

# Can we cut our legal risk by offering unconditional reinstatement?

**Q. If an employee is suing our company, what are the benefits of offering her job back while the litigation is ongoing?**

**A.** If you have been sued and you are reasonably confident your company may be at risk, don't discount the possibility of offering to bring the person back to work, to the same or equal position, and with full back pay, along with restoration of other lost benefits. This is called an "unconditional offer of reinstatement."

An unconditional offer of reinstatement can be a useful tool to minimize or even avoid liability in a discrimination lawsuit. To be effective, however, the offer must truly be *unconditional*. In other words, the reinstatement offer should:

- Return the employee to her former position, with the same responsibilities, compensation, and benefits.
- Make clear that the employee is free to continue pursuing any and all claims against the company, and that she is not required to sign a release or give up any rights as a condition of reinstatement.
- Emphatically state that the employer will neither retaliate nor tolerate any retaliation against the employee.
- Create an open door for the employee to discuss any concerns about returning to work, or issues that arise after the employee returns to work.