

# Top 5 'lightning rod' terms to avoid with employees

As a manager, you know how important it is to use the correct employment terms with your employees. Using the wrong terms can sometimes expose your company to expensive lawsuits. Business Management Daily's Editorial Director Pat DiDomenico describes the top five “lightning rod” terms to avoid with your employees.

**#1: Permanent employee.** Employment at will is the rule in most states. That means you can terminate an employee at any time for any legal reason. But managers sometimes make the mistake of using terms like “permanent” when it comes to talking to employees about their jobs. This often happens after employees pass their 90-day probationary period. Managers also make the mistake of promising long-term employment with casual comments like, “Your job is safe here as long as you do a good job.” These mistakes essentially promise the employee a job for life and it can destroy at-will status. What’s the lesson? Avoid making long-term promises of job security. Don’t use words like “permanent” employee. Instead, start using the term “regular” employee.

**#2: Layoff.** Managers should use the term “layoff” only when they end a relationship due to lack of work. If you end the employment relationship for any other reason, call it a discharge. How can one little word be such a big deal? For example, the unemployment office is told that the employee was laid off, even though you fired him for stealing. That one little word could make the employee eligible for unemployment compensation, a part of which your company would have to pay. Even more costly is misusing that term when dealing with a government agency that’s investigating a discrimination charge.

**#3: Independent contractor.** The consequences of wrongly classifying someone as an independent contractor can be huge. We’re talking about backpay, workers’ comp, tax liability and discrimination liability. Simply labeling someone as an independent contractor won’t make it stick. Determining a worker’s status as either an independent contractor or an employee hinges on various factors: most important, your degree of control over that employee. The more control you exert, the more possible that the person will be deemed an employee. So talk to HR, your company officials or your attorney if there’s any question about the person’s status at all.

**#4: Exempt employee.** When determining which employees are eligible for overtime pay, every employee falls into one of two categories: either exempt or nonexempt under the Fair Labor Standards Act. Now, exempt employees, like managers and executives, are not eligible for overtime pay — they’re paid for the work that they do, not the time it takes to do it. Nonexempt employees are eligible for overtime pay. They’re typically paid hourly. Managers often mistakenly label employees as exempt, sometimes just to avoid paying the overtime. But again, simply labeling someone as exempt doesn’t make them so. The actual work they perform is what matters, not the title. Nonexempt and exempt issues can be confusing. Our company offers a free checklist to help you make that decision correctly. You can find our exempt vs. nonexempt checklist at [www.TheHRSpecialist.com/Checklist](http://www.TheHRSpecialist.com/Checklist).

**#5: Disability.** If an employee qualifies as “disabled” under the Federal Americans with Disabilities Act (ADA)

or a state disability law, your company must make “reasonable accommodations” for that person’s disability. Now, that can include anything from new furniture to a new work schedule. Unfortunately, there’s no definitive laundry list of medical conditions that qualify as disabled under the ADA. The decision really must be a case-by-case basis. So don’t guess whether the person is disabled or informally refer to the person as a disabled employee. Federal law says that if you perceive an employee as disabled, the law will cover him and you’ll have to accommodate that person’s ailments. So consult your HR department or attorney if you have any questions.