

“WATCH ME GET FIRED” VIDEOS ARE GOING VIRAL: 7 TIPS FOR EMPLOYERS TO NAVIGATE NEW TREND

Insights
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A scroll through social media will quickly reveal that we're in a new workplace era where the stigma attached to being fired or laid off is waning and many people are seeking solidarity online. In recent viral posts on TikTok, Instagram, and Twitter, workers have recorded their termination meetings with managers and HR representatives, read their layoff notices to thousands of followers, and otherwise shared information about the bad news in a very public setting. Even on platforms like LinkedIn, job seekers are being more open about layoffs and reductions in force (RIFs) – which means that now more than ever, you need to ensure your managers and HR leaders are prepared to handle difficult conversations with professionalism and a solid plan. Can employees record their layoff meetings? Should you respond to a viral post? How do you create stability in difficult times? Read on for our top seven tips to help you tackle these new issues in the modern workplace.

1. Recognize the New Reality

While it has always been a best practice to discuss layoffs and other difficult employment decisions in person, it may be necessary to inform some employees of their layoff via video conference given how many workers are fully remote and living in distant locations.

Even though employees can secretly record these conversations whether they are held in person or online, the ease of setting up an offscreen camera and microphone to capture a Zoom call means you should be prepared to confront the issue.

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Indeed, you should give some thought to updating your social media policies for current and former employees as they flock to TikTok and other platforms to discuss their bosses and general work experiences. [You can click here for our tips on updating your policies to stay on top of the latest developments.](#)

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2. Don't Forget Federal Labor Law May Apply

In light of recent "get laid off with me" and "day in the life" trends, you may be tempted to simply ban all recordings in the workplace. But you should recognize that employees have the legal right to discuss their wages, hours, and terms and conditions of employment – including layoff decisions.

Specifically, private sector employees have the right to engage in protected concerted activity under the National Labor Relations Act (NLRA) for purposes of collective bargaining or other mutual aid or protection. This is true in both union and nonunion settings.

Under Section 7 of the NLRA, concerted activity includes statements made for the purpose of initiating, inducing, or preparing employees for group action, such as discussions about higher wages, changes to work schedules, and job security. So, you'll want to consult your attorney to ensure your social media policies don't unintentionally violate federal labor law.

3. Develop Robust Policies Protecting Confidential Information

While taking into account NLRA protections ([including the new standard governing workplace misconduct policies](#)), your employee handbook should still address the potential dangers of on-the-job social media posts, including legal and business concerns. Of the many legal concerns, the most glaring are privacy protections and confidentiality. Of course, your employees may not be concerned about the potential consequences of revealing such information in their "get laid off with me" video after they've already lost their job – and that's why you should take steps to protect trade secrets and confidential information from the start of employment. The best way to do so? Carefully tailored nondisclosure and confidentiality agreements.

What if confidential or trade secret information is discussed in the layoff meeting? What if a client account is mentioned?

What if proprietary information is revealed on a desk or in the background? You may want to take legal action if a disgruntled former employee reveals this information on social media.

It's also worth noting that some states require all parties to consent to a conversation being recorded, which may have legal implications for a laid-off employee who records and shares the separation meeting. But while you may want to pursue legal action from this perspective, it's far better to focus on some best practices (described in more detail below) that may help you avoid the public exposure altogether.

4. Be Prepared for the Conversation

Should you handle layoffs differently now in an era where workers are sharing details publicly? The reality is that careful planning goes a long way now just as it did in the past – but it may be more critical than ever when considering the reputational risks associated with viral videos being posted solely from the employee's perspective.

There are a few realities to face: these conversations are uncomfortable for everyone involved, so managers may naturally want to avoid the prep work. Moreover, employers facing a RIF are often understaffed, short on time, and challenged to get everything done – which means they may not make the time needed to develop the communications for these challenging meetings.

But it's essential for managers to be trained on what to say to employees regarding the layoffs, and they should be provided with talking points prepared by the HR department or legal counsel.

Fairness is essential. Before conversations take place, the leadership team should develop a defensible process for making selections and train managers on how to use it. It is often a mistake to leave this to the discretion of managers, as this can lead to decisions that appear subjective, unfair, or discriminatory.

5. Carefully Decide Who Will Conduct the Meeting

Who will be present in the layoff meeting? Will the employee's manager lead the conversation? Will a member of the HR team be present? While the answers might depend

on the nature of the layoff and your organizational structure, it's a good idea to have an experienced member of the HR or management team present to help steer the conversation. It's important to carefully craft such messages, to deliver them with the appropriate level of empathy and understanding, and to provide the proper support and resources to those who are being laid off.

6. Think Before Publicly Responding to Viral Posts

Even if you've followed all the best practices, you may inevitably find that your organization is the subject of a viral workplace post on social media. You may want to defend your practices, but you should avoid any knee-jerk reactions and think carefully about if and how to respond. Will your response help or hurt your reputation? Will you open yourself up to legal risks? Consider reaching out to experienced employment counsel and a PR expert before issuing a statement.

Meanwhile, effective communications from the start can go a long way to help you avoid sticky situations like this in the first place. Therefore, your leadership team should take the time to prepare communications to affected employees, communications to non-impacted employees, and talking points for managers. The leadership team should also involve the HR department and legal counsel in the planning process, along with the company's communications or public relations teams.

7. Focus on Employee Morale

Companies need to be prepared with messaging to employees who are retained and provide them with an optimistic outlook for the future of the company. There will undoubtedly be employees who fear future reductions, which may be inevitable. So, it is imperative that the retained employees see that the company has fairly treated those who were laid off, in terms of advance notice, communications, severance, etc. If they think the company handled the layoffs poorly, they will expect the same if they are ever laid off. This may lead to unwanted turnover.

Managers should be prepared to answer questions about the company's future plans and how they may impact employees. Companies don't want managers saying the wrong thing or overpromising if future plans are uncertain. And if there are concerns regarding retention, the company

should consider whether retention agreements or other benefits can be provided to key employees to help mitigate the risk of further departures.

Conclusion

If you're contemplating a RIF or other layoff, your Fisher Phillips attorney is ready to help. You may also reach out to authors of this Insight or any attorney on our [Reductions in Force \(RIFs\) Team](#). We will continue to monitor the latest developments related to this area and provide updates as warranted, so you should ensure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information directly to your inbox.