

SAFE LAYOFFS

Economic necessity is causing many firms to reduce hours and lay-off (terminate) employees. Regardless of whether an employer terminates an employee for insufficient ability, lack of work or misconduct, they can be sued for wrongful termination due to discrimination. The employer's at-will policy does not protect it where the termination violates a law—such as the anti-discrimination laws.

The following are suggestions to reduce company risk. The choice of which employees will be affected must be based on a legitimate business factor such as productivity (including items such as current skills or performance). The company must be able to demonstrate why it rated or evaluated the employee's productivity the way it did. This process and the results should be documented in writing.

If practical, you should offer a transfer or a cut in pay as an alternative to termination. Do not assume an employee will not take this offer and if not, let the employee be the one to decline. Analyze the demographics of the affected employees to ensure there is not unintentional disparate treatment or impact on people who happen to be over 40 or of a certain racial or gender category. If so, you should rethink the criteria used, depending on the circumstances.

The company may want a high level manager and/or owner to explain the circumstances and the process the company went through in the termination selection process. Each employee should feel they are important enough to warrant the attention of a top manager or owner and not a lower level supervisor. Thank them for their years of service and ask if the company can help in any way with the transition process.

Let employees vent if necessary, it may avoid venting later to a lawyer. Give them a termination letter, explaining again the reasons for the layoff, the company's regret in terminating the employee, and its thanks for their service. The letter represents proof to a future employer that the employee was terminated for other than misconduct or lack of ability.