

WIELDING THE AXE: DELAYED REACTION

Get lost... but don't go yet

The new drill: Get the pink slip but work out your notice period

WALLACE IMMEN

September 17, 2008

For years, employees who have received a pink slip have come to expect the same drill: Immediately surrender your company-issued security pass, clear out your desk and be escorted off the premises by security.

Now they may be in for a new drill: You're fired - but you can't leave just yet.

That, at least, was the finding in a recent survey of 234 Canadian companies. Forty per cent said they are planning to cut jobs in the next six months because of the current economic slowdown.

But nearly a quarter - 23.4 per cent - of those wielding the axe said they plan to make pink-slipped workers stick around on the job until the end of their notice period, rather than let them leave right away with severance in lieu of giving advance notice of their termination.

That's a practice that had "all but vanished from the workplace," says Christine Thomlinson, a partner of Toronto employment law firm Rubin Thomlinson LLP, which carried out the survey.

At the same time, many companies said they are delaying terminations, half because they are concerned about finding replacements.

All this represents an unexpected shift in the way companies are approaching job cuts, Ms. Thomlinson says.

"This is a significant finding because it may represent the struggle that employers are facing as they try to balance the reality of labour shortages and the war for talent needed to compete in the global marketplace with what has been the traditional cost-saving measure of cutting jobs."

But while employers may view that you're-fired-but-stick-around idea "as getting value for severance, this has the potential to cause major disruptions and tensions in the workplace, as disgruntled employees remain in their jobs until the notice period is completed," she warns.

"This often ends up causing more trouble than it's worth for the company."

Employment laws require employers to give employees notice - on average, six months, although that could be shorter or longer depending on the length of employment and seniority - when their jobs are being terminated; employees are entitled to be paid for that time.

Customarily, employers send terminated employees on their way immediately, then pay the amount they are due either as a lump sum or as a continuation of their salary through the notice period, which helps support the workers while they search for a new job.

Employers are within their legal rights to tell ousted employees they want them to stay on, but that comes with risks, Ms. Thomlinson says.

Employees who would rather be looking for a new position aren't all that gung-ho in their old one if they see no future with the company, she explains.

"Employers have avoided going that route in the past because it is difficult to keep employees motivated after they've been told they'll soon no longer be employed."

Even worse, it creates a higher likelihood of absenteeism, risks of sabotage and grumbling employees spreading tension among remaining staff, she adds.

The situation is different than what happens in a mass layoff, Ms. Thomlinson explains.

When a company, such as an auto maker, announces it will be closing an operation and putting people out of work on a certain date, workers stay on with the possibility that the operation might reopen or that they might be able to find a new role somewhere else in the company, or be rehired if conditions improve.

Many employers considering forcing individually fired employees to stay around may reconsider when they think what it means to keep unmotivated staff on board, and go back to the usual clean break and severance, predicts Norman Grosman, a partner in employment law firm Grosman Grosman and Gale LLP in Toronto.

Employees who do find themselves being fired but kept on should try to negotiate the best deal possible, Mr. Grosman says.

What they don't want to do is say no, or they risk losing the pay they're entitled to, he warns.

"Your employer can then call your bluff and say, 'If you refuse, I'll take it you're saying you've quit and we don't owe you anything.' "

Instead, he advises employees to "remind management that they are not doing you any favour by keeping you stuck in a lost job and limiting your options to seek a new one."

Employers who do need someone's skills but don't want to face friction are likely to be willing to agree to some pay and perk carrots, such as a bonus payoff of several months' salary to those who stay and are productive to the end of their notice time, he says.

Such employees can also probably also persuade their boss to help them in their search for a new job by getting them, for instance, to cover costs of job counselling and help in updating their résumés, Mr. Grosman suggests.

As well, employers should be willing to show flexibility in letting employees make phone calls on company time and take time off for job interviews, he adds.

Among other perks you may not think of but may be able to arrange are being able to keep the company-provided BlackBerry or laptop computer or take over the lease of a company car.

As well, employers may be willing to let employees transfer phone numbers or e-mail addresses to personal use, Mr. Grosman suggests.

"Remember that the company, at this point, will need you more than you want them, so they'll make it work for you as much as possible in a different situation," he says.

"The company will be eager to keep you happy and doing the work they expect you to do," he adds.

And if you aren't happy and productive, it will soon become clear, Mr. Grosman says.

"You can use the power of persuasion by your words and behaviour that being forced to stay on the job is a poor idea and you'd really like to be allowed to leave and pursue a new career path."