

Blog Post

Traps for the Unwary: Responding When An Employee Quits

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You may have been there: a valuable employee angered by some new development, announces “I quit!” and storms out, then shows up for work the next day as though nothing happened. Or a rapidly failing underperformer submits a written resignation, but it’s not effective until 60 days later. What’s an employer to do? Can/should an employer march them out the door?

A voluntary resignation can be unintentionally converted into an involuntary discharge if the employer isn’t careful, and the consequences can prove costly. Below are some of the more common scenarios involving tricky resignations, and some of the measures that employers might take to minimize issues.

Respond Quickly and Carefully

Communication is key in every employment relationship. When an employee gives notice of his/her departure without providing the customary details such as effective date, status of projects, and who should handle what, the employer should quickly follow up to confirm the employee’s notice and implement an exit plan. Employers that fail to do so may find themselves facing some difficult conversations down the line.

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A case in point: After being verbally reprimanded by a supervisor, an employee shouts “I quit!” in the hallway outside his office and storms out. The next day, the employee does not come in to work, despite being scheduled to work for the full day. HR processes a termination packet and prepares the worker’s last paycheck. Two days later, but before the final paycheck is mailed, the employee shows up, apologizes, and returns to his office. If the company proceeds to process his termination, does it do so as a voluntary resignation or involuntary termination?

If the company moves forward with termination on these facts, the employee may contend he was fired, and may blame it on discrimination, retaliation, or some other wrongful act. Such claims often result in lengthy – and costly – legal disputes. However, if the employer had immediately emailed the employee, advising him that the company had accepted his resignation, it would be a different situation.

Employers should consider how their actions and reactions can impact an employee’s eligibility for unemployment benefits. In New York, California, and New Jersey, an employee will generally only be eligible for unemployment benefits if they lose employment “through no fault of their own.” Occasionally, the state’s unemployment department will make an exception for employees who quit for “good cause.” This may include situations where an employee quits due to unsafe working conditions, discrimination, harassment, or retaliation. However, in virtually all cases, an employment relationship that ends with a discharge (absent a showing of misconduct, fraud, or other good cause) will entitle the affected employee to unemployment benefits.

To determine whether a termination qualifies as a discharge or a voluntary resignation, courts generally consider all of the circumstances surrounding the termination. As an employer, you should do the same, paying special attention to:

- **The employee's notice.** It is important to consider every verbal and written communication in the appropriate context. Sudden outbursts should be given less weight than formal letters of resignation. Likewise, "hallway" conversations should not be taken as seriously as face-to-face meetings behind closed doors in an HR Manager's office.
- **Previous "threats" to resign.** If an employee has previously threatened to quit but failed to follow through, the employer should promptly schedule a meeting with the employee. The employer's response to the situation should be tailored to the employee's history with the company and the circumstances surrounding the notice. If previous "threats" were made in response to perceived harassment or race-based discrimination, it will be important for the employer to ensure such complaints have been investigated and addressed. Assuming they have, an employer should still be sensitive to the employee's relationships with his or her supervisors and other staff and other existing issues before broaching the subject of resignation.
- **Affirmative steps taken by the employer.** An employer has the right to rely, in good faith, on an employee's resignation notice and to take all appropriate actions. If an employee resigns and the employer is prepared to accept that resignation, it should do so and start acting in reliance on the resignation. For example, the employer may start by posting job openings for the employee's position online, interviewing candidates, and reassigning work duties.

Protective Measures

While there is no quick and easy formula, employers can take several steps to protect themselves against the uncertainties of these scenarios.

- **Review and update the company handbook.** All company managers and HR personnel should periodically review the company's handbook and

any written policies governing resignations. Consider whether your company policy should allow employees to provide verbal or written notice, and whether the policy should expressly identify one or more individuals to be notified in order to provide effective notice of resignation. Ensure your company policy requests that employees provide a limited advance notice of resignation, such as two weeks, if that would be appropriate for your company and industry. Also, make sure that the company has a process in place for responding to a written or verbal notice of resignation.

- **Provide training to all relevant managers and HR personnel on the company's termination procedure.** Not all resignation notices will be received by HR personnel. In many cases, employees will choose to tender their notice to their direct supervisor, with whom they are more likely to have daily interaction. It is critical that HR personnel periodically train all supervisors and managers on the process for handling such resignations.
- **Follow up with all departing employees within 24-48 hours.** Be sure to formalize their resignation, obtain the effective date of resignation, and ensure a smooth transition of responsibilities. Also confirm arrangements for all company property to be returned in a timely fashion, and remind employees of any post-termination obligations.
- **Consider conducting an exit interview.** Exit interviews can help the company learn more about why the employee is leaving and what the company could do better. The exit interview is another great opportunity to remind employees of post-termination obligations, such as not using or disclosing the company's confidential or proprietary information.
- **Consider whether to accelerate the effective date of resignation.** Sometimes, a departing employee can create such a negative toxicity that you may

not want the employee to work out the notice period. You might relieve the employee of responsibility for reporting to work during the notice period, but continue to pay them for notice period, or you might simply accelerate the effective date of resignation. *Note that if you do accelerate the effective date of resignation, you may inadvertently convert a resignation into a discharge, and entitle the employee to unemployment compensation.* Several states, including California, view an employer's "early" acceptance of notice as an involuntary discharge. Employers are reminded to check with their local counsel before terminating an employee immediately, or shortly after, he or she tenders a formal notice of resignation.

For guidance with tricky employee departures, contact your Akerman attorney.

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