Resign or Be Fired: Compassionate Offer or Legally Risky Ultimatum?

Have you ever offered an employee the option to resign or get fired? Maybe you believed you were helping the employee to graciously exit the workplace without the embarrassment of a termination. However, doing so today just may fall under the no-good-deed-goes-unpunished category. As this new court ruling this month shows, such ultimatums might ultimately give you ulcers in court under the "ultimatum theory" of liability …

Case in Point: Richard Lawson, a high school history teacher in Mississippi, had a one-year employment contract. The principal told Lawson that his contract wouldn't be renewed for the following school year because of a reduction in force (RIF). Two teachers were being eliminated and the principal decided Lawson was one of them.

The principal offered Lawson the choice to resign. Otherwise, the principal said, Lawson might be blackballed from future employment if he allowed the school board to vote against his contract renewal. Lawson claimed the principal warned him, "Once a school district sees nonrenewal, they usually just throw your application or your resume to the side because a red flag goes up."

When Lawson pressed the principal why he was selected for the RIF, the principal allegedly responded, "You being a black man, I believe that you could easily get a job in the education system with your connection."

Lawson tendered his resignation before the principal presented his nonrenewal recommendation to the school board. As a result, the board never considered whether or not to renew Lawson's contract. Instead, it approved his letter of resignation.

Soon after, however, Lawson tendered his lawsuit, claiming constructive discharge and racial discrimination in violation of Title VII of the Civil Rights Act.

The court noted there are two ways employees can claim "constructive discharge." One way is if an employee claims the "terms and conditions were so intolerable that a reasonable employee would feel forced to quit." That wasn't the case here.

The second way is if an employee is given an ultimatum requiring a choice between resigning or being terminated. It's called the "ultimatum theory" and that was Lawson's claim. Lawson felt compelled to resign, which is an adverse employment action.

The judge sided with Lawson and sent the case to the jury to decide if the school district was going to learn an expensive lesson, not in school, but in court. (*Lawson v. Hinds Cnty. Sch. Dist.,* 2014 BL 28324, S.D. Miss., No. 3:12-cv-00698)

3 Lessons Learned … Without Going To Court

1. **Don’t give ultimatums.** Either RIF, fire or don’t rehire. But, don’t give employees the choice to resign or be terminated if the decision is a done deal (unless there is a written settlement agreement prepared by counsel).
2. **Don’t give explanations.** The principal should have just RIF’d based on the directions of the school board that the decision be based on the best interest of the students.
3. **Don’t discriminate.** Employment decisions, including terminations, must never be based on protected characteristics grounded in federal, state and local laws. In this case, the jury will also get to decide if the school district gets to learn another lesson in the cost of racial discrimination.

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