

RISK MANAGEMENT BULLETIN

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Avoiding Wrongful Termination Claims During Layoffs

Since many local governments are now facing budget cuts, they are being forced to do more with less. Some local governments must even consider temporary or permanent layoffs. Involuntary termination of employees is a complicated and difficult issue for every employer, but management can take steps to help protect the organization from potential liability. Wrongful termination claims from terminated employees can lead to high settlements, litigation expenses and other indirect expenses—especially if not handled properly. However, if care is taken to keep the reduction in force as a budgetary issue, rather than a punitive one, the chance of litigation can be minimized.

Employers are fully within their rights to institute temporary or permanent layoffs, as long as the layoffs are not the result of discrimination or retaliation. Care should be taken to avoid any reference to poor performance and/or misconduct on the part of the affected employee. Depending upon his/her status, the employee may have certain rights, both pre-termination and post-termination, for separations from employment based upon performance. Therefore, the focus should be on the financial setbacks of the local government and the lack of funding for the position within the local government's budget. It is a good idea to require the local government's staff to have input on all potentially unfunded positions. In addition, consultation with the local government's attorney is recommended when confronted with layoffs. Whenever possible, the determination of lack of funding of a position should be explicit within the budget ordinance.

Notifying Employees of Impending Layoffs

When the local government informs the employee of his or her termination, the supervisor or manager should refrain from making personal comments—usually the less said during the process the better. A witness should be present when the employee is notified that his position will no longer be funded. This will assist in corroborating what was said during the exit interview. Also consideration of a small termination package, whereby the employee acknowledges the termination because the position was no longer funded as the result of budget changes could be an important piece of evidence. Finally, before making the decision to layoff personnel, a local government should look at its own policies, procedures, charter and ordinances to determine whether or not an employee to be terminated has seniority rights or “bumping rights” as to other employees and whether or not that employee, if terminated, is given preference when the local government begins to rehire. It is further important to note that if a local government attempts to obtain a release from the employee, such release should be drafted by the local government's attorney.

Sponsoring Organizations



Conclusion

The above suggestions are from a Risk Management point of view and are not meant to be all inclusive or in any order of priority. The above suggestions are not meant to be a substitute for legal advice and we encourage you to obtain a complete copy of Risk Management Module 4 that is available on the “Publications” page of www.lgit.org. LGIT members can obtain the document after entering a user name and password. If you do not have a user name or password, contact Michael Becker, LGIT Systems engineer at mbecker@lgit.org. LGIT’s primary liability members’ designated LGIT contacts can also contact the LGIT Employment Law Hotline for free legal advice at 800-845-8055 or 410-625-5981.

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