



## Season 3, Episode 8: “Parting Ways: Mastering the Art of Employee Offboarding, Part 2”

Speakers: Lee Jacobs and Rosemary Enright, Barclay Damon

**[Lee Jacobs]:** Hello, and welcome to episode eight of season three of Barclay Damon’s Labor & Employment Podcast. My name is Lee Jacobs, and I’m here with...

**[Rosemary Enright]:** ...Rosemary Enright...

**[Lee]:** ...in beautiful Buffalo in New York—Studio B, as Rosemary calls it. We’re here to continue our conversation on offboarding. So this is part two of “Parting Ways: Mastering the Art of Employee Offboarding.” So as we do and we’re... promise you, I know a bunch of you are probably on the seat of your pants waiting to hear about that important employment information that you must know and employment insurance information, excuse me, that you have to give to your employees when you terminate them, either involuntarily or voluntarily. Stay tuned. We’re going to get there in a moment. But because before that, we need to give you a fun fact of the podcast. So my fun fact of this podcast is, so one of the things that we, Rosemary and I, discovered last night at dinner was that we overlapped in DC for some time, some timeframe. I was there from 1999 to 2004. And my fun fact I went to GW. I was there for undergrad and graduate school, I went to law school in New York. But for grad school, I was the commencement speaker. I was picked by the faculty. I had to audition. I wrote a speech, and I gave a speech in front of tens of thousands of people, I would think, the largest group that I ever did. And it was right at the same time that Martha Stewart was either going to jail or was in jail. Enron, MCI, Worldcom. And the thrust of my speech was, I’m going to law school, and y’all better watch out. And who knew? Who knew, 20 years later, I’d be here talking about watching out for important employment practices and how to make sure you treat your employees properly.

**[Rosemary]:** And again, you did not know that you were going to be in labor employment attorney.

**[Lee]:** You know, who knew.

**[Rosemary]:** But just because that’s what was going on, you said it, and who knows where life brings you. That brings you to very interesting places. And sometimes things feel meant to be. There you go. Well, and I have to say, I was not the commencement speaker I was not, but, but as Lee said, we were in DC, at the same time, and we were joking, saying we probably were in some of the same places at the same time and just didn’t even know each other, you know, because I was obviously down in that Georgetown area a lot. So that’s great. So my fun fact well, going back to DC since you brought up DC was, I love to cook. I love to cook, and I love to eat. And so, there, was I don’t think it’s there anymore, but there was a classical French cooking school in Bethesda, Maryland. So I was living in the Bethesda area at the time, which, if you’re not familiar with DC, there’s just, I mean, literally...

**[Lee]:** ...other side of the border.

**[Rosemary]:** I mean, you can go across the street, you across the street, you’re in DC, you cross the street, you’re in Bethesda and, Maryland. Well, actually, that’s actually been Chevy Chase, me and Chevy Chase, which is Bethesda, little further down on the Red line, but, but anyway, so, I decided that I wanted to I didn’t want to become a professional chef, but because I love to cook, I thought I would love to learn or hone my

skills and learn some techniques. And so, they permitted volunteers to come in and help. They delivered recreational classes and of course, professional classes. It was a nationally recognized school. And so I went there and, volunteered for years. And one of my... all of the chefs were wonderful. But, I got to work an entire semester with Roland. And Roland he'll never hear this, but if I say yes, I don't like it. I'm terrible with French, but I think his last name was pronounced "Mesnier." And he was... for those of you that don't know, the White House pastry chef from 1979 to 2004, served under five presidents and my gosh, he was incredible. Some of the things... just quickly, one day in one of the classes, they were, he was doing a cake and it was right around when the, the Tour de France was happening. And so he did a round cake and he put cyclists, bikes, with the little helmets and the different colored journey, jerseys. Like, I think maybe Lance Armstrong at that time was doing it for the yellow jersey and everything made it out of chocolate and had these bikes and had done like a mountain on it and had the bikes all, you know, like they were racing. It was incredible.

**[Lee]:** It's amazing. I can just think of all the people who have eaten his pastries.

**[Rosemary]:** Oh that's right.

**[Lee]:** Like just like, like Queen Elizabeth. Boris Yeltsin, Mikhail Gorbachev. Right.

**[Rosemary]:** It's true.

**[Lee]:** Leaders and celebrities. Like, exactly like he is cooked for anyone, probably anyone. The last 50 years has eaten his pastries. That's exactly right.

**[Rosemary]:** So. And he's amazing. And he was a wonderful man. So down to earth. I mean, I loved working with him, and it was great. And the only other thing I just want to say quickly is what's interesting is he did not grow up in Paris. He grew up outside of France. I mean, in a far, in a very rural, rural area, small house, I don't remember, they may have had electricity, but they did not. I'm pretty sure they did not have running water. He cooked with his mother as a child and loved it.

**[Lee]:** And look where you...

**[Rosemary]:** Look what he became. But yeah, I...

**[Lee]:** I offline I'm curious to see what tasks they had to do. So like you because you volunteered. So you would like the prep cook.

**[Rosemary]:** Oh, yes. Oh yeah. So I tell you, I can, I can cut, like a whole thing of celery. You know how you buy a big what would you call it, a bunch or whatever. Yeah, there's something like that I can do. You can hand me one of those. I can do the whole thing in probably under two minutes and get it into...

**[Lee]:** ...like, a dice.

**[Rosemary]:** Oh, yeah. Into a dice.

**[Lee]:** We won't bore you all this, but I'm going to ask you about your techniques later. So, so taking us back to where we were last conversation, so to, to set the stage, we were talking about fictitious Rosemary. Fictitious Rosemary was late, multiple times in violation of company policy. And we've now proceeded through checking our paperwork. We're good to go. We've paid everything that Rosemary should be paid. We know whether she has... We have obligations for sick time, vacation time. We've sat down with Rosemary. She's told us whatever information she's willing to share with us is the exit interview. We've acted if we need to act. You've heard about huggers. Whatever it may be, we may be need to called our lawyer because we've heard some real terrible stuff. So now we're sitting down and now fictitious Rosemary is left. What do we do? And that's what

we promised you we'd talk about. There's two things you must do. You have to send a notice of termination. It's a letter that gets sent in the mail. And we'll tell you what needs to be included in that, as well as an unemployment insurance form. So while I bring up the unemployment insurance form, Rosemary, how do you, advise clients to deal with this? Is there a particular template or form or document they should use it. While I get the computer going.

**[Rosemary]:** Well, Yeah, sure. Well, you know, I actually have a template that I created, that contains the, or rather includes the information. And so, you know, it's section 195 of the labor law. It prescribes what needs to be in that New York state termination letter. And so it's the date that they I think he's going to bring it up and show you. But in that letter, you're going to state when the employment ended, you are going to say whether or not they are entitled to vacation pay, PTO and all of that. and if so, when that will be paid and the dollar amount, you'll talk to them about their, benefits. All right. When the benefits will cease, you'll reference COBRA in there. And this is one of the things we talked about last time, Lee, you will let them know that they are required to or not required, but they are eligible to for unemployment, which I'll show you in a minute. But I think he's going to put up. Do you have it up?

**[Lee]:** It's up on the screen.

**[Rosemary]:** Okay. So you can see, the, the labor law states everything that I just took you through. And, you know, a lot of people say, well, can I just do this verbally, you know, can I just have this conversation? Just tell the employee they know, and the answer is no. Okay. New York State is very clear if this letter has to be sent to them, within five business days. And I've had some of my clients say, well, can I just hand it to them? And I've said, sure, hand it to them. And what I would do then is say via hand delivery,

**[Lee]:** Make a notice, make a note of it. Yep. I would even say hand deliver. But then also put it in the mail, which I is going to cost you just a stamp.

**[Rosemary]:** Yeah, exactly. I do the same thing and, but you put it out there right at the top. So you know, and Lee, what do you think, should we tell them, should we include that letter, why we're letting them go?

**[Lee]:** I don't think so. Yeah. I think any circumstances should you have in writing why someone is being terminated? that's being given to your employee. Hard. Stop. Never.

**[Rosemary]:** Agreed, agreed. And, Lee, what happens if I don't send this letter?

**[Lee]:** So if you don't send this letter, note... the... what we have up here on this screen is the guidelines for letter of termination from the Department of Labor. It says, what is the penalty? The penalty is a civil penalty of up to \$5,000 per employee.

**[Rosemary]:** That's right. So again, remember in our last episodes, not the last one, but before we were talking about onboarding, we were going through all the different penalties. Right. And so be aware that there is a penalty for this. Now last time, Lee, we said, okay, all of a sudden you discover you didn't give somebody a wage notice and you're like, oh my God, what do I do?

**[Lee]:** We're telling you to fix it, right? To stop the bleeding.

**[Rosemary]:** That's right.

**[Lee]:** Here? Don't do anything. In this sense, the damage is done. Like if someone was let go three days ago. okay. Yes. Send a letter. Send the letter within to five days. Yeah, but if it's...They were let go a month ago, a year ago, five years ago. The damage is done. There's nothing we can do about it. And odds are, if you send a letter now, it's kind of probably "wake the beast." Yeah, because if because in so many of the things in our

world, things are not a problem until they are a problem. Right? So don't create one. Rosemary, what about if someone says, you know, in that exit interview, right. So we're not writing down why they've been terminated. To give a reason to the employee why they're being terminated. Do you explain to them in... orally? Verbally?

**[Rosemary]:** Well, you know, I try to stay away from that. I mean, if they've been counseled all along the way, they know. Well, and, you know, here's what I'm going to say: what we're running into a lot now is, employees are recording conversations in the workplace. Right. And so I don't... I would hate for and... again, no one is intentionally violating, you know, a labor law or a one of the anti-harassment, harassment or discrimination laws. That's not at all what I mean to imply. But if you're sitting there and you're nervous, right, somebody say, well, why are you letting me go? And, and you stumble over your words or you're like, well, you know, you did this or you know, you didn't do that. And it just kind of comes out, you,

**[Lee]:** ...you put your foot in your mouth.

**[Rosemary]:** That's right. That's what happens. And it happens all the time.

**[Lee]:** Well, human beings, we make mistakes.

**[Rosemary]:** You do. And so and if it's recorded, even if it's not, and then we end up with a letter from an attorney or a charge from the EEOC. Well, this is what you said.

**[Lee]:** My favorite answer is, unless you've got you were late five times, and now you are fired. Yes. That's in violation of section 1.3 of our handbook, right? Where you have specific things that are specific things. If it's things that are nebulous, you may not have all of your ducks in a row in our prior review. I love the answer of because if we're an at will employee, "it's just not working out." That's right.

**[Rosemary]:** I always say it's just not working out. That's it. And you don't have, you know, nothing more. So and that's actually I'm glad you made that point, Lee. Do not fall into that trap. Our dear listeners, I can't tell you how many, employees will send an email after the fact, you know, or even sometimes a letter and say you have... you're obligated to tell me why you're letting me go.

**[Lee]:** Nope, nope, nope. And just. And the reasons for it is that we again, we know no one has any bad intent, direct intent when they're doing. But what happens is, if you say something in writing and give it to your employee, that is now your story. And if the story changes to something different, then it changes, but then someone will say, well, you have two stories. which one is it? Yeah.

**[Rosemary]:** Were you lying then or are you lying now?

**[Lee]:** And again we're not saying you're lying either. That's a point. But that's what they're going to say and it can be used against you. So it's much easier to say it's just not working out. And then the reasons for why it isn't working out, if the person says something to you, you can always fill in later, right? Rather than giving a reason now. And that turns out to be wrong, incorrect. Or there are other real reasons that you don't know about.

**[Rosemary]:** Right? You know exactly. You're there if you find stuff out. That's right.

**[Lee]:** It's just yeah, it's just not working out. That's right. And so you so you send the letter and then this is the form that you have to give. This is what's new, listeners, this is the record of employment that you need to give to your employees. And by giving this form and we'll have it available, a link to it up on our website, just like we have with links to other resources for posters and notifications. So the thing to know about this form is everybody gets it, regardless of why their employment with you is ending. Everyone gets it. If you know they

are ineligible for find employment because you caught them in the break room stealing law with a joint in their hands, while cursing like... they violated everything in their handbook. And you know they're not going to get it. They still get the form. That's right. Everyone gets it.

**[Rosemary]:** They resign.

**[Lee]:** They get the form.

**[Rosemary]:** They retired. They get the form.

**[Lee]:** Everyone gets the form. You giving the form does not imply that you agree that they get an unemployment insurance. You failing to give them the form could result them in getting unemployment insurance, even though they may not deserve the right insurance.

**[Rosemary]:** Exactly.

**[Lee]:** So just give the form, please. Just give the form. It's easy.

**[Rosemary]:** It's so easy. You can just download it. You fill it out your hand at home.

**[Lee]:** And Rosemary here, here's a question that I get often a lot from, from, from clients. So now we're, you know, a month after the, the, the off boarding is happened. Now, the notice from unemployment has arrived, say fictitious Rosemary has applied for unemployment insurance. So I, as a business have decided, you know what? I'm going to let Rosemary get unemployment. But if I say

**[Rosemary]:** Thank you.

**[Lee]:** And I'm not going to challenge that fictitious Rosemary, I'm going to let fictitious Rosemary get it. I'm not going to challenge it. but if I answer the questions, she's not going to get it. What do I do? Do I have to answer? Do I lie? What do I do with this form that I get?

**[Rosemary]:** Okay, you absolutely do not lie I, I. And, Yeah, you don't lie. We always answer the questions truthfully, but what I would say is what I advise my clients is, you know, what if you don't, if you don't feel strongly about it and you, you don't care what the DOL decides, because, remember, the DOL makes the determination. We don't write, we just answer truthfully and they're going to make the decision accordingly. So if you don't care if the person collects or you want them to collect the, you are under no obligation to return that form. So not returning the form is a response.

**[Lee]:** Absolutely. I, I this is something that I come through a lot and it happened a lot during the pandemic as well, where people just wanted, their employees to get unemployment and they were inundated with hundreds, if not thousands of these forms. And I said, just don't answer. You'll get it. And you will be okay. You will not get in trouble not answering, but you will get in trouble answering with a lie. Don't ever, ever submit something to the government where you know is not truthful. It is a crime in the state of New York. Okay? Falling for, filing of false instruments. Don't ever, ever do that.

**[Rosemary]:** Yeah. Oh. right. And but you know what? On a related note, you were going to, bring this up. But as Lee said, so a month down the line, you get this form, you know, the unemployment form in the mail. So, Lee, if you do decide to fill it out. All right, so you're filling this out. Now, let's think back. We sent the termination letter which states nothing. Right. So there's nothing in that. But a lot of clients have got a form, you know, that you know, they check off. Okay, we got the computer, we got this, we got that. And they might write on there why someone left. And so now you've got an unemployment, unemployment application that

somebody's filling out. And then the manager. Someone in HR is doing that. And the manager filled out the other. What do you got? I mean any potential issues.

**[Lee]:** Oh yeah. Which, which you and to be said differently, the left hand doesn't know what the right hand is doing. And what you're going to create is whether we are in the division of human rights, if we're New York State, the Commission of Human Rights in New York City, the analogs in the other states or in a private lawsuit, what we're going to have is the manager saying one thing, HR saying another, and a report to unemployment is the third thing. And so as you called me out, you said one thing here. You said one thing here, one thing here. Well, which one is it was a true then was it true here, was it true there. Right. And you're you've set yourself up for a poor defense.

**[Rosemary]:** Yeah. And in fact, I have two situations right now and I don't, I don't want to give the fact patterns away at all. But that's exactly what happened. The HR person wrote something on the form and... actually it was two different people, and the other one had done the exit interview in that and wrote something different. And so now we've got and they're very different. And so they let it go for the, for the unemployment. But we've got a real problem with, with a charge.

**[Lee]:** That's, I think with this too. And it's the same like ...every obviously every business is different. Scale is different. Like I same with onboarding. Same people, same processes, same mistakes. So and same thing here, because you want to have control and knowledge over it because so many of these things are preventable. This was completely preventable. So the the offboarding, it's an art. Right. And the others, you know, as we move forward in this conversation. Right. We talked about there were different tracks. But before we do that, the moving to voluntary at will, and voluntary contract, you know what happens here now in that letter, Rosemary? Right. Well, we talked about it. We've got now remote employees, or not even just remote employees. Someone that we've issued equipment to... a laptop, a cell phone. Well, I can certainly keep my, you know, and you haven't... fictitious Rosemary hasn't turned your cell phone in yet. And I'm holding her paycheck. Can I hold her paycheck hostage to get the phone back?

**[Rosemary]:** Absolutely not. What? I know that's it's your transferring property. I know she took it. Yeah.

**[Lee]:** Why not?

**[Rosemary]:** Absolutely not. And I can't tell you how many employees do that. And I get it. It makes absolutely no sense. I know it makes no sense. But you know what? There are pay frequency laws here in New York state. And so under New York state law, the employee is entitled to their last paycheck within one week of their last day of employment. And I can't hold it for two, three, four or five weeks until they return that.

**[Lee]:** So let me ask you a different question: So I catch my employee stealing. Can I withhold their last paycheck?

**[Rosemary]:** Absolutely not.

**[Lee]:** But they took cash! They took money from me!

**[Rosemary]:** I know, same thing. Same rule applies. What's your remedy? You can... depending on how much money they stole, or how much equipment they have. All right. You commence a civil action, right?

**[Lee]:** Call the cops.

**[Rosemary]:** That's what you have to do. And I know that's awful. And I know it sounds ridiculous, but now you cannot withhold their paycheck. What about. All right, I'll throw one back to you. All right. So I am an employee who—remember our saying no good deed goes unpunished. Remember that? All right. Who says?

You know what, Lee? I know you wanted to go on that trip to the Maldives and New Zealand. You don't have two weeks of PTO. I'll let you go in the hole. And then as you accrue it, you know, well, you know, you'll make it up to us. All right? You come back, you leave. I can I take those two weeks? Can I deduct that from your paycheck?

**[Lee]:** Absolutely not. Thank you for being so generous, though. No, thank you for my vacation.

**[Rosemary]:** Yeah, you're very welcome. Absolutely not. So that's not a holding the paycheck, but deductions. I cannot tell you how many times that comes up either I want it. Well, they, owe me. They owe me PTO, I or the other thing, education, tuition reimbursement. Yeah. All right. And they didn't....There wasn't some sort of agreement. Go take this class. Now they want to get. Can I deduct that? Absolutely not. New York Labor very specifically outlines what are, permissible deductions. Those are not permissible. Again, you're going to have to commence an action.

**[Lee]:** So the and... I think, you know, sometimes and I think I may have said this in the, in the podcast here, but I find it very, very apt. Shakespeare didn't say kill all the tailors, kill all the accountants, kill all the... apothecaries. Kill all the lawyers. Right.

**[Rosemary]:** It's true.

**[Lee]:** Because, like common sense, you stole money. I have your money. I can't call it even. No, it's because the law is very explicit. The moment someone earns wages, it's theirs. Yeah, you can't touch it. And if you fail to give it to them, not only are as Rosemary said, it brings issues of prompt pay and paying, time of wages. But it also, depending upon the amount and the number of people, it could expose you to criminal penalties now. In the state of New York. That's right. Yeah. now that the Wage Theft Prevention Act has been enhanced with significant criminal penalties, depending upon what happens once your employee earns their money, it's there's no matter what. and a lot of my clients in the hospitality industry, I'm carrying a tray of dishes. I dropped the tray. Too bad. So sad.

**[Rosemary]:** That's right.

**[Lee]:** I'm not paying for it. It's part of the job. And the same thing applies. I earned my money. It's my money. And you can't take it from me. Yeah. Okay, so we had fictitious Rosemary, who was our at will involuntary termination. Right. So let's do a voluntary, at will termination.

**[Rosemary]:** Right.

**[Lee]:** This is someone, let's call them fictitious Lee. Fictitious Lee. Let's call ..

**[Rosemary]:** Flea!

**[Lee]:** Flee. Fleas. Flea is moving on. Flea is moving on. He is this was a, going back home. This was his college job. Something to that extent. He's now moving back to Florida. That's where I'm from. So moving back to Florida. So how do we handle this? We... Is the process any different from the involuntary process that we talked about?

**[Rosemary]:** No.

**[Lee]:** How so? What do you mean? What do you mean, no? This is a good termination. I got to go do all that same stuff?

**[Rosemary]:** Oh. So. Well, so here's what I'd say. Oh. All right, so you're right. You're right, Lee. So do we have to go. So the first part, have we paid Flea correctly? All of that. We want to do all of that. But do we have to

worry about all of the protected characteristics, documentation? No. You're right, you're right, Lee. Exactly. Don't have to worry about that. So that all comes out. We're still going to do the exit interview. We're still going to do the termination letter, including the notice of unemployment. We can't take deductions. So, yeah, I think it's yeah...

**[Lee]:** It's... this is the easy one. And these are the ones that where I think where I talked about in the last episode about the chef, we didn't know why the dishwashers were quitting. This is where you've got particularly from good employees that are leaving for good reasons. You have a goldmine of data to make your business better. These are employees that want to help, feel that they can have some type of contribution to your business and improve it. So listen to them. Don't let that data leave and out the door because you're... there are things you just don't know and you can get good information through.

**[Rosemary]:** Yeah that's easy. True.

**[Lee]:** That's the easy one. So now we're in the realm of contractual employee. And let's move it away from we're not talking about.. an at will contracted employee. This is a contracted employee. Does the analysis change here? Do we have to do something different at all.

**[Rosemary]:** Well so the first thing is we're going to review the, the contract. So we have to see and so remind me, are we terminating. So this is, this is a let's do that. We are terminating this okay. So we're terminating them, okay. So in that case I'm going to go and I'm going to look at the contract. And what are the conditions under which I can terminate this person. Are there notice requirements? Do they do those notice requirements include a cure period. And what we mean by well what do we mean by cure period?

**[Lee]:** So literally if you've got that. This is why when we talk to onboarding, I think part one where you said you'd have to convince me to make someone a contracted employee in the state of New York. Everyone should be at will, because the contract could say, before you can fire me, you have to send me a letter in the mail with two week's notice explicitly saying what I did wrong and giving me the two-week cure period to try to make it get better. What? Yeah, really? This is what you wanted by downloading the contract from Legal Zoom? Unfortunately, yeah. That's what you did. So you know. But on the other side, presume you intended to have a contracted employee look through it, see what's there, because it can't just be as simple as "it's just not working out." You lose that that ability. so you got to read the contract.

**[Rosemary]:** Yeah. Read the contract. It'll say, you know, the terms and conditions under which you can terminate that individual. And clearly you have to comply with that.

**[Lee]:** And also look for things that you may not you may have forgotten about. Right. So you could have in this contract for an employee that you signed ten years ago, it's a very generous severance provision, also known as golden parachutes, that you did not know was there when you had the conversation with the person and said, thank you, but, you know, you're leaving, and now you're stuck on the line having to pay this a serious amount of money. Read the contract.

**[Rosemary]:** You know, and, you know, when you read that contract, are there any restrictive covenants or continuing obligations under those? So for example, confidentiality. Right. A non-compete, which, we know those are. You know. That's a whole 'nother episode. But in general they're, ...

**[Lee]:** In general, they're not good anymore. Exactly.

**[Rosemary]:** And which is that and then and then our non-solicits, and so you've got to go through and say, all right, so what, do we have, and, and are we going to enforce those. Because sometimes there's creative things that—we're going to do a whole thing on severance agreements. But you know, things you can do. All right,



well, we'll release you from this, and then you will do that. So we can get in there to another. So, yeah. So, so for those that don't deal with contracted employees.

**[Lee]:** Right. So you can have the, your CEO of your business could have an agreement when he signed it that says he's getting paid X, Y, and Z but also says he will not work for competitors. He will not solicit customers. He will not solicit clients, employees. So when now we're letting him go and he's got a... again this is why it's a no-no because the law is in flux. He's got a five year non-compete. You can say to him, we'll let you out of the five year non-compete in exchange for this. And you have a negotiation. Stay tuned. An episode is coming forward on all that.

**[Rosemary]:** That's right. Exactly. But it's. But for the most part, I think I don't tell me if you agree with it, but I think that a, of, a voluntary or an involuntary. So we've got a contract employee, you know, the contract is going to tell you what you can and can't do, you know, and, and so long as you comply with that you're good and you're still going to give them the letter. You're going to give them the notice. You know, you can't take the deduction. Everything we talked about... all of that still applies.

**[Lee]:** And I think when we're moving with contractual employees. And now on the... under the assumption that we were intentional and we wanted them to be contractual non-at will will employees. Right. If you're doing an involuntary termination of presumably a high-level person in your organization, you can't just think about just this employee. There's probably something bad has gone wrong. Something is happening. This person is not an hourly employee. They're not low in the organization. So now you've got to start building people into the process. You know, on the involuntary side of, okay, they're gone today. Who's taking over these functions tomorrow right? Am I... was this an essential leader? Was this a manager? How's it going to affect my culture? How is it going to affect other people?

**[Rosemary]:** What's the messaging to the organization?

**[Lee]:** My messaging to my clients? Yeah. You know, because these are things that need to be prepared for. And then in that exit interview. Right. Involuntary termination. Flee says you're right, you're right. It's just, you know, I know I have a contract, but, you know, I it's just not working out. This isn't for me. I thought I could be the CEO, but I don't. It's not my job. Yes. I'm leaving. Great. No, you you're firing me because I'm this. You're firing me because I'm that. And now you've got a big fight on your hands and potentially a public fight. And now you got to send the alarms to your lawyers, your customer teams, and your PR teams. So the voluntary termination. This is where now a contracted employee is saying, I'm retiring. I'm moving on...anything different in the process?

**[Rosemary]:** No, same thing. We're going to look at the contract where we look at the contract. And what is a contract say. Because a well-written contract. Which is important, a well-written contract will lay out the terms and conditions under which the employee can terminate the employment relationship. So it isn't just necessarily on the employer's side. And so we'll go through same process.

**[Lee]:** And it very well could be right at will employees don't have to give you two week's notice. We think colloquially that in America you have to give two week's notice. No. You know there's no requirement. But you could contract in a contractual employee to give two week's notice. And as Rosemary said, they don't give two week's notice. Then they forfeit all of their PTO time. You know, you lay all of these things out as part of a thoughtful, coordinated onboarding process that dovetails into your offboarding, where it all makes sense that you have the "if thens" and this will clearly happen. And then this is also to where you have, I think, where you have a contractual voluntary separation. Again this is communication as well. Succession planning, things to that nature. This is where it's the touch and feel of making it culturally significant to your organization. The contractual persons leaving. We want to do everything from the going away party, the good, the email, who is taking over, handoff, all those other things as well.

**[Rosemary]:** The watch, as they used to back in the day.

**[Lee]:** Exactly. All of those things. Yeah. and the other thing to that, I think to think about and in addition to the watch, to the notice of termination, and the unemployment notice. They get it too. Even if it's a shake of the hand. They get it too. They get it too. And I think as you step back even, you know, 40,000 feet even higher than 20,000 feet there I think of my grandparents. Right. They worked for one job their entire life. My mother worked for two jobs her entire life. I am now on my third right. This generation I know the students that I teach with that I teach in my school, at Brooklyn Law School. Some of them are on their fourth or fifth jobs and they'll stay at a law firm for two to three years. And, you know, people move on and they no longer think of a sense of a career. So perhaps... I suggest to you, I posit to you, develop, develop an alumni network. Because if you've got a good organization, a good beating heart with a good culture, and you've got a vibrant onboarding program that gets people into your business, they're drinking your Kool-Aid. Right? And now you've got a good offboarding program, and they're telling you how to make your business better. And you have an alumni portion on your website that says Flee, when he was in college, worked for us, and it's great. And now look at Flee ten years later, he's a partner at Barclay Damon. He's part of our alumni network. Isn't that a great recruiting tool?

**[Rosemary]:** It absolutely is. Well, and interestingly, our firm has an alumni. Yeah. So when they're in our system and they're flagged as alumni and, I think as some of our listeners may know from, you know, I don't know if it was in season one or season two, but I talked about the fact that I was at Oracle for 15 or 16 years. And, Oracle has a very active alumni network. And so, I mean, what we talked about, I was in Bethesda in Maryland, in the DC area for years, and that's when I worked for Oracle. And so that alumni network there will regularly do dinners, do happy hours, get together for lunch, and talk, and they'll welcome them. You know, Oracle will have them come in if there's some big event. Even here at the firm, we have alumni come to our holiday parties, our summer parties. Again, what's going on? Keep that connection.

**[Lee]:** And it's taking up because no one is tied to one job anymore. Yeah. And I can tell you first... studies have shown it, and it's now being happening in the real world, Gen Alpha, Gen Zoom or whatever or Gen Boomerang. We're not sure what they're going to be called yet. But this newest generation of kids that are graduating high school and entering the workforce now, I'll give or take the last three or five years, they do not see themselves of having one job and staying there forever. Their jobs are going to change continuously. So build an alumni network, build a program. It could be a recruiting tool that you didn't know that can get you your best new employee. So some closing thoughts as you move through this. We're not perfect. Human beings aren't perfect animals. Every process can be perfected and made better. So once you have your offboarding/onboarding program and you're auditing it and you're refining it. You have your offboarding program audit and refine it. Make sure it's happening and working in coordination, and figure out ways to continuously improve. Because if you're improving, and you're asking questions, and engaging your employees, you're going to spot problems before they become big ones. And when they become big ones, they're probably problems that... they're too late, you can't fix. And then and then anytime, whether that's a small problem or a big problem, reach out to us. We are here to help. We want to help you. There's nothing better in my day when I get a phone call where I can prevent something from snowballing into a much bigger problem, than getting the phone call of saying, well, you should have filled out that form six years ago.

**[Rosemary]:** Yeah, exactly.

**[Lee]:** And come back in again to what Shakespeare said. Kill all the lawyers. Right. It's it just is. So please listen to us. Let us help you. Please. We want to help you. So. And we're going to leave up the same Spotify question.

**[Rosemary]:** Yeah, I think so.

**[Lee]:** I think for this one, about whether or not you have an offboarding program, and whether or not you conduct exit interviews, we're going to be putting up on the website, link to both the notice, for employment as well as the document from the Department of Labor that says what your termination letter should include.

**[Rosemary]:** Yeah. And I'd say, I also have a template, that I give to a lot of my employers. So feel free to reach out to me. I'm happy to share that.

**[Lee]:** And vice versa. And, and the template literally again goes to everybody. Yeah, I have a template that is given to the president of a business that also goes to the dishwasher of that business. They get the same letter...

**[Rosemary]:** ...and everybody in between, everyone—treat every employee the same way all the time.

**[Lee]:** That's right. All right, perfect. All right. And pleasure... in person...

**[Rosemary]:** In person. It was great. Studio B! thank you.

**[Lee]:** Thank you. And we'll be in touch. Bye-bye everyone.

**[Ari]:** The Labor & Employment Podcast is available on [barclaydamon.com](http://barclaydamon.com), YouTube, LinkedIn, Apple Podcasts, Spotify, and Google Podcasts. Like, follow, share, and continue to listen. Thanks.

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