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READY TO THROW IN THE TOWEL?

Top 10 Considerations For Employees Before Quitting Your Florida Job

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1 *Consider Why You Are Quitting - And Seek Counsel.*

Leaving only because you landed new job or better opportunity? Good for you! If this applies to you, you can skip on to #2. For everyone else - you may wish to give pause before you turn in that resignation. Many times, for example, employees may feel frustrated because they have seen others get promoted over them and feel that their job is a dead end. Resigning is the only option. Others may be subject to persistent harassment and cannot fathom going to work another day under those circumstances. The silver lining? You may be in luck - with a potential lawsuit, that is. Before you quit, this is the crucial time for you to consult with an experienced labor and employment attorney, who can tell you your legal rights. For example, an experienced labor and employment attorney may be able to guide you through making a complaint to Human Resources or your supervisor. At best, you may get exactly what you've wanted. However, if the situation still does not improve, or worse, if you are terminated after your complaint, you may have a potential claim for retaliation or a whistleblower claim under state or federal law. Bottom line: consult with an experienced labor and employment attorney before you hand in that resignation.

2 *Review Your Employment Agreements and Handbooks:*

Bonuses, Vacations, and Sick Leave Payout - Even at-will employees may have signed an employment contract with their employer at some time during their employment. Some of these agreements may dictate whether you receive that upcoming bonus payment once you've resigned or outline the company's policies regarding pay-out of your vacation leave and sick leave. Contrary to popular belief, accrued sick time/paid time off (PTO) and vacation time are not always compensable at separation. An employer's handbook or your employment agreement may outline when these are payable.

Sometimes, if the payout policies are not clear or articulated in a policy, the employer's normal practices for payout of bonus and vacation may control. For example, if the employer maintains a practice of normally paying out vacation time or sick time at separation, then the employer's actions may mean the time is treated as a wage - and due to you upon separation. If in doubt, it is wise to consult with a labor and employment attorney for your questions about payouts for bonuses, wages, and vacation.

3 *Review Your Employment Agreements and Handbooks:*

Restrictive covenants (non-competes, confidentiality agreements, and non-solicits) So, you've had it with your employer and you're ready to leave - but where will you go? For employees who have signed restrictive covenants such as non-compete agreements, non-solicit agreements, or confidentiality agreements, you may be limited in where you can go and what you can do - at least for the time being. A common misconception by many employees is that their employee cannot prohibit them from working if it is going to cause them a financial hardship.Unfortunately, in Florida, courts do not take financial hardship into decisions about whether a restrictive covenant should be enforced - and restrictive covenants can be enforced in Florida. However, there is not all bad news - Florida law does require that the terms and conditions of the restrictions be limited in time and scope. If you have questions about a restrictive covenant and where you can work after your separation, or about a job you are considering, it is best to consult with a labor and employment attorney before you make the move. Not doing so can cost you more than just losing that job - it can get you sued.

4 *No, That Work Presentation (Computer, iPhone, Client List, Etc.) Doesn't Necessarily Belong to You:*

We get it – you have put your blood, sweat, and tears into projects and presentations for this company and know that these are great examples of your work ethic. So what is wrong with downloading these projects to your personal computer or sending them to your email to show off to future employers? Many things can be wrong with this, actually. Most companies' handbooks have policies about who owns your work product. Maybe you've signed an agreement that even states that the company owns the work product you create for the company during your employment – or maybe the projects contain trade secret or confidential company information. If you take these documents and the company finds out, you may be sued, even if you were the sole person responsible for creating the documents. The same goes for client lists, company financial information, or marketing materials – all of these documents may be afforded protections under the law and taking these documents can constitute a violation of Florida law. And sorry to say, but this also includes company phones, computers, and tablets. If you are adamant about wanting to take these documents or items with you before you leave or believe they rightfully belong to you, it is important to seek advice from an experienced labor and employment attorney before you hit download, send, or walk out the door with the item in order to know where you may stand with the law when you take that action.

5 *The Benefit of Unemployment Benefits:*

The Florida Department of Economic Opportunity (DEO) administers unemployment benefits in Florida. According to the DEO, Florida's unemployment compensation program provides temporary, partial wage replacement benefits to qualified workers who are unemployed through no fault of their own. The program is funded solely by employers who pay federal and state unemployment compensation taxes, but at no cost the workers who receive the benefits. Under Florida law, you are only entitled to unemployment benefits if you separated from your employment through no fault of your own. To be entitled to benefits, you typically have to work for the employer for a set period of time. To be clear: just because you are without a job does not mean that you are automatically entitled to unemployment benefits. It is possible that you may be denied entitlement to benefits if you quit for personal reasons, if you were terminated due to misconduct which could occur in or out of the workplace (such as refusing to follow an established rule of the employer or taking action in conscious disregard of an employer's interest), chronic absenteeism, not being able to work or available to work, or refusing an offer of suitable work. However, if you quit due to good cause attributable to your employer (such as continuous sexual harassment, even after you brought to the attention of Human Resources or because the employer has neglected to timely pay you wages) or for a personal illness or disability that made it necessary to leave the job, it is possible you may be entitled to benefits.

Typically, to receive benefits following your separation, you must be ready and able to work and actively looking for work. The DEO establishes guidelines as to what constitutes actively looking for work and may request evidence of this search during the time you are receiving benefits (and therefore, it is important to keep solid records). It is important to note that it is possible that you may be entitled to partial benefits if your employer reduces your hours against your will. In any event, whether your hours have been reduced or you have separated your employment and are unsure whether the separation would qualify you for benefits, you may seek counsel from an employment attorney or you may simply file a claim to determine if you would be eligible for benefits. In the event your claim is denied and you disagree with the determination, you likely have appeal rights, but those are subject to a short deadline. As such, if you intend to appeal a denial of your benefits, we recommend you take swift action. You are entitled to be represented by an attorney during that appeal, and if you elect to do so, it is important that you seek timely consultation with an attorney to determine best course of action.

6 *The Down-the-Road Considerations: Retirement Benefits and Plans:*

When you're leaving your job, if you have a retirement plan, a pension plan, a 401(k) plan, a profit-sharing plan, a thrift savings plan, or any other type of deferred compensation plan, the first thing you need to do before you separate is make sure you have all the documents which describe your plan (like a summary plan description and individual benefit statement) and how separation of your employment will affect your participation in the plan. You also will want documents identifying the status of your account. Some retirement plans may provide that you do not have any legal right to the benefits until you are vested. Some pension plans may require that you reach a certain age before you are entitled to benefits. Other plans, like a savings plan (other than pension or retirement plans), may allow you to make withdraws based on your length of participation in the plan or length of employment. For example, for retirement plans other than defined benefit (pension plans), your options may include rolling over the balance to a new plan, withdrawing the balance by requesting a lump-sum distribution, leaving the money in the plan, or rolling over the balance to a traditional or Roth IRA. In short, the options you have about how to handle your plans depend on what sort of retirement plan you have - and it is important for you to make this determination before you separate your employment. At termination, it is typical that all of the employer contributions to your retirement or savings plan will cease and it is not likely that you will be able to make additional contributions. A CPA or tax attorney may be able to guide you on the tax implications of each option. Both the Internal Revenue Service and the Department of Labor have excellent resources on their websites with further information about retirement benefits and options post-separation.

7 *Doctor's Orders: Health Insurance/COBRA:*

Once you've separated your employment, what are you going to do about health insurance? Some companies have policies which continue your coverage through the end of the month of your separation, but it is a good fact to know before you make the decision about when to resign. If your company is one that does give you the full month of coverage for the month in which you separate – this may factor in to whether you resign on the 31st of a month or the 1st. If you work for a company with 20 or more employees, you may be entitled to keep your employer's group health plan for a limited amount of time under a federal law called COBRA. Generally, COBRA is offered for 18 months, but can be extended to 36 months in some situations. Typically, once you have separated your employment, you should get a notice from your employer's benefits administrator or the group health plan telling you your coverage is ending and offering you the right to elect COBRA continuation coverage.

9 *Severance – The Myth:*

Entitlement to Severance Unless you have an agreement with your employer that you are entitled to a severance agreement at separation, severance agreements are not required under Florida law. Severance is a gift. Many employees expect that their employers will offer them a severance agreement when they separate - but the truth is that an employer is not required to offer a penny more than compensation for your wages. Still, many employers do choose to offer severance agreements for employees. If you are lucky enough to be offered a severance agreement, it is important that you understand the terms you are signing - and what you are giving up. Often times, employees sign the agreement because they are worried about future finances, but in doing so, do not realize they have also waived their abilities to bring forth potential claims against the employer. Regardless as to whether you have intentions to bring a claim against your employer, it is wise to seek legal counsel for review of the agreement before you sign it. But maybe you have not been offered a severance yet. In this situation - it never hurts to ask.

10 *You're Still Going to Need to Include the Company on Your Future Job Applications:*

Many times, employees think that if they had a short employment relationship with a company or ended on bad terms, they can just leave that company off their resume or next job application to avoid new employers contacting them. The problem is, this is not truthful. In fact, many times, when you're submitting an application, you're doing so with the verification that it is accurate. Leaving off a place of employment is not accurate and could land you in trouble later on. For instance, Florida is an at-will employment state and your employer has the ability to terminate you for any non-discriminatory reason. So, why give that new employer ammunition to decide to terminate you if/when they learn that you were untruthful in your job application? Better decision – be accurate about your employment history. Everyone has had a bad job or employer. If you're asked about it during an interview, be tactful. Many times, it is in the way that you handle those difficult questions that will show your future employer that you can put a positive spin on a negative situation with sophistication – and land you the job after all.

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