



Separation Compliance:

Best Practices for Final Pay, Notices,
Agreements, and More

May 7, 2026

Agenda

1 Waivers and
Separation
Documentation

2 Paying Out Sick
Leave & PTO

3 End of Employment
Considerations

- Webinar recording + slides will be sent to your email tomorrow
- HRCI & SHRM codes will be shared at the end of the webinar

“At-will” employment

Neither side is obligated to continue an employment relationship

- Employers can fire employees, and they can quit, at any time and for almost any reason
- No probationary period, cause requirements, etc.

Most US employees are “at-will”

- Notable exceptions include Montanans, union members, and some contract employees

Still some limitations on firing employees

- Can’t do it for discriminatory reasons or reasons that governments have decided aren’t in the public interest



When *can't* you fire an employee?

1. For discriminatory reasons

- E.g., because of their race, religion, sex, etc.

2. In retaliation for reporting unlawful conduct

- E.g., filing a claim of discrimination, reporting safety or wage and hour violations, etc.

3. For exercising legal rights

- E.g., taking leave employers are legally required to offer, participating in government investigations, unionizing, etc.

4. For reasons that undermine public policy

- E.g., refusing to follow illegal orders, warning the public about safety risks, etc.

Documentation is key

Documenting your reason for firing an at-will employee can be the difference in a lawsuit

- Both before and after the decision is made
- Get input from the employee if possible
- Consistency is king

Getting a release of claims from potentially litigious employees is also a good practice

- Separation acknowledgements can work for others



Agreements vs. acknowledgements

Different separation documents serve different purposes

- **Acknowledgements:** Document the circumstances of the separation, provide any required notices, and remind employee of existing obligations (if any)
- **Agreements:** Allow employer to obtain a release of claims and other promises in exchange for a severance payment

Agreements generally provide the company with more protection at a cost

- Consider the circumstances of each separation when deciding which type of document to use
- Can't force departing employees to agree



Releasing claims

Broad waivers are included in most separation agreements

- “Knowing and voluntary” waivers are effective to release *almost* all claims

But they sometimes require “magic words” to be effective

- E.g., many states require them to list the specific claims an employee is waiving by name

Saying the “magic words”

California

Can't waive “unknown” claims w/o specific language

- Ca. Civ. Code § 1542

Some lawyers include the full language of the statute to ensure waiver is valid

- But referencing it is likely fine too

Federal

Age Discrimination in Employment Act (ADEA) requires specific language when terminating EEs >40

- Even more required language for RIFs
- Must give EE 21 (or 45) days to sign

West Virginia

To be valid, release must:

- Mention WV Human Rights Act;
- Advise the EE to consult an attorney;
- Include the phone number for the WV state bar; and
- Give the EE 7 days to revoke after signing

Release agreement **compliance checklist**

1. Determine whether the employee is **over 40**
2. Specifically **list the claims** that you want the employee to waive
3. **Include any “magic words”** that state or federal law requires
4. Limit the release to **exclude claims that can't be waived**
5. Give the employee **something of value in exchange**
6. Include the **reason for separation** (if appropriate)



Final paycheck laws

Can vary significantly from state to state

- 46 states and DC have final paycheck rules.
- Alabama, Florida, Georgia, and Mississippi don't regulate when final paychecks must be paid.

Can vary depending on the reason for the separation

- In several states, employees who are let go must be paid in full on the day of their separation.
- In many of those same states, employees who resign can be paid on the next scheduled payday.

Failing to comply can subject employers to significant penalties

- In Alaska, Employers who fail to pay wages may be required to pay both the unpaid amount plus an additional 90 days' wages at the employee's regular pay rate.
- In Connecticut, employers who fail to pay wages may be required to pay the unpaid amount and criminal penalties up to \$5,000 in fines, imprisonment up to 5 years, or both for each offense.

Massachusetts final paycheck rules



[Massachusetts state law](#) requires employers to pay separated employees according to the following schedule:

- **Termination Payment:** Employees who are terminated must be paid immediately. Sales representatives must be paid earned commissions within 14 days of the contract termination.
- **Resignation Payment:** Employees who resign their employment must be paid on the next scheduled payday. If there is no regular/scheduled payday, then payment must be made on the Saturday following resignation. Sales representatives must be paid earned commissions within 14 days of the contract termination.
- **Final Wage Amount:** Employees must be paid all wages in full.
- **Payout of Unused Vacation:** All accrued and unused holiday and vacation time must be paid upon separation. Employers can place a reasonable cap on vacation accrual if the employer gives adequate prior notice of the policy, sets specific deadlines by which earned vacation time must be taken, and provides employees reasonable opportunity to take vacation.
- **Final Paycheck Location:** Massachusetts law does not specify how final payment must be made but it is a best practice to provide wages through the regular channels of payment.
- **Failure to Pay Wages Penalties:** Employers who fail to pay wages may be required to pay triple the unpaid wages and are subject to civil citations and criminal penalties up to \$25,000, one year' imprisonment, or both for initial violations and up to \$50,000, two years' imprisonment, or both for repeat violations.

Poll question

How does your organization handle vacation and sick leave?

Vacation/PTO payout

Must pay out unused vacation:

- California, Colorado, Illinois, Maine (11+ employees), Massachusetts, Montana (for vacation, not PTO), Nebraska, New Mexico, North Dakota, and Rhode Island (for employees employed for at least one year)

Must pay out unused vacation unless there is a written policy stating that vacation won't be paid out:

- DC, Louisiana, Maryland, Minnesota, New Hampshire, New York, North Carolina, Ohio, South Carolina, and West Virginia

Must pay out unused vacation unless there is a signed acknowledgement that vacation won't be paid out:

- Michigan, Oklahoma, and Wyoming

Must pay out unused vacation only if policy requires it:

- All the remaining states

Using PTO to replace sick leave

- State laws set a floor that employers must meet when using PTO to cover sick leave requirements
- Employers typically choose to be more generous by providing more PTO than required by state sick leave laws.

Pros

- Simpler
- More easily managed
- More freedom for employees

Cons

- PTO policy is now subject to sick leave rule
- Record-keeping requirements
- Notice requirements

Unlimited/flexible time off

Benefits

- Provides employees with more leave and flexibility
- Saves HR time by making leave easier to manage
- May avoid some legal requirements like carryover or payout
- Generally, unlimited time off isn't considered earned leave, so laws controlling earned but unused time off/ sick leave don't apply

Drawbacks

- Requires clear communication from managers and a high degree of trust in employees
- Most laws aren't clear about how unlimited time off interacts with sick leave requirements
- Record-keeping can get messy or overlooked
- Organizations can face legal issues if they claim to provide unlimited time off but their culture discourages taking time off (McPherson v. EF Intercultural Foundation, Inc.)

WARN Acts: Separation on a large scale

Requires large employers to send a variety of notices before they (1) close a facility or (2) layoff 50 or more workers at once

- Only required for facility closings that result in job loss for 50+ EEs

The federal “Worker Adjustment and Retraining Notification” Act applies nationwide to employers with 100 or more EEs

- Some states have their own versions with lower thresholds



WARN Acts: Continued

Federal

Must send notices to employees, state UI offices*, and the local “chief elected official”

Notice content varies by recipient, but generally includes:

- When and where the plant closing or layoff will happen;
- Who it will affect;
- Company contact information; and
- Contact information for any unions representing affected employees.

Delaware

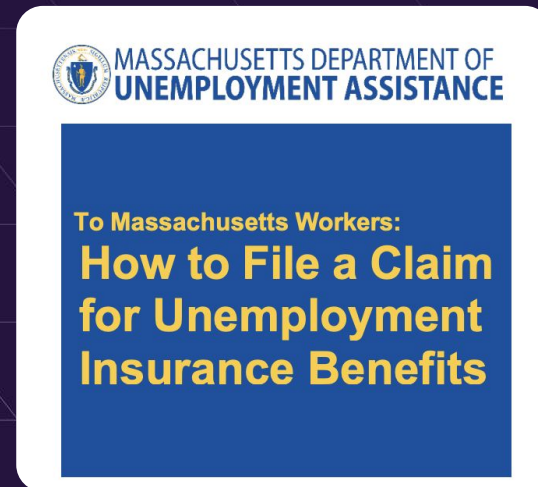
Same required recipients, plus a few more units of DE’s government

All federally required info must be included, plus:

- Details of severance payments offered to employees;
- Whether the employer is self-insured for DE workers’ compensation; and
- Specific language about available UI and retraining in DE

Separation notices: Notice of unemployment insurance or benefits

- This is the most common type of separation notice
- States often provide a specific form that meets this notice requirement
- States that require employers to provide unemployment insurance or benefits information at separation include:
 - Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Virginia, and Wyoming.



Separation notices: Mini-COBRA

- COBRA is a federal law (the “Consolidated Omnibus Budget Reconciliation Act”) that gives workers who lose their jobs the right to choose to continue their group health plans.
 - It generally applies to employees who worked for an employer that had 20 or more employees in the prior year.
- Many states have laws that extend COBRA-type benefits to employees who work for smaller employers. These are sometimes called “mini-COBRA” laws.
- Some of these states require employers to provide employees with information about the state’s mini-COBRA laws at separation. Those states include:
 - Arizona, California, Delaware, DC, Illinois, Iowa, Kansas, Maryland Minnesota, Nebraska, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Utah, Vermont, Virginia, and Wisconsin.

Non-competes

Separation notice

- OR requires employers that have non-compete agreements with departing employees to provide a signed, written copy of the terms of the agreement to the employee within 30 days of separation.
- MA & RI require a 7-day window for the employee to rescind non-competes signed at separation.
 - MA also requires additional consideration (payment)

Enforcing non-competition and non-solicitation agreements

- Even if you're not in one of these states, it may be a good idea to remind separating employees of their non-competition and non-solicitation obligations.


Non-compete validity































What if an employee's salary decreases or salary thresholds increase?

Many states set salary thresholds before noncompetes can apply.

In WA and OR, if an employee's salary falls below the threshold, the noncompete is unenforceable.

SixFifty: Research and legal updates

 **Research** Calendar View Ask AI Interactive Maps

Jurisdiction	Topic	Subtopic	Description	Notice Date	Effective Date	
Pennsylvania, Philadelphia	Leave	Sick Leave	On April 15, 2026, the City's Departme...	5/5/26	4/15/26	 
Maryland	Employee Conduct	Captive Audience Meetings	On April 28, 2026, Governor Moore sig...	5/5/26	10/1/26	 
Colorado	Wage and Hour	Overtime	On April 22, 2026, Governor Polis sign...	5/5/26	1/1/27	 
Florida	Equal Employment Opportunity	Protected Characteristics	On April 22, 2026, Governor DeSantis ...	4/28/26	1/1/27	 
Virginia	Wage and Hour	Overtime	After the Governor's recommendation...	4/28/26	7/1/28	 
Federal	Wage and Hour	General	On April 23, 2026, the U.S. Departmen...	4/28/26	6/22/26	 
Virginia	Wage and Hour	Penalties	After the legislature accepted the Gov...	4/28/26	7/1/26	 
Alabama	Wage and Hour	Child Labor	Alabama has increased penalties for e...	4/28/26	10/1/26	 
Oklahoma	Employee Conduct	Off-Duty Conduct	The Oklahoma legislature enacted a bil...	4/28/26	11/1/26	 
Virginia	Wage and Hour	Pay Transparency	On April 22, 2026, the state enacted id...	4/28/26	7/1/26	 
Maine	Wage and Hour	Pay Transparency	On April 24, 2026, Governor Mills sign...	4/28/26	7/28/26	 
Virginia	Leave	Family and Medical Leave - Paid	Virginia companion bills HB 1207 and ...	4/28/26	12/1/28	 
Virginia	Employment Agreements	Non-Competition	On April 22, 2026, the state enacted id...	4/28/26	7/1/26	 
Nebraska	Wage and Hour	Child Labor	On April 14, 2026, Governor Pillen sig...	4/21/26	7/17/26	 
Virginia	Leave	Emergency Sick Leave	Governor Slaughter signed Executive O...	4/28/26	7/1/26	 

Q&A time!

What questions do you have?

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Or visit sixfifty.com/request-a-demo



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