

From Onboarding to Offboarding: Building a Turnover Plan That Works

October 16, 2025
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Generally, employees are free to resign at any time. This is the core of “at-will” employment: just as an employer can decide the employment relationship can come to an end, an employee can also make that decision.

However, some employees have agreements in place that set the rules for their departure and the associated process. Often, those agreements also set the rules for after the employee has departed. Those rules can include barring the employee from:

- disclosing confidential information obtained during their employment
- soliciting the former employer’s clients or customers
- competing with the former employer

If there is no employment agreement, then an employee can leave at any time, and with or without notice. In that situation, it is crucial for an employer to plan what the transition period would look like if an employee chooses to depart. It is a best practice for employers to plan out the offboarding process when the employee is being onboarded.

Employers should also prepare for the risk of litigation brought by the former employee. A former employee may choose to file claims against the employer for allegedly violating wage and hour laws, the Americans with Disabilities Act, or federal, state, or local discrimination laws. The statutes of limitations periods for those claims vary, and it becomes crucial that employers focus on keeping records related to each employee.

In the event that a former employee commences a lawsuit against a former employer, it becomes crucial to look to documents and records related to the employment relationship. It is a best practice for employers to have an active system for maintaining records related to employees beyond the statutes of limitations periods. Those records may include:

- Emails
- Formal reports or complaints
- Work product
- Performance reviews
- Management/operations notes
- Payroll documents (paystubs, W-2s, 1099s)

In New York, courts have strict standards for admitting these types of records into evidence at a trial. The employer’s process

for creating and maintaining records is critically important for increasing the chances for success, when faced with these types of claims.

One approach that many employers implement is to have an agreement ready for when an employee departs. Often, those agreements include a waiver of claims which can also be customized to the employer's business, including terms protecting proprietary materials, such as client or customer lists, barring the soon-to-be-former employee from disclosing confidential information obtained during the employment, soliciting the former employer's clients or customers, or competing with the former employer.