

Layoffs and union contracts: When seniority collides with disability, seniority prevails

When conducting layoffs, some employers give preference to more experienced workers, letting them keep their jobs while less senior workers must go. That's usually no problem. However, disabled employees who get bumped may claim they should have been given preference, keeping their jobs as a reasonable accommodation.

In such cases, a court said, the seniority rules take precedence.

Recent case: Adriana had been a janitor for years before transferring to a mailroom position.

While working in the mailroom, she developed several disabilities, including rheumatoid arthritis and anxiety. These conditions required a reasonable accommodation of not standing more than 30 minutes, plus other physical restrictions.

Her accommodation requests were approved.

Eventually, Adriana's employer needed to lay off about 45 people. A union contract allowed employees with seniority to bump less-senior workers out of their jobs if the bumping employee could perform the job without additional training. Under that policy, Adriana lost her job in the mailroom.

She sued, alleging that although she was among the least senior, she was really bumped because of her disability. She claimed she should have retained her job.

The court disagreed, concluding that the seniority rule trumped her desire to remain in her present position with her accommodation in place. (*Agostini v. Emblem Health*, SD NY, 2018)

Final note: Adriana also requested being sent back to her old janitorial position.

However, that was not a viable option given her inability to stand for more than 30 minutes. No accommodation was possible.

What to say when layoffs come

HR executive and trainer Paul Falcone has offered solid sample answers to the questions you never thought you'd have to hear. Keep the useful responses below in mind come layoff time.

Question: "Why was my position chosen for elimination?"

Answer: "It was a business decision. Please don't take this personally; when a reduction in force occurs, positions are eliminated. The people who are attached to those jobs then get laid off. It's the hardest thing a

manager can do—selecting positions for elimination is so difficult because you realize that people’s lives will be interrupted. That’s why I’m so sorry that this is occurring.”

Question: “Who else is being laid off? Am I the only one in our department? Why me?”

Answer: “Laura, I can’t share who else is being laid off in the department at this point. We haven’t spoken to the other individual(s) yet, so I’d ask that you allow me to hold off on answering that for now.”

-or-

“Yes, yours is the only position in our department that’s being eliminated. Again, please don’t feel that you’ve disappointed anyone. I want you to know that you’re eligible for rehire once the hiring freeze is lifted, although we can’t guarantee that. For now, though, understand that we had to eliminate one headcount, and purely from a functional standpoint, your position made the most sense.”

Question: “Who’s going to do all the work that I do once I’m gone?”

Answer: “That was part of the pre-layoff analysis that we performed, and I want you to know that we looked at all the positions in our department and unanimously agreed on the position that should be eliminated. Let’s discuss some of the details related to your severance package and other important benefits details relating to this layoff . . .”

Question: “Wait. You can’t lay me off and keep Susan. I have more longevity than she does!”

Answer: “I recognize that. I want you to know that we did indeed consider tenure in our decision, but it wasn’t the only factor. We also looked at how the roles could be reconfigured and redesigned when determining who would be qualified to assume the remaining job duties after the reduction in force. Are there any other questions I could answer for you?”