

Layoff & Downsizing Procedures

Lines of Business: General Liability, Professional Liability

Risk Control Strategy/Key Issues: Develop controls to reduce the risks of lawsuits and minimize the negative impact downsizing can have on remaining employees

Suggested Program Elements:

1. Careful Termination Practices:

- How you terminate an employee sends a powerful message to your remaining staff--either positive or negative. Downsizing should be handled with care and dignity.
- Sometimes terminating a person's employment is the kindest action you can take for the person.
- In some circumstances, terminating an employee is an immediate necessity for the safety and well-being of the rest of your employees.
- Occasionally, situations arise for which you will want to terminate a person's employment immediately. Make sure you have these reasons listed in your employee handbook.
- The best you can do, under such circumstance, is to follow this process to terminate an individual's employment.
- Class and compassion make a difference.
- Have a written procedure for terminations.
- Talk with your attorney and HR personnel to understand all of your options and to ensure that it is a rightful termination.
- Be knowledgeable and abide by all state and federal laws concerning employment practices.
- In cases where you provide severance pay, ask the departing employee to sign a release to reduce the risk of lawsuits.
- Do not give an employee more than a few minutes' notice before the meeting.
- Ensure the employee is not a danger to himself or other employees. (If so, call law enforcement authorities and security personnel immediately.)
- If the employee does not appear to be dangerous to him/herself or others, notify law enforcement authorities if an illegal act has taken place.

2. Define Your Vision:

- Your first step is to come up with a clear picture of how you want your organization to function post-layoffs, being mindful of union regulations and state and federal laws.
- Consider which employees or departments are most necessary to make that vision a reality.
- Develop an organizational chart to show who will be handling specific tasks after downsizing.
- Be sure to redistribute the workload of employees being laid off.

3. Contact The Department Of Labor:

- Tap into the Department of Labor's Rapid Response services for employers, which offers coordinating services to help transition displaced workers and to minimize disruption due to layoffs. (Also, see Web Site Links at end of this document.)

4. Stay Within The Law:

- To minimize the risk of lawsuits, conduct layoffs in accordance with the law. Most important is being able to demonstrate that employees are being downsized based solely on specific business-related guidelines.

- Consult an attorney who specializes in employment law. Some states have laws that employers must comply with certain employee layoff notification requirements.

5. Check Obligations Per Contracts:

- Review and comply with any Civil Service Rules or Collective Bargaining Agreement terms.

6. Maintain Good Records:

- Document the layoff process with the necessary forms, including information on details such as final pay, COBRA rights and retirement plan distributions.

7. Determine Severance Pay:

- Severance pay is typically based on the length of employment. A common guideline is offering employees one to two weeks' pay for each year of employment. There are no laws governing severance pay, and it is up to your discretion.
- In exchange for severance pay, many employers ask employees to sign a general release that minimizes the risk of future lawsuits.

8. Provide Opportunities:

- Identify and develop the resources that will be available to managers and employees. This may include layoff packets with job-seeking tools, designated staff for coaching and advice, and Web sites with process information, answers to frequently asked questions, and other resources.
- Consider contracting with an outplacement service to ease the transition for downsized employees. A good service should provide résumé assistance, negotiation advice, and assistance with job searches.

9. Communication:

- Develop a comprehensive communication plan.
- Identify how you will communicate with managers, employees at risk of layoff, and those employees who remain behind.
- Determine your key themes for each audience.
- Communicate early and often to avoid rumors and speculation.
- Prepare your answers to common questions. Secrecy isn't necessarily the best policy when layoffs are in the pipeline.
- Often, employees will leave of their own accord, eliminating expensive severance packages.
- After layoffs, provide open communication with remaining staff. Managers should meet with the staff regularly to answer any questions about extra workloads or the reorganization of assignments.

10. At The Time Of Termination:

- Have internal security on standby.
- Have a witness in the room during the discussion.
- Remain polite and respectful.
- State the offense calmly.
- Tell the employee that employment is terminated or if the situation allows, give the employee the option to voluntarily quit.
- Enable the employee to ask any questions about the end of employment.
- Escort the former employee from the building with the understanding that if he returns he is trespassing.

11. Things To Do At / After Termination:

- **Permissions Termination:** Disable the employee's building entry code.
- **Notify Your Network Administrator:** As soon as you know that an employee is leaving, notify your Network Administrator or other appropriate staff person of the date and time on which to terminate the employee's access to computer and telephone systems.
- **Passwords:** Employees should provide passwords and other information pertaining to accessing computer files and telephone messages.
- **Return of Property:** Exiting employees are required to turn in all books and materials, keys, ID badges, computers, cell phones and any other items.
- **Personal Items:** Allow the employee to pack personal items from his work station, if circumstances warrant.
- **Updated Address:** Ensure to get an updated address for mailing benefits information and final compensation.

12. After Conclusion Of Termination, Document The Process:

- Who was involved
- Times and dates
- Items received, items not received
- General demeanor of the employee during the process
- Anything unusual that was said or that occurred

Web Site Links:

- United States Department of Labor
<http://www.dol.gov/compliance/topics/termination-issues.htm>
- United States Department of Labor
<http://www.dol.gov/dol/audience/aud-unemployed.htm>

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