

DATE: **2008 November 10**
PODCAST: **The Undercover Lawyer**
TITLE: **Episode 6: 10 Tips for Anyone Facing Termination, Including Negotiating a Severance Package**

Welcome to the "Hostile Work Place" podcast, I'm your host, the Undercover. Here we are with show number six of the "Hostile Work Place" podcast. Obviously, it's been a little while since the last podcast. Frankly that's because the Undercover Lawyer Forum has been just exploding with members and people with questions, and much of my time has been taken up answering questions there. So if you haven't seen it and/or you would like to ask questions yourself, feel free to go there and check it out. That's at www.undercoverlawyer.com/forum/ or there's a link at the UndercoverLawyer.com website.

I hope you enjoy the last segment with our listener interview. If you feel like you have a story that would be a good illustration for the "Hostile Work Place" podcast, please leave a comment on the iTunes site and let me know. I'm a firm believer that a lot of the best learning can come from just us sharing stories with each other. So don't be shy about getting on iTunes and under the "Hostile Work Place" podcast leave a comment and let me know that you have a story that you would like to share. If you're more comfortable doing it this way, you can call the listener comment line which is (360) 450 5750.

Today's segment is 10 tips if you are facing job termination. Our quick tip comes from one of the lessons learned posted by Lawdog on our website on Hostile Work Place Forums. Now for our feature segment, 10 tips if you were facing job termination. As is obvious to everybody right now, the economy is really creating a tense atmosphere in almost all every workplace all across the US. Many people are loosing their jobs for the first time in their life, older workers are being pushed out and companies are saving money by replacing them with younger workers. I monitor the news for announcements of layoffs, and everyday there is a major US company announcing either layoffs or the intention to cut its workforce by 10%, 20% by the end of year or the end of the first quarter of 2009. It just never stops. This atmosphere makes many people feel powerless in the face of termination, especially if on top of the economy issue you're dealing with a bad boss or a hostile boss who you feel like is trying to force you out of work.

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The message of these 10 tips is that you are not powerless when you are facing job termination. I've broken the 10 tips into three sections. Tips 1-3, you can fight back by utilizing protected classes and turning the table on your supervisor. Tips 4-7, you can slow the process down by knowing all your due process rights and utilizing those rights. Then Tips 8-10, even if you do decide to leave, don't just walk away, you have the power to get something out of the company and that can ease your transition to your next and hopefully better job.

Tip 1 - Display a positive attitude. You'd be surprised at how many employees do not want to hear this piece of advice. But the truth is it's much harder to terminate a positive person who at least outwardly displays loyalty and affection for the company. A bad attitude is a frequent reason that managers give for terminating employees. But that's such an easy reason to take away from your manager just by displaying a positive attitude, especially when your manager's boss is around. I know this one may be hard for you, but is it worth it? It's an easy and simple tool you can use to slow the termination process down or turn the tables on your manager, and it costs you nothing.

Tip 2a - Get a copy of your personnel file right away. Now this is assuming that you are in a state that allows you to get copies of your personnel file, but that's most states. You'd be surprised at how nervous a manager or an HR representative becomes when they learn that an employee is asking for a copy of their personnel file. HR and the manager begin to think, "Oh no! Do they have an attorney? Is the attorney going to get a copy of the personnel file and evaluate it? Are they going to learn that the person, the employee, has 10 years of all good appraisals and nothing bad in there?" It really makes managers nervous, it makes them stop and think about what they're doing and how it's going to look to the outside world. So, don't hesitate to get a copy of your personnel file. In some states, an employer can charge you for the copies, but the cost is nominal compared to the positive effect it will have on your employment situation. It's another easy way to fight back.

Maybe this should be Tip 3, but it's actually going to be included in Tip 2, like Tip 2a and this would be Tip 2b.

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Tip 2b - Take a look at your personnel file and evaluate what's in it. If it doesn't contain bad appraisals, you have a much better chance of fighting back and keeping your job. It's going to look like that you have been a good employee for years and years. You've never been warned, you've never been told that you have to improve these three things by X date or you will be terminated. So, take a look and see what a jury would see if they leafed through your personnel file. Then even if there are bad documents in your personnel file, you can still fight back. It just means that there's a bit more work to do, and we'll cover that in the next tips.

Tip 3 - Fight back, push back. Now what other reasons besides performance can be connected to the decision to let you go or to your manager's desire to let you go? What reasons besides performance would an outside party see as a reason to let you go? Can you connect the desire to terminate you to your age or can you connect it to any disability that you may have? By disability, I don't mean you're in a wheelchair or you lost a limb in Iraq. A disability under the law simply means an impairment in a major life activity. So if you have difficulty walking, if you have difficulty reading, if you have difficulty standing for long periods of time, and that somehow interferes with your ability to do your work. Has your supervisor lost patience with that and is trying to shove you out?

Just recently on the forums, someone posted about how a supervisor was pushing out two 50 plus year old female employees. To one of them he said, "There's a lot of younger people out there who can learn a lot faster than you," and that is just plain evidence of age discrimination obviously. Then also, what if her ability to learn is impaired by some medical issue, then he should give her more time as an accommodation. So, a few other issues that you may be able to connect to your termination; your gender, are you the only male of the only female in our area or one of the few and is your supervisor pushing you out?

Just last night I spoke with someone who worked at a government office and was the only male in his department, and this was in an eastern state. A few weeks ago I

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spoke to someone who's the only male on a government office in California. Both of them felt like they were being harassed by the women there and pushed out by the woman supervisor. It's kind of this reverse gender harassment where the majority wants to be - I don't know - pure or not have a man listening in on their conversation and they try to shove them out. It does happen. Don't be shy about connecting that to your supervisor's apparent desire to geminate you, and make a ruckus about it.

This will be the final alternative reason that we cover, that your supervisor may want to terminate you. Did you make some complaint recently to management about your supervisor and are they retaliating against you for that? If your company has a strong policy about the handling of money or the use of the phones for personal calls during work time, and you reported your supervisor for that, now your supervisor is just livid and out to get you. You can fashion that as your supervisor retaliating against you for whistle blowing. Maybe you haven't complained about our supervisor, but in the department your supervisor has a favorite and lets them take lunches that are way too long. Maybe your supervisor overlooks harassment that's going on near you in your department and you speak up and say, "Supervisor, you should put a stop to this gender harassment or this racial harassment that's going on in our department," and they don't do it. Well, you've raised your hand and blown the whistle on that issue. Take it to the next level. If your supervisor gets mad that you didn't give them more time to address it or make some excuse like that, then again you fashioned yourself into a whistle blower. If you have some indication of termination coming our way, don't be shy about looking around and seeing if there's one of these issues going on, you can blow the whistle on it and get yourself into a protected class. This is something I cover in great depth in the book. So if you think that that might be useful for you, the book would be a great thing for you to look at more closely.

Now we're into Part 2 of our 10 tips, slowing the termination process down which is tips 4-7.

Tip 4 - What does your organization's employee handbook or employee manual state about employee disciplines or terminations? In other words, if you open up your

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employee handbook, does it talk about all terminations can be at will; that you can be terminated at anytime, for any reason, just so long as it's not an illegal reason? Perhaps your employee handbook says that everyone will be terminated for cause or just cause? Do you have something like that in a union agreement that says everyone must be terminated for cause or for a reason or for just cause? Is there any promise in your employee handbook that everyone will receive progressive discipline? If your handbook goes on and on about progressive discipline but doesn't say that you can be terminated at any time for cause, then you have a very good argument that you're guaranteed progressive discipline. You should point that out to our supervisor, to your HR rep or even to the local attorney.

Some employee handbooks and government employee sometimes have this in a city charter or a county employee manual where the employee can appeal a termination decision or a discipline decision to the HR department or to a city manager, to a county commissioner or to a higher body at the workplace. This isn't just for public employees, private employers sometimes have this, and they're wanting to stem litigation. So, if you might litigate because you feel your termination would be unjust, use these procedures. Slow your manager down. Don't be shy about appealing to HR or some other executive at your workplace. Get out that employee manual or your personnel policies and go through them, read what they say about discipline. Chances are, if you read through it one night, the next morning you will be the most knowledgeable person about that manual at your entire workplace. Those things get written, then hardly anyone ever looks at them. So, knowledge is power in these kinds of situations.

Now if you haven't been ever given a copy, make an issue out of that, go to HR or even your own manager and say, "I want a copy of the personnel manual." If they don't have one or don't have an employee handbook, can't find it, say, "I have a right to know what's in there and I know what my rights are." That will slow them down because they become worried about you pushing back and asserting your rights in making them look bad. Part of the reason that so many bosses are so hostile and so

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angry is they want to get you under our thumb and scare you into silence. Don't be scared into silence, learn what your rights are and push back.

Tip 5 - Ask for clear expectations. If things aren't going well, chances are you've tried hard, and no matter what you do it seems like your boss is unhappy with you. So, here's the strategy. Send the letter to your manager or your supervisor or your manager and the HR representative, have a go at something like this; you love your company and your job, you're committed to doing a great job for the company, but you need clear expectations in order to do a great job. All you need is clear expectations. Request additional training, and don't say outright that you believe that part of the reason you've struggled is because of the lack of training. Now you don't say this explicitly, outright. But by writing this letter, you are implying that the real reason that there are issues between you and your boss regarding your performance is that your boss doesn't give clear expectations, and your boss has failed to train you. You don't have to say that blatantly, you can write this letter and have what looks like a very positive attitude, but the subtle between-the-lines message is "I'm not getting clear expectations from my boss. I'm not being trained by my boss." That message if for the HR rep or for your boss' boss that you copy in on this letter.

Tip 6 - What notice must be given? In other words, does your boss, does your employer have to tell you "we are considering terminating you" before they actually do that? If you're a union employee, chances are your union contract at least gives you due process. What due process mean is 1) written notice that you've done something wrong and 2) an opportunity to explain your side of the story. I highly recommend that you get your union representative involved. But I also highly recommend that you do not expect your union rep to take care of everything because they won't. No one will be a better advocate for you than you. The other group of employees who gets due process are government employees. That's everyone from postal worker to a nurse working at a public hospital, to people working at road grooves, fixing potholes. All those people get due process, and that means a written notice that you've done something wrong that could lead to termination and an opportunity to tell your side of the story.

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I've been involved in cases where the termination or the discipline was undone, not because it wasn't deserved but because the employee didn't receive their due process. That's what a strong right that is. Again, look over the employee handbook or the personnel manual and see what guarantees of a disciplinary process are in there. Some are even stronger than just opportunity to be heard and written notice, but they've got a 7-step appeal laid out in them. Find out if our company or your organization has that.

Tip 7 - In slowing the termination process down is to request an alternative to termination. Now you got to remember here that goal number one is to keep you job goal number two is to prove that you were right and your boss was wrong. But don't lose sight of goal number one, keeping your job, keeping your income, staying employed. One of the ways to do this is to say, "Hey, I realized that there are issues here, how about if instead we solve this situation by extending my probation," if you're a probationary employee or "putting me on probation with very clear goals and training" or even doing a suspension with additional training. In all these cases, you're asking for a clear set of goals, an additional training and coaching meetings. By doing that, you're putting part of the onus on your supervisor, that they need to give you more feedback and they need to be a better supervisor in order for you to succeed. But you don't say that blatantly. Again, you let that be a subtext.

Another things that happened when an employer wants to move someone out or if you're facing termination is a demotion. Now you could suggest this by saying, "I think I've got a lot to offer to the company but I would be better off with a fresh start under a different supervisor or in a different area." There are extraneous issues in your life that have been getting in the way and you acknowledge that, so, you'll take this less demanding position and then work your way back up once your personal issues are resolved. I don't know what those may be, but it's another way to show the company that you're committed to staying there. Try to negotiate a demotion in title and accept that, but working out the details so it's actually a lateral change for you. If you get out from under the direct supervision of your bad boss, it can actually make

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your life a whole lot better. So, be sure to explore that possibility. What other lateral moves, even if they're called a demotion, are there around you that you could go to and avoid termination that way?

Moving into Part 3 of our 10 tips, if you decide to end it. Now all my materials is based on helping you keep your job. But I realized that there are times when you just decide the best thing for you is to separate from this position, from this company, get away from this boss and your job. I can help you with that, too.

Tip 8 - Don't let them know your decision. Let's say we're talking to the company about the procedures for termination and if there is a possibility of a lateral move or a demotion or extra training, and during that process you decide, "I'm done. I want to go." Well, don't let them know that right away, keep negotiating even though in your mind you're ready to leave. What you want to do is keep negotiating about staying there, but add kind of one option of the different options that you're negotiating over. Simply say something like, "Rather than continuing to argue and negotiate about all these stuff, would the company be open to a severance package?" Severance package implies that you will agree to leave and that the employer will give you something to reward you basically for your decision to leave. So, here are the issues that come up in negotiating a severance package.

Tip 9 - Negotiating a severance package. One thing you can ask for is extended healthcare. Most times you leave an employer and your healthcare end immediately, unless you make the COBRA payment every month which can amount to hundreds of dollars. So you can ask the employer to extend your healthcare coverage. Someone on the Undercover Lawyer Forum got an extra year of healthcare coverage. Now if you're an older employee, that can be just a huge value to you. Another thing that you can ask for is extended salary. There's no problem negotiating 3 months pay, 12 months pay, usually a company will want to keep it under a year but you can get at least 30 days if not 90 days pay, and that can be enough to bridge you over to your next job. Usually, it's the salary and the extended healthcare that are the sticking point to toughest things to negotiate when you're negotiating a severance package.

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But there are some extras that you should always ask for because companies will almost always give them. They don't cost the company as much money but they're significant benefits to you. First is a letter of reference. Now, let's face it, if you're leaving this company under not the greatest circumstances, you really don't want future employers calling and asking them all about your work history and the details of your separation from the company. So, you ask for a letter of reference which just emphasizes the positives and leaves out the negatives, and then you can hand it to future employers. Then also along with that, you negotiate that the company you're leaving will only provide people who call for a reference with your date of hire, date of separation, beginning wage, ending wage and your job title, nothing more. Don't think that that reflects bad on you because most companies of any size limit themselves in giving references to those things. So there's that plus, a positive letter, then it would look like your old company is going out of its way to help you make a move positively, help you find new work. So, letter of reference is something else you want to ask for and ensuring that anyone who calls for a reference is just given the dates of your employment and your job title.

Another thing to ask for is that your employer will not contest your claim for unemployment benefits. Now employers will frequently agree to this because it doesn't cause them cash out of their pocket. Most unemployment departments and states throughout the US are funded by a payroll tax. So, if more people claim unemployment, an employer's payroll tax may go up, but it's not as painful as writing you a big check. What happens if your employer agrees not to oppose your claim for unemployment is you go down to the unemployment office, you say that you were laid off. The unemployment office sends a notice to your employer and says, "Please tell us your side of the story," the employer agrees not to say anything, just sit there silently. The unemployment department only has your side of the story. So, if you say you're right, you'll get benefits if your employer does not oppose unemployment or contest it. So, that's another thing that you can ask for, and that provides you with a guarantee of benefits for 12 or up to 24 weeks now and a certain percentage of your

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salary. So, you be sure to ask for extended healthcare, extended salary, letter of reference and no contesting unemployment by your company.

Then is exchange, here is what you have to give up. You resign and you sign a release that you won't sue the company. Now, if you're getting everything you need by way of a severance package, you're not going to need to sue the company and you don't have to deal with that to your headache. You get all these benefits now without having to go through two years of trial, depositions, attorney fees and on and on. It's much nicer just to get all the benefits immediately, given that something absolutely hideous has not happened to you there.

Tip 10 - Don't let your guard down. Stay vigilant until you've completely left the company. Pay attention to what your supervisors are saying about you during the process. Are they saying anything during the negotiation process or the confrontations with you about your age or encouraging you to retire instead of taking a different position at the company? Are they implying that your health is causing you to miss too much work? Don't be afraid to back out of a negotiated severance package if you begin to hear comments like these and you feel like you finally learned the real reason that they're letting you go; your age, your health. Encouraging you to retire can be a substitute for age, many people start to relax and let their guard down when they sense that difficult negotiating period is coming to an end. So that's why I say don't be one of those people who lets their guard down. Stay vigilant. Let your boss, the HR rep and the company attorney let their guard down and see what comes out. When I say don't be afraid to back out, I'm assuming that you haven't signed the severance agreement already.

But in the case of age, even if you've signed it, Federal statutes allow you to back out within a certain amount of days, and that should be in your severance agreement. If it's not, then you definitely can back out. That's called the Older Worker Protection Act, and it provides a cooling off period. Kind of like in California, if you buy a car you have 24 hours to change your mind if you buy it from a dealer. Same sort of thing here where if an older work signs a severance agreement, they have 21 days to change

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their mind and decide to back out of the agreement. So, if you begin to hear comments at the close about the real reasons they started to determinate you and you think that you can do a lot better in court, you can have that right to back out.

Those are out 10 tips. Now, in conclusion, you're not powerless if you're facing termination, you can fight back by utilizing protected classes and turning the tables on your supervisor. You can slow the process down by knowing all of your due process and using them. Then even if you do decide to leave, don't just walk away, you have the power to get something out of your company and ease your transition to your next and hopefully better job.

For our quick tip, I want to bring you something from the Undercover Lawyer Forum and it dovetails with something I've been saying all through the 10 tips which was don't be shy about asserting your rights and don't let your supervisor scream you into silence or scare you into silence. One of the members on the forum is Lawdog, who I mentioned earlier, and he was deciding what step to take next. After to talking to people on the forum, he made the move and it felt good for him to just finally make a move instead of deciding what to do and worrying about what to do. He wrote on the forum, "Right now, at least for me, I'm treating it like a chess game. My opponents are blasting away, treating it like skeet, this could be good for me." Then I responded on the forum, "There could be a certain thrill to starting to fight back. After taking their crap on the head for so long, it feels liberating and freeing to push back. It makes you feel alive again, doesn't it?" Before Lawdog could even respond, another member, Talkingstick chimed in and said, "To Kurt's comment, it makes you feel alive again, doesn't it?" Yes, hail yes! Then Lawdog himself responded briefly, "It does feel good!!!! Do you think I might be getting under their skin just a bit?" Another member on the forum posted about how they felt if they could do anything different, they would start taking action sooner, they wouldn't wait so long to make a move to start to learn their rights and push back. That's the quick tip for today, don't waffle forever deciding what to do. Start learning your rights and take action. You'll be amazed at how much better you feel just by engaging them and starting to push back.

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That's the end of the show for today, if you want to learn more about pushing back or you want some of the moral support that will help you to do that, visit the Undercover Forums or take a look at a front page of the UndercoverLawyer.com website where there's always a new video and post every week with new articles that are just as in-depth as this podcast about how to go about learning your rights and asserting them at work.

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