

Laid off? Get what's coming to you

Don't be afraid to talk about policies if you lose your job

[By Julie Jason](#)
[Correspondent](#)

11/15/2009

Connecticut Post (Bridgeport), The Advocate (Stamford)
Greenwich Time, Greenwich, The News-Times (Danbury)

If you recently have experienced a layoff or believe you might someday soon, it helps to be aware of what to expect from your employer.

Start with a full understanding of your company benefits. For example, do you have any unused vacation that should accrue to you? Are you vested in the 401(k) company match? Are you vested in the company pension?

You'll need to do a little homework to get the facts. Check your company manuals for policies for terminated employees. Get copies of all of your benefits statements to check on your vested benefits.

Also review any medical benefits that you will be able to continue under COBRA's health benefit provisions. COBRA, which stands for Consolidated Omnibus Budget Reconciliation Act, was passed in 1986 and provides for health coverage to continue after termination of employment.

Then, after you understand what you are entitled to, review your understanding with your company's human resources professional.

Although severance packages are not required by law, your company may offer you one. If so, you might want to have an employment lawyer review the severance agreement, and possibly negotiate the package.

Attorney Julia Murphy, who is of counsel at the Outten & Golden LLP of Stamford, offers the following pointers.

- First, the severance agreement may cover benefits that you are entitled to without entering into an agreement -- for example, accrued unused vacation days. Check to make sure that what is offered is accurate based on your review of company policies and plans.
- Second, be aware that if you were laid off, you may be entitled to unemployment benefits from the state of Connecticut, even if you receive severance pay. Murphy

advises asking for a letter from your employer stating that the company will not oppose your application for unemployment benefits.

- Third, ask for a reference letter. "These days, most company policies state that they provide only dates of employment, job title and last salary if you authorize it. But you can still ask for a reference -- either a letter or an 'audio' script that a designated person would use when called about you. If you had a long tenure at your company and built up goodwill, this is easier to negotiate, especially if everyone agrees that you didn't have performance problems," Murphy said.

- Fourth, Murphy points out that companies like outplacement so that you can focus on "getting another job and not obsessing about getting fired." If you don't have a job at the end of the outplacement period, and believe it will be helpful to extend your outplacement, ask for more time.

- Fifth, ask for "mutual non-disparagement." Murphy said: "Virtually every agreement requires you to promise that you won't disparage the company. Often employees are worried that they will be disparaged, especially if performance was an issue or they had a personality clash with the boss."

Companies often will agree to make the non-disparagement clause mutual or to state that agreed-upon employees -- typically the employee's manager -- have been counseled not to disparage you. Many employees find this valuable."

- Sixth, ask for indemnification or a mutual release. "Virtually every agreement has a one-sided release and waiver provision that prevents you from suing the company for any reason up to the date you sign your agreement," Murphy said. "If you think you could be sued because of the unique role you played, ask the company to agree not to sue you. You can also clarify how the corporation's indemnification provisions in the certificate of incorporation or bylaws protect you as a former employee."

- Seventh, ask to be released from restrictive covenants, such as a noncompete agreement or a non-solicitation agreement. Murphy warns that some restrictive covenants can be buried in a stock plan or other compensation agreement. These restrictions usually are enforceable even if you are laid off, she explains. "Ask the company to relieve you of these obligations," Murphy said. "After all, they let you go. If the company won't let you off the hook, you may be able to negotiate a more limited restriction."

- Eighth, ask for additional time to consider the agreement, especially if you feel pressured to sign. If you get an extension, ask for it in writing, says Murphy. And be aware that you may be able to revoke an agreement that you signed within seven days of your signature if you are older than 40.

- Ninth, in some cases, you might be able to negotiate additional severance pay, but this usually requires "legal leverage." Murphy said: "Legal leverage exists if the company discriminated or retaliated against you while you were employed, improperly selected

you for termination or otherwise may have treated you illegally. Companies in this position may be willing to renegotiate the severance payments if faced with the facts." You'll want your lawyer on your side if you go this route.

Finally, read, don't skim, your agreement. Be sure to understand and agree to the terms you are being offered before you sign.

Julie Jason, JD, LLM, author of "The AARP Retirement Survival Guide: How to Make Smart Financial Decisions in Good Times & Bad," is a money manager and principal of Jackson, Grant Investment Advisers Inc. of Stamford. She welcomes questions for consideration in her column. Please e-mail her at readers@juliejason.com or write to her c/o The Advocate and Greenwich Time, 9 Riverbend Drive, South, Building 9A, Box 4910, Stamford, CT 06907.