

## **New York Requirements for Employee Termination**

Employees in New York State are presumed to be “at-will,” meaning that the employment relationship can be terminated at any time for any reason, absent a law or contractual agreement to the contrary. But even though employers and employees are free to terminate employment at any time, New York State still requires certain specific steps be taken by employers when employees depart, whether voluntarily or involuntarily.

Employers with employees working in New York should be aware of the following requirements that upon the termination or separation of any New York employee:

### 1. Written Notice of Effective Date of Termination and Cancellation of Benefits

**N.Y. Labor Law, § 195(6)** requires employers to provide written notice to discharged employees, stating the effective date of termination. The notice must also provide the exact date that any employee benefits, such as health, accident, and life insurance, will cease. This notice must be given to the employee no later than five working days after the date of termination.

This notice requirement applies not only to terminations initiated by the employer, but also to employees who resign, retire, or otherwise leave voluntarily. Employers of New York State employees should ensure that they have processes in place to provide this written notice to all departing employees within five days of separation. In the case of termination initiated by the employer, we would advise employers to be prepared to provide this written notice at the time of termination, whenever possible.

### 2. Written Notice of Unemployment Insurance Availability

**12 N.Y.C.R.R. § 472.8** requires all employers to provide notice, at the time of separation, of the employee’s right to file an application for unemployment benefits. The notice is to be provided on [Form IA 12.3](#), provided on the Department of Labor website.

Once again, the law does not distinguish between employees separating voluntarily or involuntarily. This means that even in a situation where the employee’s departure clearly does not qualify her for unemployment insurance benefits, the form must still be provided.

Employers of New York State employees should confirm that Form IA 12.3 is included with the notice provided to all employees upon separation.

### 3. Final Paychecks Must Be Issued By The Next Regular Payday

**N.Y. Labor Law § 191** requires employers to issue a final paycheck to departing employees on or before the next regularly scheduled pay date. If requested by the employee, final paychecks must be mailed to the employee.

Commissions are considered wages under New York law. New York requires all commission agreements to be in writing, and to specifically address how commissions will be paid when the employment relationship ends. All commissions earned at the time of termination must be paid as required for all other wages. For commissions that have not yet been earned at the time of

termination, the terms of the written employment agreement will control regarding if and when such commissions will be paid.

New York does not require employers to provide paid vacation; however, any accrued and unused paid vacation that is provided to employees must be paid out at termination unless the employer has a written policy specifically stating that vacation pay is forfeited upon termination. Employers of New York employees should review their vacation policies and craft clear provisions specifying any vacation caps or forfeiture policies they wish to enforce.