Mitigating Damages—How Far Must A Wrongfully Fired Employee Go To Find A New Job?



When you wrongfully dismiss an employee you're on the hook for termination notice. That may include not just employment standards minimum notice based on years of employment but also what's called common-law notice compensating employees for the losses they suffer as a result of getting the axe.

Question: What's to stop an employee who's been wrongfully dismissed from kicking back, eating bon-bons and waiting for the losses to pile up, knowing that he can eventually recover the money from his employer?

Answer: To prevent these abuses, the law requires wrongfully terminated employees to "mitigate" their damages by seeking comparable new employment. If employers can show that employees failed to mitigate, the court will award them less termination notice.

While the rule is pretty straightforward, applying it to actual cases is anything but. Over decades of litigation, courts have drawn certain lines about what steps employees must take to mitigate. The basic rule: Employees must carry out an active and reasonable job search to find comparable jobs at comparable wages and terms within their industry and market, which may include accepting employment from the company that fired them during the notice period. Check out the analysis on the HRI site for a breakdown of the 7 basic rules of mitigation.