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2003 BENEFIT PLAN LIMITS

By: Timothy Brechtel

Several benefit plan limitations in the Internal Revenue Code were adjusted for 2003. The limit on annual deferrals to 401(k) Plans increased from \$11,000 to \$12,000; the limit on "catch-up" contributions for those age 50 and higher increased from \$1,000 to \$2,000; and the limit on contributions to a SIMPLE IRA increased from \$7,000 to \$8,000.

No changes were made to other limits. The annual compensation that can be considered under a qualified plan remains \$200,000; the threshold for being deemed a highly compensated employee remains \$90,000; and the limit on the total amount that can be contributed on behalf of an individual to all defined contribution plans sponsored by an employer remains \$40,000. For defined benefit plans, the maximum annual benefit that can be received remains \$160,000.

The limit on the amount of parking that can be paid on a pretax basis via a program established under Code Section 132(f) increased from \$185 to \$190, while the limit for transit passes and commuter vehicles remains \$100.

The amount of wages subject to the 6.2% Social Security tax increased to \$87,000 (up from \$84,900) for 2003. For an employee earning this amount or more in 2001, this translates into additional Social Security taxes of \$260 (\$130 each for the employee and employer).

AVOIDING LONG GOODBYES: SEVEN STEPS FOR CONDUCTING SUCCESSFUL TERMINATION MEETINGS

By: H. Mark Adams

Terminating an employee is never easy (unless you really dislike him), and the very fact it's such an uncomfortable situation may lead you to slip up and say something you'll later regret. Following these seven time-tested steps for conducting termination meetings will help reduce your risk of being sued, increase your chances of winning if you are, lower your anxiety level in the process, and avoid long goodbyes.

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Step 1: Figure Out What You're Going to Say Ahead of Time.

A question I'm often asked by employers is, "Do I have to give my employee a reason for firing him?" The answer is, "No," but the question you should be asking is, "Should I give a reason?" the answer to which is an unequivocal, "Yes! And it better be truthful." By that we mean the whole truth. Consider the alternative:

You terminate an employee without giving a reason or, worse, you give an inaccurate or incomplete reason. Maybe you "sugarcoat" the reason because you want to "let him down easy." It's still not the whole truth, and anything short of the whole truth is still inaccurate. So now you're in deep. A lawsuit is filed, the day of judgment arrives, and there you sit on the witness stand. It's the moment of truth, and winning or losing lies in the balance. The eyes of the jurors are fixed on you, the judge peers down from the bench, and your former employee's lawyer demands to know, "Why did you terminate Mr. Jones?" If you give a reason other than what you told Mr. Jones when you fired him, you're going to get nailed with another question for which there is no good answer: "If that's so, why did you tell Mr. Jones something different?" No matter what you say, it's going to look to the jury like you trumped up your reasons only after you got sued. Remember Mark Twain's admonition: "*Sometimes half the truth is the biggest lie of all.*" That's what it'll look like to the judge and jury. Of course, you see the point. The time to think about what you're going to say on the witness stand is not when your former employee's lawyer poses the question, but before you terminate the employee.

So Step 1 is to determine beforehand what you need to say and how you'll say it and to develop a contingency plan for any awkward situations you anticipate may arise (see Step 3). Rehearse what you're going to say if you need to, but try not to memorize your lines so you won't sound like you're reading from a script.

Step 2: Pick the Best Time and Place.

When selecting the time and place for your termination meeting, remember the advice of the last Crusader in *Indiana Jones and the Last Crusade*: "Choose wisely." As best you can, choose a time and place that will ease the employee's discomfort and reduce the likelihood of exposing her to embarrassment or humiliation with her coworkers. Think about it this way: If you were the one being fired, where and how would you want it done? Show the same type of consideration for your employee. Be discreet. Do it out of the sight lines and earshot of her coworkers. The end of the day when other employees aren't likely to be around or the beginning of the day before the employee goes to

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her work station or joins her colleagues on the production line are the best times. And if the employee needs to take her pictures off the wall or clean out her desk or locker, offer to let her come back after hours when she won't have to face her former coworkers and answer their nosy questions.

Step 3: Get a Witness. Always have at least one other management representative, such as the employee's supervisor or department head, present as a witness during the termination meeting. Your assistant might also be a good choice. Whoever it is, make sure he takes good notes. And whatever you do, don't ask one of the employee's coworkers to be **your** witness. If you do, you'll just add to the employee's embarrassment. But you need to be prepared if the employee tells you he wants a coworker to be present as **his** witness or representative.

A recent NLRB ruling gives all employees, even in a nonunion workplace, the right to have a coworker present as a witness or representative in any meeting with management which the employee reasonably believes may result in disciplinary action. You do not have to inform the employee of this right, but you cannot deny the employee's request if he asserts his right. If he does, you have two options: Grant the request or decline to continue the meeting. The latter may be your best choice if you fear the employee's chosen representative may be disruptive or the meeting may turn unruly. In that case, politely decline the employee's request and hand him his separation notice or termination memo with your carefully worded and truthful statement setting forth the reasons for his discharge (which you should already have prepared).

If you don't have to deal with this contingency, move on to Step 4 and continue your interview.

*Part 2 of this article
will appear in next month's newsletter.*

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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