

## ***Should You Offer Severance Pay?***

**In most circumstances, employers are not legally required to pay severance to fired employees -- but you may want to consider it anyway.**

Some employers assume that they have to offer a severance package -- some combination of money and continuing benefits -- to fired employees. In many cases, however, this assumption is incorrect.

## **When You Must Pay Severance**

There are only two situations when you may be legally required to provide severance pay. First, a handful of states require employers who are closing a facility or laying off a large number of workers to pay a small amount of severance. (Contact your state labor department to find out if your state has this type of plant closing law.)

Second, you might be legally required to provide severance to former employees if you led them to believe they would be paid, as evidenced by:

- a written contract stating that severance would be paid
- a promise that employees would receive severance pay as documented in an employee handbook or personnel policies
- a history of the company paying severance to other employees in the same position, or
- an oral promise to the employee that you would pay severance.

Many employers routinely give severance packages to long-term employees who are fired for reasons other than serious misconduct, even if they are not legally required to do so. Why? To soften the blow of being fired and to buy a little insurance against lawsuits. A severance package may help sweeten the sour grapes a worker feels about being fired. And a happier former employee is a less litigious former employee. (For information on requiring an employee to sign an agreement not to sue you in exchange for receiving severance, see [Using Severance Agreements to Avoid Lawsuits](#).)

## ***Using Severance Agreements to Avoid Lawsuits***

**If you fear a wrongful termination claim, consider asking a terminated employee to sign a release.**

Firing workers is never pleasant. But sometimes, you know that firing a particular employee will be especially difficult and might even result in a lawsuit. Perhaps the employee stirs up a lot of trouble in the workplace. Or maybe you have made some mistakes in managing the employee and have good reason for concern if a judge or jury later reviews your decisions.

Whatever the reason, if you are worried about being sued by a terminated employee, you might want to consider asking the employee to sign a release: an agreement not to sue you in exchange

for receiving certain benefits. Some employers routinely ask their employees to sign a release as a condition of receiving a [severance package](#). Other employers ask only those employees who might have a legitimate legal claim against the company, or who seem especially motivated to sue, to sign a release.

Because some states have specific requirements about what language must go into a release, you should consult an attorney for help in crafting a legal agreement that will meet your needs. Keep in mind the following general considerations:

- **You must give the employee something in exchange for the release.** You are asking the employee to waive the right to sue you, and that right is worth something. This means that if you ordinarily offer a severance package to those employees who are not asked to sign a release, you will have to give something extra to employees who do sign. Specify what you will provide (typically, a sum of money) in the release.