

## HR Department Toolkit



## The Severance / Release Form

Terminating employees can seem sometimes very routine as tanning salons tend to have high turnovers particularly with younger workers who change jobs frequently. Usually the termination event is one where the individual turns in their keys and walks away either disgruntled about something or pushed to do so by salon or company management. The reason for wanting to be rid of some employees are many and varied. But on occasion you may need to do a termination on an individual who has not only been problematic but appears to be a potential litigious nightmare. The cost of a termination gone sour can be huge. Between lawyer's expenses and the cost of remaining employees to be pulled into a litigation nightmare can be staggering even if you successfully defend your position for making the termination. The firings that, on the surface, that have potential issues are those employees that are in management, or have been with your employ for many years or simply someone who had expressed the threat of legal action if something happens to their job. Simply stated, you can't and shouldn't handle all terminations the same way. Most young age employees don't know much about their legal employment rights unless another person dummies them up or they have an uncle who is an attorney.

Remember this, in a court deciding on an employment law suit, the jury will usually have more identity with the plaintiff than you as the salon operator or owner. Best way to shut off any potential post termination legal moves from a problematic worker? Consider severance pay that you give the employee for signing and agreeing to the covenants of a "severance release form."

A troublesome salon manager who is being released primarily because of a personality conflict with her owner and, assuming she is an aggressive personality, it may be well worth a few bucks to insure she can't bring a legal action against you whether it is warranted or not. Paying a severance to a difficult employee (assuming the termination is not for dishonesty or gross misconduct) to acquire her agreement to not hold you and your business liable for any damages, real or contrived, can be a great investment in the serenity of yourself and probably other employees.

Take for example a 5-year employee of a 2-salon chain who had many personality run-ins with her owner. Her performance was quite good in terms of numbers but she and the "boss" just could not mesh. She was offered 4 weeks of severance or about \$1,600. Seem like a lot of money? Not when you consider most employment law defense attorneys charge anywhere between \$250 and \$400 an hour. By signing and agreeing to the severance the owner did not have to pay legal defense fees and was not hit with unemployment comp charges... that's a big plus. This summary of the use of a severance release form and strategy is not intended to be legal advice and if you would want further guidance in handling sticky termination situations please contact John Farr at [john@johnrfarr.com](mailto:john@johnrfarr.com).

# SEVERANCE / RELEASE AGREEMENT

## 1. RELEASE AND DISCHARGE

In consideration for the severance payment set forth herein, the undersigned \_\_\_\_\_ ("Employee") hereby releases and forever discharges \_\_\_\_\_ and \_\_\_\_\_ ("Employers") and each of its respective owners, partners, shareholders, predecessors, successors, insurers, attorneys, agents, principals, and employees, and each of them, from any and all claims, causes of action, debts, and demands of every kind or nature whatsoever, whether they be known or unknown, including any claim or claims for costs of suit arising out of or in any way connected with Employee's employment with Employer, and/or the termination of such employment, including, without limitation, any and all claims for discrimination or harassment, breach of express or implied contract, wrongful termination, breach of covenant of good faith and fair dealing, termination in violation of public policy, unemployment compensation claims save and except any and all claims for benefits of workers' compensation and/or unemployment insurance.

## 2. GENERAL RELEASE

This Agreement is a full and final release applying to all unknown and unanticipated injuries, deaths or damages arising out of Employee's employment with Employer, as well as to those now known or disclosed, and the undersigned waives all rights or benefits to their employment, with the exceptions of those provided in the compensation ("Payment") section of this agreement.

## 3. PAYMENT

As consideration for this Severance and Release Agreement, Employer shall pay Employee, upon approval of this agreement, \_\_\_\_\_. Said sum shall be characterized as wages which are therefore subject to normal withholdings, including but not limited to State taxes, Federal taxes, and FICA.

## 4. REFERRALS

Employer agrees that it will provide any inquiring potential employer of Employee a confirmation of Employee's job title, dates of employment with Employer, and final pay rate.

\_\_\_\_\_ Page Initials

## 5. TERMINATION DATE

Employee's employment termination date shall be \_\_\_\_\_. It is expressly agreed that Employee releases and waives any rights which he/she may have, or claim to have, to seek re-employment with Employer. It is also agreed that Employee hereby acknowledges satisfaction of and releases and waives any and all claims for severance pay, bonus, commissions, incurred business expenses, salary, company stock, sick leave, holiday and vacation pay, life insurance, disability, health insurance or medical insurance or to collect unemployment compensation or any other fringe benefits, except as otherwise set forth herein and excluding vested pension and retirement rights, COBRA, and benefits under worker's compensation insurance, if any.

## 6. CONFIDENTIALITY

Employee agrees to keep the terms of this Agreement confidential and may only disclose the same to his/her attorneys and accountants.

## 7. WORKERS COMPENSATION

Employee acknowledges and agrees that his/her severance from employment is in no way related to Employee's filing or having made known his/her intention to file a claim for workers' compensation benefits. Employee shall retain his/her right to past, present, and future workers' compensation benefits.

## 8. DISCLAIMER OF LIABILITY

It is expressly agreed and understood that the aforesaid sum and agreements contained herein constitute the sole and entire consideration to the parties to this Agreement and that such agreements, as well as payment of the aforesaid sum, are contractual and not merely recitals; that neither this Agreement nor any payment hereunder is any admission by anyone of any liability, the same being expressly denied by each party.

## 9. PROPRIETARY INFORMATION/NON-DISCLOSURE

For purposes of this Agreement, the term "Proprietary Information" means confidential information of any kind, nature or description whatsoever relating to the business of Employer and/or the properties and assets used in connection with the business of Employer. Proprietary Information shall specifically include, but not be limited to, all of the following

information of Employer: (a) the names or practices of its customers and clients; (b) its marketing methods and related data; (c) all lists and other written records used in its business; (d) all financial data relating to the Employer or its business; (e) the compensation paid to its employees and other terms of employment; (f) its contracts and licenses; (g) the details regarding its business systems, computer programs and other properties and assets used in connection with Employer's business, and the condition thereof; and (h) any other confidential information of, about, or concerning the business of the Employer or its manner of operation. Without the prior written consent of Employer, Employee shall not (i) distribute, reveal, disclose or otherwise make known to any person except as authorized herein, or (ii) use for the benefit of Employee or the benefit of any other person, entity or entities, except as contemplated herein, the Proprietary Information which Employee has received from Employer. Employee shall return to Employer all Proprietary Information in his/her possession.

#### 10. TOTAL INTEGRATION

This Agreement constitutes the entire agreement between the parties and supersedes and replaces all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning all subject matters covered herein. This is an integrated document.

Any amendments to or changes in the obligations created by this Agreement shall not be effective unless reduced to writing and signed by all parties. All parties have cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter.

#### 11. Provision for contract terms severance.

11.1 In the event that one or more of the provisions, or portions thereof of this severance agreement is determined to be illegal or unenforceable, the remainder of this severance agreement shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

11.2 This severance agreement is entered into in the State of \_\_\_\_\_ and shall be construed and interpreted in accordance with those laws.

11.3 Should suit be instituted to enforce the terms of any of the provisions contained herein, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

11.4 Each party and/or counsel for each party to this severance agreement have participated in the terms and conditions set forth in this severance agreement and, accordingly, the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting parties will not be employed in any interpretation of this severance agreement.

DATE: \_\_\_\_\_

EMPLOYEE: \_\_\_\_\_

Print Name: \_\_\_\_\_

DATE: \_\_\_\_\_

EMPLOYER: \_\_\_\_\_

Print Name: \_\_\_\_\_