



## DEAR HRK

# We are planning to terminate an employee. Should we offer a severance agreement?

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Before we dive into this topic it is important to note that while Federal Laws do not mandate severance pay, there are a limited number of states that require severance benefits to certain employees upon termination. Additionally, collective bargaining agreements may also outline severance terms for unionized employees. This article is written assuming the absence of these exceptions.

### What exactly is a severance agreement?

A severance agreement is a legally binding document that provides compensation and other benefits in exchange for a release of claims against the employer. It is almost always used for involuntary terminations; however, it is important to review your employment contracts as those may address severance requirements.

### What are common benefits outlined within a severance package?

- **Salary Continuation** – While there is no standard figure, the amount is typically based on tenure or position. The dollar amount may also be a round figure that is enticing enough for the employee to sign an agreement. As a general rule of thumb, employers have followed the standard two weeks of pay for every year at the company.
- **Insurance Benefits** – Group benefit plans may restrict a terminated employee's ability to remain on the plan, though the employer may offer to pay the COBRA premium or a partial contribution.

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- **Uncontested Employment Benefits** – An employer may agree not to challenge the unemployment application. Employers may wish to consider how a lump sum severance payment would affect unemployment benefits vs. payment spread out over several pay periods.
- **Outplacement Services** – This benefit might include support with finding a new job, resume-writing, career counseling, and time off to apply and interview. Outplacement support may be provided by the employer or outsourced.
- **Recommendation Letters** – This is a considerate and meaningful offering as terminated employees often worry about their reputation and “explaining” the job change to future employers.

### **What are the potential advantages of offering a severance agreement?**

- Employers can sleep easier due to the reduced likelihood of lawsuits and other claims by the employee
- The agreement may ease the tensions during the termination process
- Salary and insurance benefit continuation allow the employee time to handle the stress and emotional toll of losing a job
- The severance process may preserve an employee's dignity and reputation
- Outplacement support may prove highly valuable as the employee considers their next job

### **What are the possible disadvantages?**

- Employees may view the offer as an invitation to negotiate which can prolong an already unpleasant situation
- Employees may perceive the agreement as an employer's attempt to hide something and “buy them off”
- If an employer has a pattern of offering severance agreements, or refusal to offer severances to similarly situated employees, this may result in a claim of discrimination
- Routine severance agreements can be costly for businesses
- If the employee chooses not to sign, they may attempt to use the severance provisions against an employer in a claim

### **What should I do if I want to draft a severance agreement?**

For starters, employers should review current policies, prior company practice, employment contracts, state law requirements, and consider the specific circumstances of the involuntary termination. Not all involuntary terminations may constitute the need for a severance agreement. Employers can also pay at the time of separation without requiring an employee to sign an agreement, however this potential offer should first be discussed with your employment attorney or outsourced HR professionals.

Employers that wish to provide a severance agreement are **strongly advised** to contact their

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corporate counsel or employment attorney to draft the document. As noted earlier, severance agreements are legally binding contracts and an increasing number of states have passed legislation surrounding the receiver's rights (for example, informing the employee they have the right to consult with an attorney) and restrictive covenants that can be incorporated (such as non-disclosures, noncompetition agreements, and non-disparagement clauses). Be mindful that severance agreements may not be one-size-fits-all. It is recommended to review each termination situation separately. We partner with [Littler](#), the largest employment law firm in the world, and would be happy to make an introduction.

### **Be mindful of messaging.**

As in most difficult conversations, delivery is key. Employers should understand the components of the severance agreements enough to provide a brief overview during the termination meeting. This is an area where a mindful approach is recommended, meaning don't go it alone — engage with your HR experts for the best approach to your specific situation in order to reduce the risks.

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