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How to negotiate severance

It may seem futile, especially if you're part of a mass layoff. But you may have options.

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By Jeanne Sahadi, CNN/Money.com Staff Writer

NEW YORK (CNN/Money) - Layoffs continue to be a favorite cost-cutting mechanism in corporate America.

And given that the job market is the worst it's been in years, as a middle manager or rank-and-file employee, you hope that if you get the ax you'll at least get a big enough severance package to tide you over to your next paying gig.

You can help ensure that happens if you act strategically, professionally and proactively, say negotiation and compensation experts.

Maybe you'll want more money, longer health insurance coverage, a good letter of reference or a narrower scope of competitors on a non-compete agreement. There's no guarantee you'll get what you ask for, but there's a fair shot you'll get more than what's initially offered.

Separate yourself from the herd

First, though, a dose of reality. If you get snared in a mass layoff, you undercut your position significantly if you don't speak up until the day the crowd is being shown the door. By that point, packages have been decided and generally speaking, management can't make an exception for you.

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But they might be more flexible if you arrange to get laid off apart from the herd.

Since mass layoffs take at least a month, if not months, to plan, you should have a good idea whether you're on the hit list well before you get the bloodless speech from your boss.

Clear signs you're on the way out? "(Your bosses) stop talking to you. They're embarrassed. You stop being invited to things. New projects stop coming your way," said Lee E. Miller, a former human resources executive and coauthor of "A Woman's Guide to Successful Negotiating."

So be proactive, he recommends. See if the company is willing to lay you off after Pink-Slip Day. Figure out what you're doing that your company needs and offer to help through the post-layoff transition for a set period of time -- say, two months. "Now all of a sudden you're not part of the mass layoff," Miller said, and your company has more flexibility to tailor your severance package.

Check your leverage

If that doesn't work, there may be other options.

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In any job termination, an employee has five potential sources of leverage to negotiate a better deal, said Alan Sklover, a compensation attorney and author of "Fired, Downsized or Laid-Off: What Your Employer Doesn't Want You to Know."

Consider them seriously before signing off on your severance package. Typically you'll get at least 21 days to officially accept the deal -- or 45 days if you're part of a mass layoff. Once you've signed off, you'll have an additional seven days after that to change your mind. (Due to age discrimination laws, these limits are required in instances where employees over 40 are being let go, but often employers allow for them uniformly for workers of all ages.)

Remember, in most instances, severance pay is not required by law. It's something companies offer because they want something in return -- your silence, your agreement not to sue or in some cases your agreement not to work for competitors, Sklover said. And they'll ask you to sign a document stating that you agree to those terms before you get any money or benefits. (For more on rights you may waive by signing such a release, click [here](#).)

TRY TO GET A GOOD REFERENCE

- Draft a reference letter.
- Make it factual.
- State your accomplishments (e.g., increased sales).
- Ask if your boss will sign it.

Source: Lee E. Miller

So the question is, "How much is it worth to them?" Answer: potentially more than the initial offer. Sklover suggests you ask the following five questions:

Have you ever received assurances that your job would continue or that you're due special remuneration? Maybe your boss asked you to take a project that would last a year, Sklover said. Or, if it's Dec. 15 and you'd been promised a bonus or commission for a deal that won't close till January, you might make the case that money is owed you. "There's an implied understanding," he said.

WORKPLACE FAIRNESS

[Find out what your rights are as an employee.](#)

Has anyone violated your rights? Layoffs aren't random. And it's legitimate to ask why you were selected. If you think

you've been selected, for example, as a result of your age, race or gender, you may have legal claims against the company. Even if your manager once said to you, "Hey, Marty, you're 64, when are you going to retire?" Sklover said, that might raise a red flag. Or, if you're being laid off five minutes before your pension benefits vest, the company may be in violation of the Employee Retirement Income Security Act (ERISA), which prohibits an employer from intentionally choosing you for elimination based upon your benefits, Sklover said.

Has anyone said anything defamatory about you? Is someone at the office spreading false rumors about why you were let go? If so, your employer may be liable for damage those rumors have caused you, Sklover said.

Do you think you're being let go unfairly? Since most states observe at-will employment -- which means you can quit your job or be fired at any time for any reason that's not illegal -- "unfair" has to be something more compelling than "my boss hates my haircut." You'll have a stronger case, for example, if you've always gotten great reviews until you became a whistleblower, exposing wrongdoing at the company. "The truth is, it's leverage," Sklover said.

Do you or your family have special needs? If circumstances make it hard for you to find work or make it imperative that you not be without steady income or health coverage -- perhaps your spouse or child has a serious illness, said Sklover -- appeal to the highest levels of management in writing. "Never deal with human resources. Never deal with legal," he said. There's no legal basis for this kind of claim, he said, but "sometimes it's the strongest leverage you have."

Play the lawyer card carefully

If you think you have a claim, you may think threatening to sue is your best bet. Not so, say Miller and Sklover.

A better approach is to say, "You're a fair person. I don't want to have to sue. I'd rather work this out with you," Miller suggested.

If you have a sympathy claim without any legal basis, "appeal to (your employer's) sense of fairness and guilt. Unless you're a jerk, most people want to help," Miller noted. One effective approach, he said, is to say, "I've enjoyed working with you. I know this isn't your decision, but it's going to be hard for me to get a job right now. Is there anything more that can be done to ease my transition?"

You should use a claim as leverage to get a better exit deal, not to burn bridges. Your job is over, but your career isn't.

That's not to say consulting a lawyer is a bad idea -- it's certainly useful if you don't understand your rights or the terms of your severance. (Your local bar association may be able to recommend a good employment lawyer.)

Just don't tell your employer you're huddling with legal counsel, unless you're ready and willing to bring suit. "Bringing in a third party changes the dynamics of the negotiation," Miller said.

Don't be afraid to ask

Before you negotiate, decide what you really need by reviewing both your resources and your critical expenses. Then, "negotiate for everything you can get," Miller said. The worst the company can say is "No."

But, chances are, if it's a mid-sized to large company, it can afford to pay. Any firm bracing for layoffs budgets for the experience and then puts more money in reserve to cover unforeseen expenses, Sklover said. "They calculate how much it will cost them and add extra just in case you come along and know what you're doing."

(This article, originally published in November 2002, has been updated.) ■

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