

# Ten Steps to Avoid Liability in Terminations

8/13/2013

Practices: Employment, Labor & Benefits

*[Editor's Note] Alan M. Kaplan and Frank J. Del Barto gave a joint presentation to HRoundtable, a networking group for human resource professionals in the northwestern suburbs of Chicago. They spoke on the "Ten Steps to Avoid Liability in Terminations."*

One of the most important tasks of a human resource professional, CFO and president of a company is determining the risk involved in terminating employees. By following the Ten Steps, business professionals may determine that risk and then take additional steps to lessen the risk:

## **Part I: Due Diligence**

**Step 1:** Analyze the employee's contract rights by reviewing the offer letter, employment agreements, employee handbook and any and all written or oral statements made by supervisors and agents prior to the employee's hiring and during employment.

**Step 2:** Analyze the employee's statutory rights under federal, state and local laws relating to wages and hours, discrimination and retaliation.

**Step 3:** Analyze the employee's tort rights under state law.

**Step 4:** Determine if the company implemented a performance management system consistently and non-discriminatorily.

## **Part II: Due Process**

**Step 5:** Take advantage of a resignation.

**Step 6:** Determine if there are applicable rules and policies.

**Step 7:** Investigate whether the employee knew of the rules and violated the rules.

**Step 8:** Implement a lawful decision-making process.

## **Part III: Action**

**Step 9:** Conduct a termination in the best way to protect the company.

**Step 10:** Respond to inquiries from former employees, their attorneys and government agencies to defend against a finding of liability.

Contact your relationship attorney or a member of the Employment, Labor and Benefits Practice Group to learn the details of these steps or to schedule a training program for the company's supervisors.