

## **SECTION IX: TERMINATION OF EMPLOYMENT**

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1. TYPES OF TERMINATION. The Termination of Employment Flow Sheet (see Appendix Number 23 for details) may be used to help determine the appropriate type of termination to use. Any involuntary termination or termination of an employee who may feel pressured into a "voluntary" termination, also known as constructive termination, should be reviewed with legal counsel before termination is pursued or a resignation is accepted to ensure the employee's "due process" property rights are not violated.
  - A. Retirement. Retirement is acceptable as long as it is truly voluntary. The purpose of Tremonton City's retirement program is to provide employees with income benefits upon completion of successful careers.
  - B. Voluntary Resignation. When an employee wishes to leave Tremonton City, they will complete a Notice of Voluntary Resignation Form (see Appendix Number 24 for details) and present it to the Mayor.
  - C. Resignation, in Lieu of an Involuntary Termination, Agreement. The Mayor, or City Manager, may conclude that an employee should be involuntarily terminated for no reason (for probationary employees and Department Heads) or for cause. If Involuntary Termination proceeding have begun, but have not been completed, and an employee suggests that they would like to voluntarily resign, the Mayor may agree to a Resignation, in Lieu of an Involuntary Termination, Agreement (see Appendix Number 25 for details).
  - D. Involuntary Termination. The Mayor, City Manager or department head, may conclude that an employee should be involuntarily terminated. The Employee Termination Notification (see Appendix Number 21 for details) will be completed.
  - E. Reductions in Force/Layoffs. Whenever it is necessary to reduce the number of employees in Tremonton City because of lack of work or lack of funds, Tremonton City may attempt to minimize layoffs by readjustment of personnel through reassignment of duty in other work areas.
  - F. Medical. The American's with Disabilities Act (ADA) prohibits illegal discrimination by an employer against an "otherwise qualified individual with a disability." Consequently, an employee should not be terminated for medical reasons without prior consultation with legal counsel.
  - G. Death. If an employee of Tremonton City dies, their estate receives all pay due and any earned and payable benefits (such as payment for compensation time, annual leave, and/or sick leave) as of the date of death.

2. REQUIRED NOTICE PRIOR TO TERMINATION.

- A. All employees, including “at-will” employees, must notify Tremonton City at least two (2) weeks before retiring or voluntarily resigning to be eligible:
  - (1) To receive pay for unused, accrued vacation leave (if applicable).
  - (2) To receive pay for vested sick leave (if applicable).
  - (3) For rehire.
- B. Tremonton City does not have a requirement to give any prior notice to an employee before terminating their employment with the city. When Tremonton City terminates their employment, Tremonton City will determine whether any pay for unused, accrued vacation leave (if applicable) or pay for vested sick leave (if applicable) will be paid to the terminated employee.
- C. Unused, accrued vacation leave (if applicable) and vested sick leave (if applicable) will always be paid for terminations of employment involving Reductions in Force/Layoffs, Medicals and Deaths.

3. TERMINATION PROCEDURES.

- A. A Notice of Voluntary Resignation Form (see Appendix Number 24 for details), signed by the employee and the Mayor, City Manager or department head, may be utilized in Voluntary Resignations.
- B. Involuntary Terminations/Separations for Cause require Tremonton City to provide their terminating employees with written notification of due process. “At-Will” Involuntary Terminations (for probationary employees and department heads) do not require Tremonton City to provide their terminating employees with written notification of due process.
- C. A Resignation In Lieu of an Involuntary Termination Agreement (see Appendix Number 25 for details), signed by the employee and the Mayor, or City Manager, may be utilized in negotiated terminations. A Resignation In Lieu of an Involuntary Termination Agreement does not require Tremonton City to provide their terminating employees with written notification of due process.
- D. The following steps should be taken for Voluntary Retirements:
  - (1) Employees who desire retirement should notify Tremonton City three months in advance.

- (2) Tremonton City should communicate the status of each employee's retirement benefits. The employee is responsible for notifying Tremonton City, the administrator of the retirement program and the appropriate state and federal regulatory agencies of their intent to retire. *(CC mtg. 01/07/03)*
- (3) Tremonton City should carefully explain to the employee what the options are (such as Cobra and Retirement Plan Options).
- (4) Tremonton City should give the employee ample time to review the retirement plan.
- (5) Tremonton City should have the employee sign a release, or at least a declaration statement, to the effect that they are electing retirement of their own free will.

E. The following steps should be taken for Reductions in Force/Layoffs:

- (1) Determine whether Tremonton City is required to follow statutory guidelines related to the reduction in force/layoff. If Tremonton City is required to follow statutory guidelines; policy, procedure and actual practice must comply with said guidelines.
- (2) If Tremonton City is facing a possible reduction in labor force, Tremonton City should explain the situation to its employees, advising them of the possibility that reductions in force/layoffs may become an economic necessity for Tremonton City.
- (3) In the selection of employees for Tremonton City's reduction in force/layoff, the following guidelines should be considered:
  - (a) Selection should be based upon the employee's ability to perform the work assignments within the affected department.
  - (b) Seniority should govern the selection when ability is equal.
  - (c) Emergency, temporary, and probationary employees should be laid off first.
  - (d) Permanent employees should be the last to be laid off, when possible, in inverse order of their length of service.
  - (e) Before any reduction in force/layoff, Tremonton City should determine whether it is subject to the requirements of the Worker

Adjustment and Retraining Notification Act, 29 U.S.C. 2101, et seq.

(f) If Tremonton City cannot give advanced notice of a reduction in force/layoff to the employee, two weeks severance pay may be given in lieu of notice for a bona fide reduction in force/layoff.

(4) Written reductions in force/layoffs notices should contain the following information:

(a) Statement of reason for layoff.

(b) Anticipated date of layoff.

(c) Tremonton City's option regarding employee placement in another position.

F. Outstanding Pay.

(1) Arrange for distribution of any paychecks which may be due the employee, including pay for any hours worked but not paid; pay for unused, accrued vacation leave (if applicable); or pay for vested sick leave (if applicable).

(2) Under Utah State law, the required timing of the final payment at termination is:

(a) A Voluntary Resignation. Within one (1) workday of effective resignation date.

(b) An Involuntary Termination/Separation for Cause. Within one (1) workday of last day worked.

G. The terminating employee will return any supplies or equipment, which are the property of Tremonton City, to Tremonton City at termination.

4. COBRA. Any employee that is separated from Tremonton City is entitled to a continuation of insurance coverage per the mandates of the COBRA plan as stated in the Tremonton City's COBRA Notification (see Appendix Number 26 for details).

A. Federal Public Law 99-272 (which became effective July 1, 1986 and is known as COBRA) requires that all employers of 20 or more full time employees offer a

continuation of group insurance coverage to individuals who fall under one of the following "qualifying events":

- (1) Termination of employment (other than for gross misconduct), for a maximum continuation period of eighteen (18) months.
  - (2) Reduction of work hours below eligibility requirement, for a maximum continuation period of eighteen (18) months.
  - (3) Dependent coverage terminated due to death of employee, for a maximum continuation period of thirty six (36) months.
  - (4) Divorce or legal separation from employee, for a maximum continuation period of thirty six (36) months.
  - (5) Spouse or dependent of Medicare eligible employee, for a maximum continuation period of thirty six (36) months.
  - (6) Dependent child who ceases to be a dependent under the generally applicable requirements of the group plan, for a maximum continuation period of thirty six (36) months.
- B. Under the Act, a qualifying individual is entitled to continued group insurance coverage identical to that which is provided to similarly situated beneficiaries to whom a qualifying event has not occurred. Individuals who are entitled to continued benefits under COBRA guidelines are required to pay the entire premium required under the policy during the entire period of the continued coverage. The premium a qualifying individual will be required to pay may not exceed one hundred and two percent (102 %) of the applicable premium, for any period of continued coverage. Failure to pay the monthly premium will result in a cancellation of the insurance.
- C. The insurance benefits offered under the COBRA guidelines will be terminated if and when any of the following occur:
- (1) A qualifying individual fails to pay the premium at the time it is required.
  - (2) A qualifying individual becomes eligible for coverage under any other group insurance plan due to employment or remarriage.
  - (3) At the expiration of a qualifying individual's maximum continuation period.

- D. The offer of continued insurance coverage under COBRA is made independent of any other offer to continue insurance that may be required under any applicable state law.
  
- E A qualifying individual has sixty (60) days from the termination date of their current coverage to decide whether to continue their insurance coverage under this plan. If they decide to apply for the continued coverage, all due and owing premiums must be paid before coverage will be granted. If they fail to apply for coverage within the sixty (60) days, they will have waived their rights to continuation of coverage under the COBRA guidelines. They are not required to apply for or accept coverage under COBRA.