

Severance Packages: Best Practices for Calculating and Communicating Them

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Severance decisions sit at the intersection of legal risk, employee relations, and business judgment. For employers, the challenge is not simply deciding whether to offer severance, but determining how much to offer, under what circumstances, and how to communicate it without creating unnecessary exposure.

From the employer-side counsel perspective, severance works best when it is approached deliberately—not reactively—and when it aligns with both the reason for separation and the employer's broader workforce strategy.

Understanding the Legal Starting Point

Despite common assumptions, severance is rarely required by law. Outside of contractual obligations, collective bargaining agreements, or statutory notice requirements tied to layoffs, most severance arrangements are discretionary. Problems arise when past practice, offer letters, or outdated policies blur that line and create an expectation of entitlement where none was intended.

Before discussing numbers, employers should confirm what obligations already exist and whether prior decisions have set informal benchmarks. Consistency matters, but so does clarity about when severance is offered as a business decision rather than a legal requirement.

Let the Reason for Separation Drive the Analysis

Not all separations should be treated the same, and severance decisions should reflect that reality. A position eliminated due to restructuring presents a very different risk profile than a termination for poor performance or misconduct. Offering severance in situations that contradict the stated reason for termination can undercut the employer's position if the separation is later challenged.

Employer-side counsel often advises against rigid formulas in favor of a framework that considers why the employment relationship is ending, how the decision was documented, and what claims the employee could realistically assert. Severance should reinforce the employer's narrative—not weaken it.

Calculating Severance With Defensibility in Mind

While there is no universal formula, employers benefit from anchoring severance decisions to objective factors such as length of service, seniority, and compensation level. These guideposts help ensure internal equity and reduce the risk that severance decisions appear arbitrary or discriminatory.

At the same time, employers should preserve discretion. High-risk separations may justify enhanced severance in exchange for a comprehensive release, while low-risk exits may not. The goal is not mathematical precision but defensibility if the decision is later scrutinized.

Severance as a Risk-Management Tool

From a legal standpoint, severance is most valuable when it is tied to meaningful protections. Employers are not simply paying for goodwill; they are often seeking certainty. A properly structured separation agreement can significantly reduce exposure by resolving potential claims before they become disputes.

That tradeoff only works if the consideration offered is proportionate to the risk being addressed. Underpaying for broad releases or overpaying in low-risk situations can create problems. Thoughtful calibration is key.

The Importance of Clear, Careful Communication

Even well-designed severance packages can create risk if they are communicated poorly. Separation conversations are emotional, and off-the-cuff remarks can later take on outsized significance. Employers should communicate severance in a way that is respectful, measured, and precise, avoiding language that suggests fault, guarantees, or precedent.

Employees should understand that severance is being offered in exchange for an agreement, and they should be given adequate time to review. A rushed or confusing process often invites second-guessing—and, in some cases, litigation.

Avoiding Unintended Precedent

One of the most common employer concerns is that severance decisions will set a precedent for future separations. While consistency is important, employers are not required to treat every departure identically. What matters is whether each decision can be explained based on legitimate business considerations.

Maintaining internal documentation of the rationale behind severance decisions—particularly when they deviate from past practice—can be invaluable if those decisions are later challenged.

Revisiting Severance Practices Over Time

Severance practices should evolve alongside the business. Workforce changes, economic conditions, and developments in employment law can all affect how severance is viewed and valued. Employers who periodically review their policies, templates, and decision-making frameworks are far better positioned than those who rely on habits formed years earlier.

Severance is not just an end-of-employment expense. When handled thoughtfully, it is a strategic tool that helps employers manage risk, preserve credibility, and bring closure to difficult transitions.