Termination Vs Layoff



Many organizations in the routine of business activities need to terminate or lay off an employee.

TERMINATIONS – Most terminations are due to reasons that are specific to an employee or that employee's particular job. Employees may be terminated for poor performance, lack of knowledge of job duties, attitude or behavioral actions. Employees may also be terminated if their specific job is being restructured or eliminated. Employees can also make the decision to terminate their position.

When an organization makes the decision to terminate an employee there are several issues to think about.

- If the termination was involuntary – make sure you have documentation as to the reasons for your decision to terminate.
- If the termination was voluntary – ask for a resignation letter. This provides documentation for your files.

LAYOFFS – A layoff is the reduction of a company's work force in response to a temporary or long-term business strategy or economic condition. Layoffs are not specific to any one employee or position.

The federal Worker Adjustment and Retraining Notification Act (WARN) provides some protections to employees who are subject to a layoff. Some States also have their own versions of the WARN act. Please be sure to check your state laws.

WARN offers protection to workers, their families and communities by requiring employers to provide notice 60 days in advance of covered plant closings and covered mass layoffs. This notice must be provided to either affected workers or their representatives (e.g., a labor union); to the state dislocated worker unit; and to the appropriate unit of local government.

In general, employers are covered by WARN if they have 100 or more employees, not counting employees who have worked less than 6 months in the last 12 months and not counting employees who work an average of less than 20 hours a week. Private, for-profit employers and private, nonprofit employers are covered, as are public and quasi-public entities which operate in a commercial context and are separately organized from the regular government. Regular federal, state, and local government entities which provide public services are not covered.

There are several things to consider when laying off or terminating an employee. Questions such as “How do we decide who to layoff and who to keep?” or “Which state agencies must be contacted?” and “What legal risks should be considered?” are all important considerations.

Ask yourself these questions (for example) before making the decisions on your layoffs:

- Is there an alternative? Would employees consider job sharing? A part time job may be better than no job at all.
- Seniority – is seniority a consideration in your decision?
- Performance and Skills – which employees have the necessary skills and performance to keep your business running smoothly? Do you need leaders?
- Offer voluntary layoffs – instead of making the decision of whom to layoff – ask the employees, offer a lay off package (severance etc).
- Will you offer outplacement services? This may help employees find other employment.

Legal considerations:

- Avoid discrimination claims by making all decisions based on objective criteria and supported with documentation. Be aware of the Equal Employment Opportunity laws and regulations on discrimination (protected classes).
- In addition to the Federal WARN act, check with your State to see which State Agencies you need to report layoffs to.
- Continuation of Health Insurance (COBRA). Check your State Laws as well. Some states have their own continuation of health insurance laws that differ from the Federal COBRA laws.

Whether you are terminating or laying off an employee be prepared to answer questions and have information readily available to them. Information you may want to have available:

- Severance Pay
- Health Insurance continuation
- Length of layoff
- Outplacement Service information