

'Resign or be fired' may be the riskiest offer

Have you ever presented 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 a recent ruling shows, such ultimatums might ultimately give you ulcers in court.

Case in point: Richard, a high school history teacher in Mississippi, was told that his contract wouldn't be renewed for the following year because of a reduction in force.

The principal offered Richard the choice to resign. Otherwise, the principal said, he might be blackballed from future employment if he allowed the school board to vote against his contract renewal.

When Richard 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 connections."

Richard decided to tender his resignation, and the school board never considered whether to renew his contract. Soon after, however, Lawson tendered a lawsuit, claiming constructive discharge and race discrimination.

The court said there are two ways to claim constructive discharge:

1. If an employee claims the job conditions "were so intolerable that a reasonable employee would feel forced to quit." That wasn't the case here.
2. If an employee is given an ultimatum requiring a choice between resigning and being terminated.

That "ultimatum theory" was the basis of Richard's claim. The judge sent his lawsuit to trial for a jury to decide. (*Lawson v. Hinds Cnty. Sch. Dist.*, S.D. Miss.)

3 lessons learned

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 that has been prepared or approved by your attorney).
2. **Don't give explanations.** The principal should have just RIF'd, stating that the decision was based on students' best interests.
3. **Don't discriminate.** Employment decisions must never be based on protected characteristics grounded in federal, state and local laws.