

What's Your Due When You Lose a Job?

Figure out what you're really owed -- and then move on

By Eve Tahmincioglu, msnbc.com contributor



After the initial shock of losing a job wears off, some people get angry and assume their former employer is trying to screw them out of what they're entitled to, such as severance pay or vacation days.

Indeed, some of you may be due money that an employer is reluctant to pony up, but in many cases, you may be fighting a losing battle.

I've been flooded lately with e-mails from readers wondering if their former managers are trying to pull a fast one, and in many cases, it seems as if the employer is following the letter of the law, if not necessarily the law of civility.

I include some reader e-mails below and advice from experts, but the bottom line is: Figure out quickly whether you're really entitled to what you seek and then move on with your life.

"You need to move on to your next role, whether it is another job or a successful life outside of the work force," says RHR International management psychologist Gail Golden. "That takes energy and focus, both of which are diminished if you are busy being angry."

Here are some of your letters:

Severance and insurance

I have a question regarding severance pay. Recently I was terminated from a nonprofit that had paid the last three employees terminated severance pay. They paid the departing employees a full month's wages (four weeks), but I received only two weeks, and I had to request severance pay in writing.

I also was not given medical insurance until four months into the job, when I should have been given this after completing 30 days, as stated in the employee handbook.

Do you think I should request payment for those months that I was not given medical insurance, and for two additional weeks of severance pay?

What are my options at this point?

-- Elizabeth Lopez, Downey, Calif.

Often, severance packages are structured differently for different employees depending on position and tenure, says Jay Warren, a labor attorney with Bryan Cave. Severance payouts also can depend on the reason you were terminated, he adds, leaving it up to the discretion of an employer.

Basically you have to ask the company -- preferably someone in human resources, if it has such a department -- what the terms of severance are for employees and why you were treated differently.

The terms of severance payouts may also be included in a company's handbook or in paperwork you were given when you were hired. Some plans are subject to federal law, or the Employee Retirement Income Security Act (ERISA), and in that case you should be able to get a copy from the plan administrator at your former employer to see what you're owed, legal experts say.

As for the health insurance you think you're entitled to, firms rarely pay out for coverage retroactively, Warren says.

But nothing precludes you from going to your employer with a detailed request in hand to ask for compensation. Maybe you paid out of pocket for health care coverage, or ended up having to pay for a hospital visit and want to be reimbursed.

"It's a negotiation," Warren explains.

My position was "eliminated" this week. About one month ago, my company was acquired by a multinational corporation. I was notified that my last day would be Dec. 15.

They offered their standard separation package except for adding five years to my age and service for pension purposes. However, they offered a sweetener if I signed a release. The sweetener would be to give me 12 months paid medical benefits.

I have a few concerns. First, as of my separation date I had worked for 14 years, 11 months and a few days; however, for the severance calculation, they said that ERISA only required them to credit me with 10 years of service (severance is at one level for 10 years and at a higher level for 15 years). I indicated I would be willing to stay on until my anniversary date of Jan. 10 to get my 15 years but they said no. Is it true that they do not have to credit my last 4 years and 11 months?

Also, if I sign the release and waiver of claims, how binding is that?

-- J.C., Los Angeles

First, if you sign a release or waiver, in most cases it will be binding. There are exceptions, including if you think you've been discriminated against because of your age, but that doesn't sound like the case here.

So, I'd think long and hard before signing a waiver and even get some legal help. In most cases, you legally have 21 days to consider such a waiver, so don't let your managers pressure you.

As for the separation package, Warren says, employers have to draw a line in the sand when cutting off payouts based on years of tenure. If you fall below that line, not having reached 15 full years, and the plan specifies these terms, then your employer is within its legal right not to pay you for the 15th year, he adds.

You need to get a copy of the severance plan to make sure that your employer is following the written agreement.

Last paycheck and COBRA

The company I worked for sold to another company. During this process, several people were laid off, and just two weeks before money was exchanged and paperwork signed, our company closed doors and gave remaining people layoff slips. They promised to pay us for timed work and any vacation days left. They also promised us COBRA (health) insurance.

Since then, they have not paid us our last paycheck or vacation days, and we all received letters that our insurance was terminated on 9/30/08. Our business closed doors on 10/20/08. We also had received a paycheck during this time, three days late, and insurance was taken out.

The vice president told some of us who called that we would not be paid and our best bet was to find a job. Is there any recourse besides taking that company to court?

-- David Anderson, Bluff City, Tenn.

In most states, employers are required to pay workers their earned wages in a timely manner, says Heather McCloskey with human resource company McCloskey Partners.

She says states require that workers be paid within the "normal payroll cycle period."

If vacation time was part of your regular benefits and your firm has a history of paying out accrued vacation upon termination, the company is required to pay it out when you're terminated. Again, she adds, the payout should be made within your normal pay cycle.

But the laws vary depending on the state. California is one state that requires employers to immediately pay workers accrued vacation time at the time of termination. Check with your local labor department to find out what the laws are in your state if your employer refuses to pay.

As for COBRA, companies with 20 workers or more are required to offer the coverage. But that doesn't mean the employer has to pay for any of the premium, unless you have a written or oral agreement with your former employer that part of your severance would include premium payments, McCloskey says.

The cost for such plans, which can be used up to 18 months after you're terminated, can run anywhere from \$400 for a single policy to upwards of \$1,600 for family coverage, she adds.

You should have received a COBRA notice at your home within 15 days from the time you were laid off, she says.

If you think you have not gotten what you're owed regarding pay or insurance coverage, McCloskey's advice is to write a letter to your former employer and send it via certified mail asking for the money you're owed. If that gets you nowhere, you should contact your state department of labor.

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