

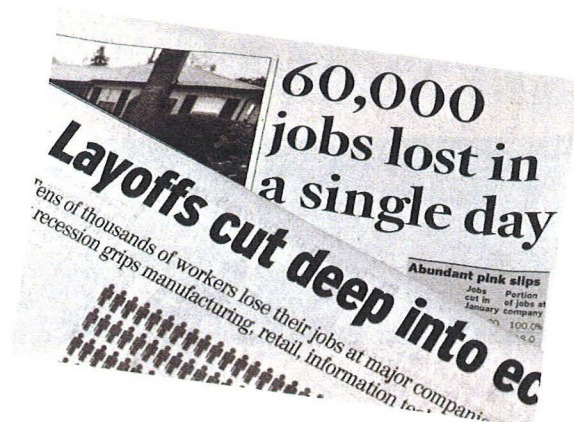
HR LAW

WRONGFUL DISMISSAL

With the numbers of layoffs and terminations increasing due to recession, so too are wrongful dismissal claims. And recent case law is reflecting the harsh economic climate, with courts recognizing that dismissed employees face longer unemployment.

There are several things an employer can do to improve its position should it be necessary to assert that a former employee has failed to take steps to mitigate:

1. At the time of termination, advise the employee in writing that a reference letter is available upon request.
2. Once requested, provide the reference letter in a timely manner.
3. Provide a neutral reference letter and ensure that all comments provided to prospective employers remain consistent with the content of the letter.
4. Provide a positive reference letter if it's deserved and reasonable to do so.



5. Consider offering re-employment counselling, whether or not the employee accepts a termination package, which demonstrates the employer's good faith and enhances the employer's mitigation argument.

If you do end up in court, "Employers have to show that they've done everything reasonable in their power to assist the employee," says Erin Kuzz, a partner at Toronto employment law firm Sherrard Kuzz LLP.

Source: Sherrard Kuzz LLP