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## So you've been axed . . .

In case you're laid off, know your rights.

Posted by the Asbury Park Press on 03/6/06

BY WILLIAM CONROY  
BUSINESS WRITER

Whether it's an individual firing or mass downsizing, the layoff experience is painful.

When it happens, an employee may be too stunned to think clearly. And so it's one of the occasions in life for which it helps to prepare yourself thoroughly, just in case. The best way to prepare is to know your rights as an employee.

If you think the ax is coming anytime soon, you should be aware of a few things.

First, start removing your personal belongings. More importantly, never sign anything without reading it carefully and knowing its implications on your finances, your future job search and your right to sue your employer.

Each company manages layoffs differently. The Accident Group, Britain's largest personal-injury insurance company, once sent its workers cellular-telephone text messages notifying them they had lost their jobs. Other companies have a more formal way of communicating the bad news to employees.

"You have a mixed bag," said Frank Scanlan, spokesman for the Society for



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Scanlan said many companies have come to realize respecting workers and laying them off with dignity is important not just for those terminated, but also for the morale of remaining employees.

Still, a company is not obligated to act in any particular manner.

New Jersey is an employment-at-will state, which means someone can be fired or laid off by an employer for just about any reason or no reason at all — as long as the employer is not breaking any law or discriminating and there is not a union or individual contract. The employer doesn't even have to give notice.

"The employer can look at the employee and say: "I don't like the fact that you're wearing a red shirt. You're terminated!" said David A. Krenkel, an employment lawyer in Ocean Township.

Some people have the misconception that the employer cannot exercise bad judgment and fire someone who does not deserve it, but that is not the case here, Krenkel said.

"You can have an employee who is performing far above other employees but there may be a performance evaluation which indicates they are below-average," he said.

Even if that evaluation is incorrect, the employee does not have grounds for a lawsuit, Krenkel said.

An employer is free to be arbitrary in such firing decisions as long as he or she is not guilty of discrimination, said Peter Lucas, an employment lawyer based in Ocean Township. In New Jersey, an employer cannot discriminate against someone because of their race, religion, gender, sexual orientation, age or because they have a disability, he said. New Jersey also offers protection for whistle-blowers — workers who report an employer's illegal actions or threaten to do so, Lucas said.

Two other groups of employees are also protected, Krenkel said: those who have a contract and those who are represented by a union.

"You have to look to the contract," he said.

This spells out the rights and obligations of both sides. Often it says what would constitute grounds for termination, Krenkel said.

A contract does not have to be called that explicitly. "Employment manuals and other documents can rise to the level of a contract," he said.

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In New Jersey, an employment manual is a contract if it includes job security provisions and it is widely distributed to the work force.

An employee represented by a union usually has a general contract.

Even an employee who does not have a contract has the right to ask why he or she is being let go. This is important because, if you are being fired for violating a company policy — such as stealing, repeated absenteeism or even insubordination — you may not be eligible for unemployment benefits.

You may dispute the claim with the state Department of Labor and Workforce Development. But the key is to know what you are up against sooner rather than later.

Many companies offer a severance package, but no one has an inherent right to one.

"People think that, when they are laid off, they are supposed to get severance," said Nancy Ezold, owner of employment law firm Nancy O'Mara Ezold PC in Bala Cynwyd, Pa. "There is no legal requirement" for it.

What if your employer says you must sign something in order to get your severance?

According to the federal Older Workers Benefit Protection Act, an employer must give workers 40 years or older at least 21 days to review their severance package.

By accepting a severance deal, employees usually give up the right to sue the company. Workers 40 years or older have seven days after signing a release agreement to change their minds and revoke acceptance.

"They are paying you money to buy their peace," said Gary W. Aber, an employment lawyer in Wilmington, Del. "You are giving up all of your rights to make any claim against them once you accept the money," he said.

Employees should realize that the signature the company wants from them is a bargaining chip they can use, Krenkel said. "The first thing (the fired worker) should do is see a lawyer," he said.

Workers can trade their signatures for information, for example, about what kind of reference they will get when they apply for another job.

"When you get the severance package you should speak to someone in human resources to find out what the reference might say," Krenkel said.

If you sign documents, make sure you keep copies of everything.

Finally, you may be asked for an exit interview. There is no law requiring you to do it, but if you do, experts advise you to be cordial and leave amicably. If you badmouth individuals or the company, word is likely to get around.

Another issue to consider as you leave is whether you have been injured on the job over the last several months, Lucas said.

The statute of limitations on a workers' compensation claim is two years, he said. You can file such a claim after you leave a job, but you have to do so within two years after the injury happened, Lucas said.

*Gannett News Service contributed to this story.*

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