

Severance perks improve in hot labor market

With the national unemployment rate dropping to 3.6% this month, the lowest since 1969, employers are using every trick possible to lure and keep the best employees. One increasingly popular move: expanding severance packages to separated employees.

Among employers that offer severance packages, a full 44% of employers now offer those perks to all of their employees—a 6% increase from 2017, says a survey of 1,500 HR professionals by RiseSmart.

Reputation is a priority

“In a world where companies’ reputations affect their ability to hire and retain talent, organizations have to maintain a competitive edge at every stage of the employee journey—including upon separation,” says RiseSmart president Dan Davenport. “Severance is a great benefit because it also can help protect a company’s brand when layoffs are unavoidable.”

The survey found that corporate leaders are increasingly aware of the reputation (and recruiting) damage caused by negative online comments by former employees on sites like Glassdoor and Indeed. A full two-thirds of HR professionals surveyed said they monitor those sites for negative reviews—a 10% increase from 2017. Offering severance packages can help defuse some of the negative vibes of departing staff.

The top reasons employers offer severance (in order): project an “employee-first” culture, take care of employees, protect the brand and limit legal liability.

The most popular way to calculate severance is by looking at a combination of tenure and salary. Second most popular: just look at tenure.

How many months of salary is a typical severance? Most popular is 1-3 months (30%), followed by 3-6 months (21%), 6-9 months (13%) and 9 months to 1 year (12%). Twelve percent offer less than one month of severance.

About two-thirds have a formal, written severance policy, while the rest have an informal policy.

When are severance payments due after a layoff?

That depends upon what you mean by “severance.” If an employee is being offered severance in exchange for signing a waiver and release of claims, the time in which to provide the severance is usually set out in the contract. If the agreement contains a waiver of age claims under the Older Workers Benefits Protection Act, the individual offered the severance must be given at least 21 days to consider the offer, and if more than two individuals are being let go and offered severance, at least 45 days to consider the offer, and each would have seven days after signing the agreement before it became effective. In these cases, severance is not owed, and therefore not paid, until all those prerequisites have been met; after that period, payment is usually but not always made in the next few weeks.

Final wages, however, are different. Each state has a different rule on when an individual must be paid any wages earned during the course of employment. State law also determines whether wages to be paid include

any accrued but unused vacation time. In some jurisdictions, wages are due sooner if the individual was laid off than if he or she resigned. In Montana, if an employee quits, final wages must be paid by the next regular payday, or 15 days from the separation date, whichever occurs first. However, if an employee is fired or laid off, final wages must be paid immediately unless the employer's written policy extends the time for final wage payment to the next regular payday, or within 15 days from separation, whichever occurs first. See Mont. Code Ann. § 39-3-205.

Case in Point: Merely offering severance package doesn't constitute admission of employer wrongdoing

It's often tempting to offer a severance package in exchange for the promise not to sue over alleged discrimination. But some workers may see that offer as an admission of sorts that the employer believes it needs to pre-emptively cut liability.

As long as the offer is consistent with a company's usual practice, there's little chance that argument will succeed.

Akin, who is black and was born in Nigeria, took a job for Overhead Door in Williamsport, Pennsylvania, where he was in charge of improving an under-performing factory. After a short time, management grew disenchanted with Akin's work. He was placed on a performance improvement plan.

When nothing changed, the company offered Akin severance pay in exchange for his resignation.

He rejected the offer, so Overhead Door fired him.

Akin sued, alleging race and national origin discrimination.

He tried to argue that the mere fact he had been offered a severance package to resign was proof the company admitted it had done something illegal. He said it showed that alleged poor performance was just a pretext for discrimination.

The court rejected the idea that offering a severance payment alone was proof of pretext, especially when such offers are standard practice. It said that in rare cases—where there is other, clear evidence of bias—a severance offer might be some evidence of pretext if severance is unusual. That wasn't the case here.

Akin's lawsuit was dismissed. (*Akinlawon v. Overhead Door*, MD PA, 2018)