

Layoff Cautions for Employers

Economic slumps may force many employers to lay off workers to save costs. Along with this attempt to save money comes the inherent risk of being sued by a terminated worker. Employees may claim that their dismissal was discriminatory, or among other things, that it did not comply with the Worker Adjustment and Retraining Notification (WARN) Act in which employers covered by the Act must provide 60 days notice before a mass layoff or plant closing.

Litigation Protection Plan

Use these strategies to protect your organization against potential lawsuits brought on by terminated employees:

- Ensure that your organization has written policies and procedures for disciplining and terminating employees that are presented upon hire.
- Maintain documentation about employee performance and the actions that were taken to make the employee aware of his or her performance shortcomings. Creating a paper trail is the best defense against a lawsuit.
- Create a business plan outlining the need for layoffs (if they are coming in a large quantity), what part of the business will be affected, what positions will be affected, when the layoffs will occur and how the layoffs will be announced to employees. Make these decisions well in advance of any actions being taken.
- Create a list of criteria for evaluating your employees (e.g., years of service, field experience, job performance, disciplinary history). Establish a

weighting system for each item on the list to determine how employees rank. This may be used as a decision-making tool, if you must make a massive layoff.

- Conduct an analysis of how a layoff would affect the organization and whether it would unlawfully affect a protected class of employees.
- Retain legal counsel to protect against lawsuits and as a source of guidance for handling layoffs.
- Create a probationary period for all hired employees (which cannot be more than 60 days). During this time, employees can be laid off for any reason

In order to protect your organization against potential lawsuits brought on by terminated employees, there are several measures you can take as an employer.

without severance.

- Except in the instances where an employee seriously violates company policy, give workers adequate notice before they will be terminated.
- When delivering layoff news to employees, it is best to avoid being too apologetic or sugarcoating the reasons for the decision.

Provided by Scott Benefit Services

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- Keep detailed records of all layoffs—note the reason for the decision, what was said and how it was handled.
- Do not retaliate if employees become angry or aggressive while being laid off. Remain calm and do not be threatened by their demands or accusations.

For more information on legally laying off employees, visit the U.S. Equal Employment Opportunity Commission (EEOC) at www.eeoc.gov.