

PBPA Podcast Transcript
The Departure Lounge: Offboarding Nonprofit Employees
(22:58 minutes)



Sireesha ([00:00](#)):

One of your employees has just provided their two week notice. After what might be an initial shock or relief, what do you do? Does your organization have an outline for offboarding employees? Many nonprofits have a process for at least a general outline for onboarding new employees, but it is also important to set up a process for when an employee leaves your organization. In this episode of the PBPA podcast, Rayne Towns and Cary Burke will share suggestions and guidance on what to consider when an employee leaves your organization.

Sireesha ([00:46](#)):

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at pbpatl.org. Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel. Contact your attorney for guidance on your nonprofits' specific situation.

Sireesha ([01:56](#)):

Cary Burke is a partner in the Labor and Employment Group at Seyfarth Shaw. Rayne Towns is Global Head of Risk and Monitoring at Nokia. What a great duo to have with me here today to talk about offboarding employees. To begin with, I want to mention that this podcast episode will cover situations where an employee is leaving voluntarily, whether they're retiring or moving to another organization. We will not cover specifics related to employee terminations. While some things we mentioned today also apply to terminated employees, it's on a different timeline and with differing levels of employee cooperation. I'm going to drop a link to another resource on the podcast page for this episode for any listeners who might need more information about employee terminations. For today, we're talking about voluntary employee departures. Let's start with a hypothetical. Emily, an employee, has just told her supervisor that she will be leaving the organization. Her last day is in two weeks. Cary, walk us through the process for the next two weeks and after starting with: When does the offboarding process begin?

Cary ([03:14](#)):

Sure, thanks. I'd be glad to. In my mind, the offboarding process has got to begin immediately. While Miss employee has mentioned that she's going to leave in two weeks, those two weeks are going to go very, very quickly. Particularly in the nonprofit space, as you all know, employees tend to wear multiple hats and can be working in multiple roles at the same time. And so, it's really important to begin to understand right off the bat what Emily's roles are and what she is responsible for, so that you as an employer can begin an orderly transition as soon as possible. The other thing that I think you ought to be considering right off the bat is: What sort of information does this employee maintain or have responsibility over? Does she have access to social media passwords, perhaps employer datasets, even

things like donor lists or emails and phone numbers. Right away you want to get your arms around what all that stuff is, where it is, and who can work with it next.

Sireesha ([04:24](#)):

And what documentation is necessary during this process, whether it be from the employee or from the employer?

Cary ([04:33](#)):

Yeah, that's a great question. So, something I always like to get as soon as possible is a resignation letter with a firm exit date, just for documentary purposes that you can place in that employee's file and that you can start to send along to other administrative personnel. They can begin the process of things like offboarding benefits or ensuring that a final paycheck will be ready when it needs to happen. Along with that, the employer is going to want to figure out who to "read in" to the resignation. You know, who are the folks in your organization who need to know that Emily is leaving right off the bat? So not only can they begin to help transition her responsibilities, but they can also figure out what they need to be doing to help with that transition as well.

Sireesha ([05:22](#)):

And Cary, one of the items you just mentioned was benefits. What should employer do about those benefits, as they work with the departing employee?

Cary ([05:34](#)):

So I always like to have what I'll call a one pager, a sort of fact sheet that contains helpful emails, phone numbers and contact information that Emily can look to as she's off boarding herself. Things like, who can Emily talk to the extent that there's an issue with ongoing COBRA benefits, or to the extent that you as an employer offer a 403B, the equivalent of a 401k plan. Who can Emily reach out to ensure that 403B is rolled over into any new investment plan?

Sireesha ([06:12](#)):

Going back to our initial hypothetical with Emily employee, let's say Emily has a company laptop and a credit card. Rayne, what should be done about that company property?

Rayne ([06:27](#)):

Yeah, that's a really important question, and sometimes it's dealt with too late. As long as the employee is still working and you're still paying the employee, that's when you have the most leverage to be able to get everything back from the employee that you need to. Once the employee is out the door, it's just very difficult. It's really difficult to go and get that laptop or the printer or the credit card or anything else that the employee may have with them. So, as Cary said at the very beginning, it's super important to understand, what does the employee has, what's at home, what's at the office? Then to have a plan on when that needs to come back. Things that are expensive like laptops and printers. I know a lot of people went remote during covid and a lot of people have company property at their homes, whereas in past years we probably didn't have so much of that.

Rayne ([07:23](#)):

But you really need to get that inventory and we would need to start getting it back in the office in your hands really quickly. One of the things that I know a lot of employers' stumbles on is that they will believe that if there's, for example, a company phone or laptop that's not returned, that they can deduct that cost from a paycheck, and you can't do it in most states without written authorization from that individual, from the employee, that permits you to make that type of deduction. So, there's not, there's just not a whole lot of leverage after an employee walks out the door. So, you need to get all that stuff on the front end. One of the things to think about as well is that a lot of people, particularly with the impact of covid, a lot of people have been doing work on their home computers, right? So, you're not going to be able to ask for a return of a home computer, nor are you very likely to get access rights to what's on the home computer. But think about property in the sense, broader than actual physical things. Think about it in terms of where other information might have gone to on a personal phone, on a personal laptop, and then work with the employee to make sure that all that gets deleted, or if the company needs it, gets sent back to the company and then deleted off the personal devices.

Sireesha ([08:46](#)):

That's a good segue into my next question about Emily employee. Let's say Emily was the communications manager and she managed the social media accounts and the website for the nonprofit. Can you talk to me a little bit about security related to other company assets that Emily might have been involved with?

Rayne ([09:06](#)):

Right, exactly. So, if Emily is involved with third parties, and it could be social media outlets, it could be donors, it could be vendors, it could be a host of people. I think some real structured thought needs to be given to where the contacts that Emily had outside of the organization are. And you want to make sure that, for example, if there are links or access to third party's systems, you want to make sure and get those passcodes changed. You want to make sure that you're informing third parties of her departure. And you don't want to get into any details about why you know she's quitting for a better job or, you know, just didn't work out. No reason. But just to let them know that Emily is going to be leaving us and this is the person who will be filling this role. You want to make an introduction, so that all your third parties with whom Emily had contacts are aware that Emily will no longer be part of the organization at some point in the near future.

Sireesha ([10:10](#)):

Another question which employers may get pretty quickly from their departing employees: When is that last paycheck supposed to go out?

Cary ([10:22](#)):

Yeah, so great question. In Georgia it's just the next pay period. There are always some employers who like to hand an employee, particularly an employee in good standing, when they resign a live check on their way out the door. That's just a courtesy that's certainly not required. You're just going to want to make sure that you meet that next pay period.

Sireesha ([10:41](#)):

Got it. And let's say that Emily is a remote employee. Cary, are there any special considerations when offboarding a remote worker?

Cary ([10:51](#)):

Yeah, Rayne touched on this. I think it's really important early in the process, within hours if not a day, when Emily announces her resignation to have a Franken Folsom discussion about what stuff she has at home. Does she have papers with wet signatures as an example, other physical employee files, and if so, does the company need that stuff back? Or would it be preferable to have a representation from Emily that it's been destroyed? You know, another thing that you want to think about and really have a fulsome conversation with Emily about are the things that Rayne discussed. What is all the electronic stuff that Emily might be maintaining on a computer, on a cell phone, on an iPad, perhaps on things like thumb drives. What is it and does the company need it back, or do they only need, again, a declaration or an assertion that it's been destroyed? You know, the higher up somebody gets in an organization and the more diffuse the data, the more complicated that can get. So, it's really something that you don't want to wait till the last minute on, because as Rayne said, once that employee is out the door, you are going to have very little leverage in those discussions.

Sireesha ([12:18](#)):

Speaking of going out the door, my next question is about the exit interview. Does that exit interview always need to be conducted? And do you have any tips on what should be included in an exit interview?

Rayne ([12:34](#)):

So, I have a firm belief here, and reasonable minds can differ. I think exit interviews can provide a wealth of information, whether the exit is voluntary or whether things there just wasn't a good relationship building, for whatever reason, I think an exit interview just provides lots of insight. Employees who are exiting usually feel much more empowered to speak freely about improvements that could be made about concerns that they have about the job, about issues that they've encountered that they didn't share during their employment. Now, ideally, you want your employees to be empowered, to raise issues and to challenge ideas. But the fact, reality is that that doesn't always happen. And I think an employee who's departing could really be a key stakeholder on how you can improve, right?

Rayne ([13:35](#)):

Even though they're out the door, there are still steps that they may share with you that you could take to improve your organization, which is always welcome, right? Because we're always looking for continuous improvement. One of the reasons I think employers often shy away from these conversations is because they're afraid they'll hear something bad. <laugh>. They're afraid they'll hear something not good. Like, what if Emily says that she was harassed by one of the organization's big donors? Now all of a sudden, you know, as an employer, you have not only a legal responsibility to investigate and explore whether or not that actually happened and then take appropriate actions. You also need to make sure that you're managing Emily correctly. Is Emily feeling like she has to leave because of this?

Rayne ([14:29](#)):

There are all kinds of legal issues that come up if there's an exit interview. If there's a complaint or concern raised, you really should contact legal counsel to help get some guidance on this. But it is really important that if your exiting employee has something to say, a concern, a complaint, it's really important that that be handled correctly by the employer. There are certain steps that you need to take now. So, you might say, well, then I just won't have an exit interview, and then I just won't come across

that kind of information. But think about it, if you have a donor who's behaving badly, you need to know about that, right? Because Emily's not the only person that badly behaving donor has harassed, right? I always feel like it's better to understand what the problems and the issues are and then address them. They'll come out more positively than just deciding that you don't want to be aware of those things.

Sireesha ([15:32](#)):

And now Rayne, can you share some thoughts on what would happen if, it's a scenario, where the departing employee, you heard through the grapevine, or maybe even directly from the departing employee that they're leaving to create a new nonprofit. You have some concerns around competition. They know the donor list and they have a lot of strong relationships with the donors. Do either of you guys have any thoughts on that?

Rayne ([15:59](#)):

So I'll start off, I mean, that's certainly a concern. At the heart of it, we're all doing good for our communities and so we want more people doing more good for our communities. Although at the same time, I know, you know, there's a concern. If Emily has a fantastic relationship with one of our really big donors, we certainly would be concerned that that donor might turn its attention more to Emily's new organization, rather than sticking with us and supporting the good work that we're doing. There are a few ways to manage that. During employment, or at the beginning of employment, you need to work with a lawyer on this. You could have a confidentiality, non-disclosure agreement in place with your employee.

Rayne ([16:52](#)):

And this would basically need to be narrowly drafted to protect your interests. If something like your donor list is maintained confidentially, then you could have an agreement with your employee saying that they agree that they're not going to disclose that donor list or use that donor list for purposes other than for the benefit of the organization. That's not going to protect you completely. If the donors are personal friends of Emily, you're not going to be able to cut off completely or the involvement and interaction between them even after Emily leaves. But it's better than not having anything. The other thing you could do, if you've not gotten employees to sign these types of agreements during their employment, is you could have kind of a heart-to-heart discussion with Emily during the exit interview. Emphasize the confidential obligations that she has, both while she was employed and after she leaves, that these confidential obligations do not go away just because she's exiting the company.

Cary ([18:06](#)):

That's right. The only thing that I would add is that if you're thinking about this, you want to be very wary of the optics. Either at the beginning of employment or at the end of employment, with a specific high-level employee, you might consider having them enter into a non-competition or nonsolid agreement. The issue with that obviously is as Rayne said, we're all trying to do the good. The idea of prohibiting somebody from "competing" in the nonprofit space for a period of time might not pass the smell test or look good. So, it's just things to consider.

Sireesha ([18:44](#)):

Now, I have one last scenario that I would like to run by you guys and get your thoughts on it. Let's say Emily is our rockstar. She was kind of kept in mind as the successor executive director for the

organization, but she's decided to leave. Do you have any thoughts on: What a nonprofit could do to try to make this employee stay?

Rayne ([19:10](#)):

Yeah, so one of the things to think about in this area, is whether during employment, you're really expanding the responsibility of your top performers. Are you giving them more responsibility? Are you giving them stretch work? Are you sharing with them that you feel like they have a future and there's a succession path and that you see that, and you wanted to continue to develop them along those lines. Ideally you would do all of this during employment, before you get the notice that they're going to leave. And then I would explore too, when the employee's leaving, and the exit interview is a good place to do this as well. Why are they leaving? Is it that they're bored, they want to do something else, they're moving, salary, income level? Find out if you can, why they're leaving and then maybe you can address that.

Rayne ([20:09](#)):

Maybe it's possible to address that. Sometimes you can get employees to change their minds if there's something that they feel like they're missing, a succession path, a career path, and you can provide that to them. Of course, you have to be careful what you promised. But if there's really a succession path for this employee and you have been thinking about this employee as your successor or the successor for another larger role within your organization, then you can share that. You should share that. And maybe that might get them to stay

Cary ([20:47](#)):

I think those are all great points, Rayne. The only thing I would add is you might also consider a retention agreement. To the extent that becomes top of mind, you will absolutely want to and should engage legal counsel to ensure that you don't fall over any trip wires or hit any landmines when drafting that. A retention agreement, you're going to want to have real clear requirements for payout. For example, you're going to want to make sure that the employee understands they need to be employed through a certain date. Oftentimes that's about a year out or so, and that the employee has certain performance metrics that they need to meet at the very baseline they need to be performing satisfactorily. And that additional financial incentive can, in certain circumstances, convince an employee who's looking elsewhere to stay.

Sireesha ([21:39](#)):

And while you want to keep that key employee, you definitely do not want to raise any red flags with the IRS. So, as Cary mentioned, a nonprofit would definitely want to reach out to tax or employee benefits Council for guidance on such arrangements. This conversation explored a range of important topics and provided valuable insight into employee offboarding. What a privilege to hear from two employment experts on this topic. Rayne and Cary, we appreciate you sharing your knowledge and perspectives with us. Thank you.

Cary ([22:13](#)):

Thanks for having us.

Sireesha ([22:16](#)):

We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.