

Tips for Downsizing with Dignity While Avoiding Lawsuits

Nobody wants to do it, but sometimes, there just isn't any other alternative. In the world of business, tough times means taking tough turns—and opting for tough solutions. Downsizing or layoffs is one such “necessary evil”, and one that should be managed effectively to avoid damage to the brand and litigation.

Since the recent economic downturn forced many employers to lay off masses of employees, the number of state and federal laws to protect workers has grown. This increases the likelihood of litigation against employers.



However, if done right and handled with care, downsizing shouldn't be a major cause of concern. The trick is to downsize with dignity.

- **Keep Records:** Records are evidence. The more “hard evidence” you have to support your decision or judgment, the less likely you are to be accused of wrongful conduct. Document your reasons for downsizing or laying off at the time of discharge. Perhaps you prefer cutting down employee who do not possess a specific skill-set which would be needed for future projects. Or maybe you are downsizing to attain a goal that requires savings. Whichever the case, make sure you provide sufficient support and reasoning for your decision at the time of termination—and if possible have as many “proofs” (Attendance sheets, annual reviews, etc) as possible to make your case credible.
- **Understand Litigation:** In order to avoid employee protection lawsuits, you need to study the relevant labor law at the federal and state level. Impacted employees may opt for two kinds of lawsuits: one that is based on going against a written or oral contract; and the other is more often related to violating a public policy (i.e. discrimination). Abiding by written and verbal agreements usually isn't a problem. However, state/federal laws on “wrongful termination” are usually what give root to litigation even when unfairness was not intended. Lawsuits on discrimination (age, sex, race, religion, color, pregnancy, national origin, or disability) are generally more frequent.

To avoid these potential damages, Human Resources and leaders should set an objective for the termination/downsizing. What is the intention for downsizing and how does it impact your business? Even if cost-cutting is your aim, there should be a strong backing for why you need to cut costs and why it is necessary for your business.

- **Use the Fairest Techniques:** Given the litigious environment we operate in, it is critical that employers use thoughtful downsizing practices. For instance, downsizing on a last-hired first-fired basis can easily be justified in court. This leaves little room for employees to claim that dismissals occurred based on “discriminatory” reasons. Such methods,

however, should be used with caution since they could interfere with company objectives. Although they work well in courts, they may not be the best for the organization.

- **Say Only what is necessary:** Be wary of your words during the downsizing process. What you say to departing employees or the survivors could be used against you in court. Organizations should also avoid making implied or explicit promises that could turn into “verbal contracts.” Written methods of communication during downsizing are best to avoid any “verbal slips” the managers might make.
- **Downsize With Dignity:** By not informing your severed employees—leaving them little time to search for alternatives—or being vague and distant while downsizing, you are setting yourself up for litigation. The departed employees who sue are generally the ones who feel they were treated unfairly. They are the angry ones who were given little notice, no counseling, few reasons, and possibly no assistance. The more you empathize with your departing employees, the less likely they are to file lawsuits.

Providing formal outplacement support is an excellent way to protect the company brand and legal exposure while increasing the likelihood that the employee will land into a new role quickly.

Adapted from an article by James Thompson of HR C-Suite.

<http://www.hrcsuite.com/downsizing/>