

Use rational business reasons to justify RIF choice

When employees lose their jobs, they naturally wonder why they were chosen. Employees who recently have complained about discrimination—real or imagined—often do more than wonder. They often jump to the conclusion that they have been fired in retaliation for complaining. That conclusion can lead to a lawsuit.

Be prepared with solid and rational reasons why you chose the employee who got the ax. You don't necessarily have to tell the employee directly when she's terminated. However, you must make sure your records show the process you used to arrive at the discharge decision and the reason she was chosen.

The good news is, the reason doesn't have to be perfect. It just can't be discriminatory.

Recent case: Claudette Payne was a cashier for Brink's Bank, working at the Rochester branch in the vault where cash is stored and transported. She complained, using the company's harassment reporting process, about her co-workers' foul language.

Brink's investigated and told everyone to keep the cursing down. Payne told management its intervention helped.

Later, when the bank had to cut costs, Payne lost her job. She sued, alleging retaliation for complaining about her co-workers. But Brink's told the court it had cut her job to lower its costs. It was easier to replace her than other employees who had skills Payne didn't have. In other words, if Payne remained, she'd have to be trained further, while the others easily could fill her job duties without additional training.

The court dismissed the case, noting that cutting costs was a legitimate business reason for the reduction in force. Plus, the court said the reason for terminating Payne didn't have to be perfect—just nondiscriminatory. It could even be a wrong reason or a reason based on erroneous facts. (*Payne v. Brink's, et al.*, No. 05-CV-6224, WD NY, 2007)