions without regard to an individual’s race, color, religion, gender, pregnancy status, national origin/ancestry, age, disability, marital status, military/veteran status, sexual orientation, gender identity/expression, genetic information, hair texture/protective hairstyles or any other legally protected status?

## II. **HIRING GUIDELINES**

### ***Applications & Advertisements***

8. Is an employment application being used that complies with federal and state laws (such as containing no questions about past/current salary/wages; no questions about criminal history until interview or after; no questions about date of birth/year graduated in initial application)?
9. Does the employer ensure that all information on the application has been completed and that the application has been signed and dated where required?
10. Does the employer ensure that all applications/resumes are reviewed to determine if each candidate meets minimum job qualifications?
11. Has the employer reviewed the criteria to be used in reviewing applications, making sure that the criteria are legitimate, business-related and non-discriminatory?
12. Are employment advertisements reviewed for accuracy and legality?
13. Has the employer properly classified the position before accepting applications? (i.e., employee vs. independent contractor; full-time vs. part-time; exempt (from overtime) vs. non-exempt)?
14. Does the employer have a job description that accurately reflects the qualifications for the position (i.e., education, experience, licenses) and essential and non-essential functions of the position for which the employer can demonstrate a business necessity?

### ***Interviewing***

15. Is the employer consistent in the personnel used to conduct interviews, the types of interviews conducted (i.e., phone screen vs. in-person) and the number of interviews conducted?
16. Are all interviewers appropriately instructed as to lawful inquiries and provided with an interview checklist and examples of both lawful inquiries and questions not to ask (such as no questions about past/current salary/wages; no questions about criminal history until interview or after)?

17. Does the employer ensure that interviewers are consistent in the subject areas explored and the types of questions asked during interviews by means of developing a standard set of questions to be asked of all applicants and keeping a record of the questions used?
18. Does the employer recommend that interviewers complete a written interview report following each interview?

### ***Background Checks***

19. Are applicants required to sign an appropriate written authorization allowing the employer to conduct reference and background checks in compliance with the requirements of the Fair Credit Reporting Act (“FCRA”)?
20. Does the employer understand the circumstances when an applicant (or current employee) may be required to consent to a request for a “credit report” as a condition of employment and when credit scores may be used in making hiring or employment decisions?
21. Does the employer not require an applicant to disclose any information regarding his/her criminal background (or conduct a criminal background search) until the interview or after?
22. Does the employer not require an employee or job applicant to disclose the existence of any arrest, criminal charge or conviction that has been “erased” under Connecticut law?
23. Does the employer make hiring (and employment decisions) based on criminal convictions (and, if so, only if a business necessity can be established and the connection between the convictions and the job is not too remote) and not based on arrest records?
24. Does the employer understand that only public information available on social networking sites may be obtained regarding applicants (or employees) and may be used when making employment decisions (in same lawful manner as background information is otherwise obtained and used), without requiring applicants or employees to provide social networking passwords as condition of employment?
25. Are references appropriately checked before an offer of employment is communicated to the applicant?

26. If an applicant (or employee) might be rejected based upon a report issued by background checking agency, does the employer provide notice to the applicant (or employee) prior to taking any adverse action based on the consumer report (except as a result of an investigation into misconduct) and provide a copy of the report and a summary of the FCRA to the applicant (or employee)?

### ***Pre-Employment Testing***

27. Does the employer conduct pre-employment drug testing in accordance with required notice and testing procedures?
28. Does the employer prohibit the use of lie detector tests for pre-employment screening (and during the course of employment)?
29. Does the employer prohibit medical examinations or inquiries about medical conditions before a job offer has been made?
30. If the employer requires an applicant to perform a physical agility test or a job skills test as a condition of employment, can the employer demonstrate that the test is job-related and justified by business necessity?
31. If the employer requires an applicant to perform a written test as a condition of employment (such as an honesty test), can the employer demonstrate that there is a rational relationship between test scores and job performance and that the test does not have a disparate impact on minority job applicants?

### ***Making the Offer***

32. Has the employer carefully reviewed all of the information that has been compiled concerning the applicant during the pre-employment process, looking at the information as critically and objectively as possible?
33. Is the employer prepared to articulate and demonstrate, with specific information, why a particular applicant has been chosen over others, making sure that the reasons for choosing a particular candidate are legitimate and non-discriminatory?
34. Does the employer wait to make offers until all steps in the pre-employment process have been completed?

35. Does the employer provide written offers of employment containing information pertaining to position, hours of work, salary, wage range for the position, starting date and benefits and any contingencies upon which the offer is based (i.e., results of criminal record checks; drug testing; completion of I-9 Form; post-job offer medical examinations)?
36. Does the written job offer state that it sets forth the complete terms of the offer and supersedes any prior oral or written representations to the contrary?
37. Has the employer decided whether to provide an employment agreement to certain new hires containing non-compete, non-solicitation and/or non-disclosure provisions (as applicable and as allowed by law)?

### ***Orientation***

38. Is orientation standardized for all departments and is an appropriate orientation checklist followed?
39. Does the employer have a handbook/personnel policies to provide to a new hire, containing policies pertaining to, among other things: "at-will" employment (non-unionized employers); workplace harassment or discrimination; reasonably accommodating qualified disabled individuals and pregnant employees; equal employment opportunities/affirmative action statement (as applicable); disciplinary rules/rules of conduct; employee complaint procedures; employee leave (FMLA, vacation leave, sick leave, etc.) and employee benefits (insurance, 401(k), etc.)?
40. Do new hires sign an appropriate handbook receipt/"at-will" disclaimer (non-unionized employers) and receipt for other orientation materials and equipment?
41. Are all new hires asked to complete the I-9 Forms with appropriate documentation?
42. Does the employer report each new hire to the state labor department?
43. Does the employer (with three or more employees) provide two hours of sexual harassment training to all employees within six months of hire?
44. Within three months of an employee's start date, does the employer (with three or more employees) provide information to every employee about the unlawfulness of sexual harassment and the remedies available to victims of sexual harassment to each employee, either by direct email with a subject line that includes the words "Sexual Harassment Policy" (or

words of similar import) or by posting that information on the employer's website or by providing a link (by email, text or in writing) to the website of The Connecticut Commission on Human Rights and Opportunities which contains this information.

45. Does the employer (with three or more employees) provide the required CT "Pregnancy Discrimination and Accommodation in the Workplace Notice" to all new hires upon hire?

### ***Wages and Benefits***

46. Does the employer pay all employees at least minimum wage (\$13 per hour effective August 1, 2021; \$14 per hour effective July 1, 2022; and \$15 per hour effective June 1, 2023)?
47. Are employee benefits programs communicated to employees in writing at time of hire, in a handbook and when changes/improvements are made?
48. Has the employee been properly classified as exempt vs. non-exempt under state and federal wage and hour laws?
49. Has the new hire completed all necessary tax withholding and wage deduction authorization forms?
50. Does the employer make the required deductions for the Connecticut Family and Medical Leave Paid Insurance Benefit program?
51. Does the employer pay employees on either a weekly or bi-weekly basis (and not bi-monthly, monthly or some other basis without having first obtained the advance approval of the Connecticut Department of Labor)?
52. Does the employer pay employees by check (unless the employee has consent in writing to payment through direct deposit or paycard)?
53. If the employer pays the employee by paycard (with the employee's written consent), is the paycard associated with an ATM network that has a "substantial number" of in-network ATMs and are employees permitted to make at least three withdrawals without fees per pay period and are none of the employer's costs for using paycards assessed to employees and does the employer provide employees with the ability to check, free of charge, payroll account balances 24 hours a day, 7 days a week by automated telephone system, teller machine or electronically?

### ***Employment Documents***

54. Has the employer established a separate personnel file for each employee, containing any documents which are used or have been used by an employer to determine such employee's eligibility for employment, promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel action?
55. Does the employer keep the employee's personnel file in a locked file cabinet or otherwise electronically in a secure, private location with access limited to those with a "need to know"?
56. Has the employer established a separate medical file for each employee containing any and all records in the employer's possession pertaining to medical exams, workers' compensation claims, pregnancy accommodations, reasonable accommodations under the Americans with Disabilities Act ("ADA") or Family and Medical Leave Act ("FMLA") requests?
57. Does the employer keep the employee's medical file in a locked file cabinet or otherwise electronically in a secure, private location with the most restricted access possible?
58. Does the employer maintain I-9 forms in separate files for their employees, without retaining copies of the documents presented by the employee to satisfy the requirements of the I-9 forms?
59. Does the employer know how long to maintain personnel files, medical files, I-9 forms, wage and hour records, OSHA records and employment policies/handbooks?

### **III. EMPLOYMENT GUIDELINES**

#### ***Wages and Benefits***

60. Is the employer in compliance with state and federal wage-hour laws, including those pertaining to minimum wage, overtime pay and exemptions, time record-keeping, meal breaks, not working more than six consecutive days in a calendar week, wage deductions, wage garnishments, payment for training time, travel time and "on call" time, retention of wage records, weekly or bi-weekly payment of wages, payment by direct deposit or paycards and pay stub information?



61. Is the employer paying an employee not less than what the employer is paying an employee of the opposite sex for “comparable” work (unless other legitimate reasons such as seniority, education, training, performance, etc. justify differences in pay)?
62. Does the employer provide the wage range for the employee's position upon: (a) hiring the employee, (B) changing the employee's position, and (c) the employee's first request for wage range information?
63. Are wage increases given in a consistent manner, based upon as objective criteria as possible?
64. Is there a continuing program in place to gather necessary data to ensure that the wages and benefits remain comparable to the competitive area?
65. Does the employer properly issue COBRA notices to employees at time of insurance enrollment and at time of qualifying events during employment (such as divorce from an employed spouse; reduction in hours)?
66. Does the employer not maintain any policies that prohibit employees or applicants from inquiring about, discussing or disclosing information about the terms or conditions (such as pay and benefits) of their own employment or of any other applicant or employee in a lawful manner (including when exercising any rights to engage in protected concerted activity)?
67. Does the employer have a policy which states that employees may treat information about the terms or conditions (such as pay and benefits) of their own employment as confidential to the extent that they prefer not to share such information with others and that employees may not share information about another's terms and conditions of employment (including information about another's pay) when others do not wish them to do so?
68. Does the employer have a policy which states that employees remain subject to discipline if they have access to compensation/benefit information of other employees or applicants as part of the essential functions of their job and they disclose that information to others who do not otherwise have access to such information without their consent (unless the disclosure was made in response to a formal complaint or charge, in furtherance of an investigation by the employer or any outside party, or as part of any legal or administrative proceeding or hearing or consistent with the employer's legal duty to furnish such information)?

69. Does the employer have policies which specify whether employees are eligible for wage advances, vacation time advances and/or loans, and if so, also have proper forms (as approved by the CT Department of Labor, as necessary) to obtain reimbursement of such advances and/or security for such loans?

***Health and Safety and Accommodations***

70. Does the employer comply with federal OSHA requirements (including by providing its employees with a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm; furnishing employees (upon request) with a written statement listing the substances which such employee uses or with which such employee comes into contact that have been identified as toxic and hazardous by OSHA; complying with various OSHA safety and health standards that have been promulgated; and by compiling a log of workplace injuries and reporting the same)?
71. Does the employer ban smoking and vaping: (a) in any area of the workplace or business facility under the employer's control, including the burning of a lighted cigar, cigarette, pipe or any other similar device containing tobacco, marijuana or hemp and the use of any electronic nicotine delivery systems (e-cigarettes), marijuana delivery systems and vapor products; and (b) outside the workplace within twenty-five (25) feet of a doorway, operable window or air intake vent?
72. If applicable, is the employer HIPAA compliant?
73. For employees with workers' compensation injuries, does the employer provide light duty assignments as may be available?
74. Does the employer conduct urinalysis drug testing only in accordance with required reasonable suspicion (i.e., not random) during employment (or in accordance with federal regulations for employees with commercial driver's licenses or state regulations for employees who operate forklifts or who are in safety-sensitive positions as designated by the Connecticut Department of Labor)?
75. Does the employer have legitimate, reasonable grounds to conduct alcohol testing using a breathalyzer and/or other forms of drug testing (such as hair testing, blood testing, saliva testing)?
76. Does the employer have a policy which provides that it shall not deny employment to an applicant or otherwise discipline an employee for the lawful use of medical marijuana, if such use is: authorized by a health care

provider and the applicant/employee submits proof of such authorization to the employer as required; not otherwise prohibited by any federal law applicable to the work the employee performs for the employer; does not restrict the employer's ability to obtain federal funding; and is strictly confined to lawful use outside of the workplace and working hours that does not cause the employee to be under the influence in the workplace or during work hours?

77. Does the employer have a policy which addresses possession or use of recreational marijuana by employees while at work/performing work and/or outside the workplace?
78. Does the employer (with three or more employees) have a policy which requires, among other things, the employer to provide reasonable accommodations to a qualified individual with a disability, as defined under applicable law, who has made the employer aware of his or her disability, provided that such accommodation would enable the individual to perform the essential functions of the job and does not constitute an undue hardship on the employer?
79. Does the employer (with three or more employees) have a policy which requires, among other things, the employer to provide reasonable accommodations to an applicant, intern or employee due to her pregnancy, childbirth or need to breastfeed or express milk at work, unless doing so would pose an undue hardship (e.g., the accommodation would require a significant difficulty or expense in light of the circumstances), and which identifies possible reasonable accommodations (depending on the circumstances) as: being permitted to sit while working; providing more frequent or longer breaks; periodic rest; assistant with manual labor; job restructuring; light duty assignments; modified work schedules; temporary transfers to less strenuous or hazardous work; time off to recover from childbirth; and break time and appropriate facilities for expressing milk?
80. Does the employer (with three or more employees) provide the required CT "Pregnancy Discrimination and Accommodation in the Workplace Notice" to any existing employee within 10 days after she notifies the employer of her pregnancy or conditions related to her pregnancy (or the employer otherwise becomes aware of pregnancy)?
81. Does the employer (with three or more employees) provide two hours of supplemental sexual harassment training to all employees at least every 10 years?

82. If an employer (with three or more employees) takes corrective action (including but not limited to relocating the complaining employee, assigning such employee to a different work schedule or making other substantive changes to the complaining employee's terms and conditions of employment) in response to such employee's claim of sexual harassment, does the employer obtain the written consent of the complaining employee before doing so?

### ***Employee Leave***

83. Does the employer provide and comply with state and federal military leave requirements?
84. Does the employer provide and comply with state jury duty leave requirements?
85. Does the employer provide and comply with state witness and crime victim leave requirements?
86. Does the employer provide and comply with state family violence victim leave requirements?
87. Does the employer provide and comply with state emergency responder leave requirements?
88. Does the employer (with 25 or more employees) provide and comply with state legislative leave requirements?
89. Does the employer provide and comply with state paid sick leave for service workers (as applicable)?
90. Does the employer have the proper policies, notice and designation forms and certification forms in place to comply with the Connecticut Family and Medical Leave Act ("CTFMLA") (covering employers with 1 or more employees in CT) and/or the Federal Family Medical Leave Act ("FedFMLA") (covering employers with 50 or more employees in a 75-mile radius of Connecticut location)?
91. If an employee is absent from work due to a workers' compensation injury or is receiving short-term disability insurance benefit payments, does the employer simultaneously determine if the reason for the absence satisfies the criteria to commence CTFMLA and/or FedFMLA leave?

92. If the employee is about to exhaust his CTFMLA and/or FedFMLA entitlement, does the employer advise the employee that the leave period is about to be exhausted and request a medical update on the employee's condition and/or return to work status report?
93. If CTFMLA and/or FedFMLA leave has been exhausted, does the employer conduct an individualized assessment of the employee and engage in the interactive process with the employee to determine whether some further accommodation (such as additional leave) is required under state or federal disability discrimination laws?

***Privacy, Monitoring and Information Technology Use Issues***

94. Does the employer provide current and former employees the right to inspect their personnel files (or to obtain copies of the personnel file with or without a charge for copies by the employer) (within seven (7) days and ten (10) days, respectively) after submitting a written request to do so (up to a maximum of two times per year)?
95. Does the employer allow employees to submit an explanatory statement to be retained as part of the personnel file if upon inspection there is no agreement on removal or correction of information?
96. Does the employer have a policy of not releasing information contained in a personnel file to anyone other than the employee, except to one who performs employment related services for the employer, or in response to a lawfully issued administrative summons or judicial order (including a subpoena), or in response to a request by a law enforcement agency, or to comply with federal, state, or local laws or regulations?
97. Does the employer have a policy of not releasing information contained in a medical file to anyone (including the employee) other than to the employee's doctor (pursuant to a written authorization from the employee to do so) or to one who performs employment related services for the employer, or in response to a lawfully issued administrative summons or judicial order, including a subpoena, or in response to a request by a law enforcement agency, or to comply with federal, state, or local laws or regulations?
98. Does the employer have policies and procedures in place to guard against and impose penalties for employee misuse or misappropriation of privileged or confidential business-related information and trade-secrets?

99. Does the employer conduct internal investigations of employee misconduct, particularly allegations of sexual harassment, in a manner to protect employee privacy interests (such as an employee's reputation) by only involving employees with a "need to know"?
100. Has the employer implemented disciplinary procedures and other policies (e.g., substance abuse and alcohol policies) which state that employees cannot engage in off-duty conduct which interferes with their ability to perform their jobs or otherwise discredits the employer's reputation in the community or harms the employer's business operations?
101. Has the employer posted a notice of privacy protection for personally identifiable information (such as social security number; driver's license/identification number; account/credit/debit card number; passport/alien registration number; health insurance identification number; or military identification number) and adopted and implemented a policy with procedures in place to demonstrate how it will, in fact, accomplish the safeguarding (and proper destruction) of such personal information?
102. If the employer conducts any type of electronic monitoring in the workplace (i.e., GPS devices, monitoring of e-mail, voice-mail, computers etc.), has the employer issued prior written notice of monitoring to employees who may be affected by monitoring, stating the type of monitoring that may occur, and posted such notice where employees can readily view it (and included a monitoring policy in a handbook)?
103. Has the employer implemented a written policy stating that it retains the right to conduct property searches in the workplace at any time without advance notice, including searches of employee work areas, desks, lockers, file cabinets, mail, briefcases, handbags and cars (if parked in employer parking lots)?
104. Does the employer conduct property searches that are "justified at inception" (i.e., based on reasonable suspicion) and "permissible in scope" (i.e., the measures used are reasonably related to the objectives of the search and are not excessively intrusive)?
105. If the employer seeks to monitor telephone calls to and from the workplace, has the employer obtained the consent of all parties to the call either verbally, as a result of a recorded message at the beginning of the call, or by a recorded tone warning the parties every 15 seconds that they are being recorded?

106. If the employer conducts video surveillance of employees and/or the worksite, does the employer prohibit such surveillance activities in areas designated for health or professional comfort or for safeguarding of employee possessions, such as restrooms, locker rooms, or lounges?
107. Does the employer have a policy restricting Internet access and e-mail use for business purposes only during working time (i.e., the time an employee is engaged or should be engaged in performing his/her duties for the employer)?
108. Does the employer have a policy allowing limited personal use of Internet and e-mail access during non-working time, to the extent that such use does not interfere with the employer's business operations or others who are working, does not cause the employer to incur any additional expenses, and does not otherwise violate any employer policies or procedures or applicable laws?
109. Does the employer have a policy prohibiting employees from taking, distributing or posting pictures, videos or audio recordings while on working time (see definition above), in order to ensure employee safety and safety of employer equipment, prevent unlawful harassment, maintain individual privacy, encourage open communication, avoid unnecessary distractions and protect confidential business-related information of the employer from being improperly disclosed.
110. Does the employer have a policy (for some of the same reasons identified above) requiring employees who seek to take, distribute or post pictures, videos or audio recordings of people at the employer (such as other employees, clients or others doing business with the employer) while on non-working time to notify and obtain permission from such other individuals first?
111. Does the employer have a policy prohibiting employees from taking, distributing or posting pictures, videos or audio recordings of any confidential business-related information of the employer at any time?
112. Does the employer have a policy prohibiting employees from taking pictures or making recordings of work areas at any time, except if the employee were engaging in any activity protected by the National Labor Relations Act including, for example, taking pictures of health, safety and/or working condition concerns and/or other protected concerted activities, as long as such pictures, videos or audio recordings do not disclose any confidential business-related information of the employer?

113. Does the employer have a policy prohibiting employees from attaching their personal electronic devices (such as cell phones, tablets, laptops, MP3 players, smartwatches, smartglasses, etc.) to or charging them on the employer's computers so as to minimize the risk of introducing malware/viruses onto the employer's computer systems?
114. Does the employer have a policy prohibiting employees from plugging in any storage devices, USB drives, media cards or any other personal storage device into the employer's network or employer owned hardware unless for business purposes only with approval by the employer so as to minimize the risk of employee theft of confidential business-related information?
115. Does the employer have a policy allowing employees to use their personal electronic devices (such as cell phones, tablets, laptops, MP3 players, smartwatches, smartglasses, etc.) during non-working time (and/or working time), so long as such use is not disruptive to others (including co-workers, clients, etc.), does not interfere with the employer's business operations, and does not otherwise violate any of the employer's policies (including standards of conduct; confidentiality; etc.) or applicable law?

### ***Communications & Complaint Resolution Procedure***

116. Does the employer have a system, including a procedure to maintain employee anonymity, for gathering employee feedback and obtaining employee suggestions where appropriate? Are actions taken pursuant to such suggestions properly communicated to employees?
117. Does management have a policy of holding regular small group meetings by shift, department, etc., at which employees are provided time to voice their questions or concerns?
118. Are employees permitted to bring complaints to supervisors in an informal manner?
119. Is there a formal complaint resolution procedure which is communicated to employees and allows employees to, in certain instances, bypass their immediate supervisor?
120. Are supervisors instructed as to their role in the complaint resolution procedure in order to encourage its use and ensure that complaints are addressed in a timely manner?
121. Is appropriate documentation maintained regarding the nature of complaints and action taken?



## ***Evaluation***

122. Are written performance evaluations completed at least on an annual basis?
123. Does the person performing the evaluation have actual knowledge of the employee's performance, acquired over a reasonable period of time?
124. Do the standard evaluation forms contain appropriate and objectively measurable criteria?
125. Does the supervisor have similar expectations for employees who hold the same position with similar levels of experience?
126. Does the evaluation accurately and specifically describe how the employee performed with respect to each expectation?
127. Is the evaluation as specific and objective as possible? Are specific examples given of how and when problem(s) occurred and what the consequences were for the employee's coworkers, the employer's customers and the organization's ability to achieve its objectives?
128. If an employee's performance requires dramatic improvement, is the employer's evaluation candid about the consequences if the employee fails to meet those expectations within an expressed time frame? Are written performance improvement plans implemented with deadlines and consequences?
129. Is an evaluation conference held to review the evaluation and obtain the comments and signature of the employee?
130. Are employees advised in writing in any performance evaluation document that they may submit a written statement to be maintained as part of the personnel file explaining their position if they disagree with any information provided in the evaluation?

## ***Discipline***

131. Are current disciplinary rules effectively communicated to employees and supervisors?
132. Do supervisors in all departments receive instruction on how to enforce the disciplinary rules fairly and consistently?
133. Is enforcement of the disciplinary rules monitored to ensure consistent enforcement in all departments?
134. Where possible and appropriate, does the non-unionized employer utilize a system of progressive discipline which provides for a thorough investigation, including an opportunity for the employee to give an explanation, prior to the imposition of discipline?
135. Is appropriate documentation maintained regarding counseling or coaching and warnings given to employees (not more than one business day after the date of imposing such action) and do employees sign these documents acknowledging receipt and understanding?
136. Are employees advised in writing in any disciplinary document that they may submit a written statement to be maintained as part of the personnel file explaining their position if they disagree with any information provided in the document?
137. Does the employer have a witness present during disciplinary meetings (and especially during terminations)?

## ***Termination***

138. Does the employer have a procedure for reviewing prospective terminations prior to actual termination, including identifying and evaluating recent protected activity and positive performance reviews or bonuses to avoid bad timing?
139. Does the employer document poor performance and misconduct prior to termination and avoid “summary” terminations when appropriate?
140. Does the employer issue a notice of proposed disciplinary action before termination, if appropriate?
141. If the employer prepares a termination letter, does the employer state the real reason(s) for termination (i.e., not disguising a performance-based discharge as a layoff) and all reason(s) for the termination?

142. If the employer prepares a termination letter, does the employer immediately provide an employee with a copy of any documented notice of termination, which further advises the employee that they may submit a written statement to be maintained as part of the personnel file explaining their position if they disagree with any information provided in the document?
143. Does the employer ensure that terminations are handled in a professional manner (i.e., in private with minimal embarrassment to the employee)?
144. Does the employer ensure that all property and equipment is retrieved from the employee at the time of termination?
145. If an employee resigns in person, is a resignation letter obtained prior to allowing the employee to leave employment?
146. If an employer is notified of an employee's resignation via phone, does the employer send a letter to the employee confirming and accepting the resignation?
147. If the employer is closing and/or implementing mass layoff, has the employer complied with any WARN Act obligations (as applicable) to provide notice to employees or their unions, and to local and state authorities?

#### **IV. POST-EMPLOYMENT GUIDELINES**

##### ***Wages and Benefits***

148. Has the employer properly paid fringe benefits upon termination of employment (e.g., for accrued but unused vacation or sick time) based on the employer's individual policies or practices?
149. Has the employer properly and timely paid all unpaid wages/bonuses upon termination?
150. Has the employer made only proper deductions from the final paycheck (and recouped any wage/vacation advances properly)?
151. Does the employer properly issue COBRA notices to employees at time of qualifying events (such as job termination)?
152. Does the employer ensure that the unemployment compensation paperwork coincides with the termination reasons given to employee?

## **References**

153. Does the employer only disclose dates of employment and job title in response to a request for a reference regarding an employee, unless the employee has provided a written authorization to disclose other personnel-related information?
154. If authorized to disclose other personnel-related information and the employer chooses to do so, does the employer only provide truthful information and information in writing?

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