

Layoff Cautions for Employers

In an attempt to save money while the economy is in a bit of a slump, many employers are trimming their workforce. 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.

LITIGATION PROTECTION PLAN

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, and that they 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 defence 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. These decisions should be made well in advance of any actions being taken.
- Create a list of criteria for evaluating your employees (years of service, field experience, job performance, disciplinary history, etc.). 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 (cannot be more than 60 days). During this time, employees can be laid off for any reason 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 sugar-coating the reasons for the decision.
- 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.

If you have questions specific to your business, or would like additional information, please reach out to your Henderson Advisor.

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Regina
Moose Jaw

hendersoninsurance.ca
HII@hendersoninsurance.ca
1.888.661.5959