

Communicating with Employees¹ Employment Roundtable

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Effective communication is an essential component of a well-run organization. Most companies devote substantial resources to carefully crafting external communications through marketing, sales, advertising, and branding because these efforts directly affect the company's bottom line. How well an organization communicates its message to distributors, retailers, resellers, and/or customers, through content, delivery, and the company's response to questions and concerns, all affect the company's success at attracting and retaining customers, and promoting brand loyalty and customer satisfaction.

Internal communications can have as great an impact on the company's bottom line as external communications. Communications with applicants and employees impact recruiting, as well as employee engagement, satisfaction, productivity, retention, and loyalty. Effective internal communications also can serve as an effective risk management tool. Yet, despite these wide-ranging effects, few organizations afford the same degree of attention to communicating with their employees as they do with third parties.

More and more companies are operating in multiple states and/or countries with decentralized management, making it difficult to keep employees feeling informed and included. In addition, a typical workforce may include employees who differ by age, race, sex, sexual orientation, ethnic background, religion, marital status, dependents, language, physical and mental capabilities, and educational and social-economic background. All of these employees may communicate and interpret communications differently. Organizations must be sensitive to these differences when formulating a communication strategy. Therefore, even with significant advances in technology that allow information to be shared almost instantaneously, communicating with employees has never been more challenging.

The purpose of this memorandum is to identify key opportunities for effective communications and provide some ideas for improving communications with employees.

¹ This memorandum contains a summary of information obtained from laws, regulations, court cases, administrative rulings, and legal publications, and should not be viewed or relied upon as legal advice. Ater Wynne LLP urges readers of this memorandum to consult legal counsel regarding specific legal issues and factual circumstances.

I. Why Effective Communication Is Critical.

The nature of employment has changed dramatically since the 1950s. Hard work used to mean job security and advancement. It was not unusual for an individual to spend an entire career working for one employer. However, dramatic changes since the 1970s in technology, the stock market, transportation, and the global economy, have all changed the employment landscape. Downsizing, outsourcing, off-shoring, and part-time and contract workers are now the norm. Consequently, it is not surprising that workers today do not equate hard work with job security. Employees are more willing than ever to jump ship for other opportunities.² Employers need to make the employment relationship mutually rewarding so that employees are engaged and aligned with the company's goals.

There is a disconnect between employees and management, leading to increasingly disengaged workers who cost businesses billions of dollars annually due to lost productivity, absenteeism, turnover, and litigation. The disconnect is not just between those at the top and those at the bottom. Supervisors and middle managers are also feeling disaffected to the point that they are identifying with workers and their complaints, rather than with management and company goals.

Employees who are kept "in the loop" are more likely to feel connected to their workplace. Those with a clear understanding of their employer's expectations, goals, and concerns are more likely to respond to constructive criticism and be successful at work. Providing venues and opportunities for meaningful, two-way communication reduces the desire to engage in unproductive gossip, vent in chat rooms or blogs, or even sue. Such opportunities may also provide the organization with information about potential problems and improvements within the company.

While advances in technology have made it possible to deliver messages to the masses with a few keystrokes, electronic and other one-way communications are not always the most effective way to stay in touch with employees.

Communication does not simply mean providing communication. Effective communication requires the establishment of trust, front-line contact, and a personal responsibility to ensure the message has been presented and received in a manner consistent with the topic's urgency and importance. Effective communication is the

² Surveys conducted over the last few years have reported dramatic increases in job dissatisfaction and a greater willingness to change jobs. For example, a 2003 survey of 2,400 workers by Careerbuilder.com reported that one in four employees were dissatisfied with their jobs, and six out of ten employees planned to leave their jobs within the next two years for other opportunities. See, Jeff Claybaugh, *Survey: Job satisfaction wanes*, Washington Business Journal, November 17, 2003, <http://bizjournals.com/washington/stories/2003/11/17/daily5.html?f=et87>. A February 2005 report on a study of 5,000 households by TNS, a leading market information company, said that only fifty percent of all Americans are satisfied with their jobs, down from nearly sixty percent in 1995. The decline in job satisfaction was widespread among workers of all ages and across all income brackets. TNS also found that:

- 40% of workers feel disconnected from their employers.
- Two out of every three workers do not identify with or feel motivated to drive their employer's business goals and objectives.
- 25% of employees are just "showing up to collect a paycheck."

U.S. Job Satisfaction Keeps Falling, The Conference Board Reports Today; http://www.conference-board.org/utilities/pressDetail.cfm?press_ID=2582.

dissemination of business needs and expectations in a controlled situation and within a working partnership. * * * Effective communication requires a strategy that clarifies expectations and recognize[s] employee's [sic] feelings, perceptions, and wills.³

Effective internal communications should:

- Utilize a variety delivery methods (face-to-face, print, electronic), each one appropriate to the nature and importance of the information being conveyed. For example, e-mail may be an appropriate method for communicating routine information such a work assignments, schedules, and the like. However, major business changes, such as mergers and acquisitions, reorganizations, reassignments, downsizing, and other changes in policies, procedures, or benefits, are apt to cause anxiety stress that can lead to dissatisfaction and resentment among employees. Employers need to provide an adequate explanation of such changes, why they are needed, how they will affect employees, and a forum that allows employees to ask questions and raise concerns.⁴
- Deliver consistent messages to all audiences, internally and externally.
- Engage senior leaders, managers, and supervisors as key communicators. Important messages should come from the top, but be reinforced at multiple levels. Employees should be able to go to their supervisors for input and answers.⁵
- Engage employees. Employees need to understand the organization's goals, how the employees connect to the organization, and how their success and the organization's success intertwine.
- Be clear, concise, and timely.
- Encourage two-way dialogue and insure that individuals have opportunities to raise concerns and have their questions addressed.⁶

Employers are using a variety of communication tools to gain and understanding of employees' needs, and help employees gain a better understanding of their roles in the organization. For example, organizational research is often used to determine how an issue is handled across an industry (*e.g.*, compensation and benefits). Employee surveys, particularly anonymous surveys, enable employers to determine how employees feel about a particular issue they might otherwise be unwilling to discuss. Some organizations are using weblogs ("blogs") to promote regular, up-to-date, informal informational exchanges with an individual (like the CEO) or within a work group.

³ Delina Aberle, Contract Management, 2/1/04 Contract Mgmt. 8, 2004 WLNR 5751112.

⁴ Of course, the opportunity to ask questions and voice concerns will not facilitate effective communication unless the employer responds in a timely and meaningful way.

⁵ "The mistake that dooms most campaigns seeking to win support for new business goals is the failure to let supervisors explain the change to front-line employees." *See* Contract Management, footnote 3, *supra*.

⁶ *See, e.g.*, Claudine Capel and Maggie Thompson, "Effective Communications Link Employees to Business, Customers, 1/17/05 Can. HR Rep. 12, 2005 WLNR 979315.

“Town hall” type meetings and opportunities for breakfast or lunch with the boss provide a forum for two-way dialogs on issues of concern to individual employees. Communication audits help organizations determine which, if any, of its communications methods are effective.

At the same time employers are encouraging and facilitating communication with their employees, they may also have the need or desire to limit or control employee communications.⁷ Investor chat rooms, personal blogs, e-mail, and too much free time may provide an unintended and undesired forum for employees to vent dissatisfaction and frustration with the company.

II. Think About Your Audience.

An organization’s method of communication can be just as important as the content. Communications should be designed to reach and resonate with the intended audience.

Applicants and employees obtain information from a myriad of official and unofficial sources, which may include a company website, as a consumer of company products or services, from managers, colleagues, former employees, suppliers, competitors, company newsletters and other publications (*e.g.*, handbooks, intranet, blogs), brochures, press releases, media coverage, e-mail, and the rumor mill. These sources are not necessarily tailored to the recipient’s needs and provide no opportunity for dialogue.

III. Opportunities for Effective Communication.

- ***Recruiting***

An informative, up-to-date, and creative website may be a primary tool for attracting candidates for employment (as well as customers) to a high tech business. However, a website may not be at all helpful for attracting employment candidates to a “brick and mortar” business that is not heavily dependent on technology (*e.g.*, traditional manufacturing, restaurants, etc.). Such businesses would probably be more successful recruiting through print advertising in their local newspapers and trade publications, job fairs, union halls, community colleges, and employment agencies.

Once candidates for employment are identified, it is not enough to confirm that they have the appropriate qualifications to satisfy the needs of the organization. It is equally important to make sure candidates will find the organization a good fit for *their* needs. Candidates need to understand the company’s core values and culture. The organization should communicate to applicants about who they are and how they operate, both directly and in promotional and recruiting materials like brochures, web sites, and job postings.

- ***Communicating Policies and Procedures***

Employers often devote substantial resources to developing corporate policies on a wide variety of subjects, but fall short when it comes to communicating these policies to employees. Policies that

⁷ It is important to be aware of the legal limitations on controlling employee speech before imposing restrictions or taking disciplinary action against employees for their communications. For example, Section 7 of the National Labor Relations Act, 29 USC § 157, protects all employees (union and non-union) who “engage in [] concerted activities for the purpose of collective bargaining or other mutual aid or protection.” Employee communications about wages, benefits, and working conditions may be protected under Section 7.

are not communicated to employees are generally ineffective.⁸ In addition, state and federal laws require employers to notify employees of certain employment-related rights and obligations in writing. Consequently, employers need to insure that employees are adequately informed of their policies (and, if necessary, be able to prove it).

The method chosen for communicating a new or revised policy should be appropriate to the nature and importance of the change.⁹ The following are some methods for communicating company policies:

- **Posting:** Under state and federal law, employers are required to post notices of certain rights to which employees are entitled by law (*e.g.*, minimum wage, workers' compensation, family medical leave). Required posters should be placed in a central location accessible to all employees (including those with disabilities). Employers may wish to post their employment policies at the same location.¹⁰
- **Intranet Posting:** Many employers post their policies on a company Intranet. This method has the advantage of enabling policy revisions to be made and posted quickly.¹¹
- **E-Mail Distribution:** There is no guarantee that employees will read their e-mail, but e-mail distribution of policies and policy revisions has the advantage of allowing the sender to print a hard copy of the e-mail contents and distribution list.
- **Hard Copy Distribution:** Company policies can be distributed in hard copy through interoffice mail, with paychecks, or mailed to an employee's home.¹² A good time to distribute copies of company policies is at new hire orientation, at which time employees may be given the time to read the policies, ask questions about them, and acknowledge receipt of the policies in writing.

⁸ See *Sabin v. Willamette v. Western Corporation*, 276 Or 1083, 1089, 557 P2d 1344 (1976) (plaintiff was not bound by bulletin policy abrogating payout of vacation time upon termination, since it was not provided to him); *Bland v. Blount*, 2001 US Dist LEXIS 7823 (D Or 2001) (employee handbook not distributed to employees cannot form the basis of a contractual agreement between the employee and the employer).

⁹ Another important consideration is the need to document receipt of the policy by employees.

¹⁰ The drawback to posting is that there is no guarantee that employees will read the postings, and no documentary evidence that they received notice of them.

¹¹ However, like hard copy posting, this method provides no guarantee that employees will read the policies, and no documentary evidence that they received notice of them.

¹² Documentation of the mailing may be kept in each employee's personnel file. Whenever possible, it is a good idea to have employees sign an acknowledgment that they received the policies.

- Meetings: Company meetings provide a good opportunity to rollout and train employees on company policies, explain why they are needed, and answer any questions about them.¹³
- Handbooks: Handbooks are probably the most common method of communicating company policies. What is included in a handbook and how the provisions are worded can have a profound effect on the way employees feel about the company. What is communicated to employees in the handbook can set the tone for the entire workplace. To the extent possible, policies should be developed and articulated in ways that are consistent with the employer's culture. Policies should be clear, concise, and in plain English. It is often helpful to explain why the policy is important and provide examples of what the policy requires. The optimal time to distribute handbooks is at the time of hire or orientation, or when policies are adopted or revised.¹⁴
- Training: Some policies, such as anti-discrimination and harassment policies, are so important that it is wise to not only distribute them, but to provide employees with training.¹⁵
- ***Avoiding Communications that Undermine the At-Will Policy***

Most private employers in Oregon wish to maintain at-will employment relationships.¹⁶ However, oral or written promises can undermine or nullify the at-will nature of the employment relationship.¹⁷ It is, therefore, important for at-will employers to avoid communications that undermine their right to terminate employees at will.

The first step toward preserving the at-will relationship is to tell employees that they are employed at-will and limit the circumstances, if any, under which that relationship may be modified. Oregon

¹³ Employees who attend the meeting should be asked to sign in and a written agenda for the meeting (listing the rollout of the new policy) should be maintained. It is important to make sure that employees who miss the meeting nevertheless receive a copy of the policy.

¹⁴ Each employee should be required to sign an acknowledgment of receipt, which should be retained in the employee's personnel file.

¹⁵ Some laws require periodic training on certain mandatory employment policies. *See, e.g.*, Drug Free Workplace Act, 41 USC § 701 *et seq.* (requires federal contractors and grantees to establish a drug-free awareness program and annual supervisor training); Cal. Gov. Code § 12950.1 (2004) (requires sexual harassment training for supervisors every two years). Employers should retain a copy of any training materials and a list of attendees for all training sessions.

¹⁶ In most states, including Oregon, private employment is at-will unless the parties agree otherwise. *See, e.g., Koepping v. Tri-County Metropolitan Transp., Dist. of Oregon*, 120 F3d 998, 1002 (D Or 1997) (absent a contractual, statutory or constitutional requirement, an employer may discharge an employee at any time and for any reason); *see generally*, Charles J. Muhl, *The employment-at-will doctrine: three major exceptions; Letter to the editor*, 124 Monthly Labor Rev. 3 (January 1, 2001) (includes table of employment-at-will information by state).

¹⁷ *Bennett v. Farmers Ins. Co. of Oregon*, 332 Or 138, 26 P3d 785 (2001) (holding that employer may modify, waive, and/or be estopped from relying upon at-will provision).

courts have consistently held that a disclaimer in an employee handbook or personnel policies manual is sufficient as a matter of law to retain an employee's at-will status.¹⁸

It is equally important that communications not contain language or promises of specific treatment that are inconsistent with at-will employment. For example, employers should avoid the use of the term "permanent" employee, or "cause" or "just cause" in connection with termination decisions. Organizations should try to express compensation in terms of hourly, weekly or monthly as opposed to annual pay.

A progressive discipline policy that promises a lock step procedure will always be followed to address poor performance and misconduct is inconsistent with the notion that the employer can terminate employment at any time. A well-drafted disclaimer of at-will employment may be sufficient to retain an employee's at-will status even when other policies provide that a specific disciplinary procedure will be followed.¹⁹ However, a less-than-perfect disclaimer may open the door to arguments that the meaning of the conflicting policies is ambiguous.²⁰

While progressive discipline may be desirable in some cases, it should not be promised in all cases. A progressive discipline policy should reserve to the employer the discretion to skip steps in the procedure or proceed with termination in the first instance.²¹

An employer's unilateral promise of specific treatment or benefits becomes binding on the employer if an at-will employee continues employment with knowledge of the employer's promise.²² Supervisors and those with hiring authority should be trained and reminded that oral promises may be enforceable.²³

¹⁸ See *Mobley v. Manheim Servs. Corp.*, 133 Or App 89, 889 P2d 1342, 1345 (1995) (company may terminate its employees at any time for any reason); *Gilbert v. Tektronix, Inc.*, 112 Or App 34, 827 P2d 919, 921 (1992) (company reserves discretion to determine whether termination, or any other disciplinary action, is justified).

¹⁹ See *Bland v. Blount*, 2001 US Dist LEXIS 7823 (D Or 2001) (Oregon employers may provide a framework for discipline without disturbing "at-will" nature of employment relationship, particularly where handbook outlines exceptions to the progressive disciplinary model).

²⁰ See *Gilbert, supra*, 827 P2d at 920-921; see also *Lawson v. Umatilla County*, 139 F3d 690, 693 (9th Cir 1998) (handbook disclaimer retained at-will status even where handbook stated "no permanent employee shall be disciplined except for violation of established rules and guidelines"); *Burnett v. Ross Stores*, 857 F Supp 1434, 1440 (D Or 1994) ("The court finds that the [disclaimer] language of the Employee Handbook is unambiguous and does not as a matter of law create a contract between Ross Stores and Burnett."); *Clarke v. Boise Cascade Office Products Corp.*, 1999 US Dist. LEXIS 11905, 14 (D Or 1999) ("an employee cannot make out a claim for breach of an employment contract when the provisions of the employee handbook explicitly preserve the employment at-will relationship").

²¹ Note that consistency in the treatment of similarly-situated employees is desirable to avoid claims of unlawful discrimination.

²² See, e.g., *Sabin v. Willamette-Western Corp.*, 276 Or 1083, 1089, 557 P2d 1344 (1976) (employer's vacation policy made known to employee after he accepted employment was binding on employer); *Rose City Transit v. City of Portland*, 271 Or 588, 592-593, 533 P2d 339 (1975) (pension and disability plan created by employer constituted unilateral offer to at-will employee that was accepted by continued employment).

²³ Employees have alleged the existence of a contract precluding termination except for cause based on a supervisor's representation that the employees would have a job as long as they did good work or there was

- ***Protecting Communications Involving Confidential Information***

Many companies wish to protect confidential matters (such as research, development, trade secret, pricing, marketing, financial, customer, and personnel information) from disclosure to third parties. To protect their confidential information, customer contacts, and trade secrets, employers may have their employees sign agreements in which they promise not to use or disclose the employer's confidential information during or after the termination of employment, assigning the employee's rights to all inventions developed both during and after the termination of employment, and restricting competition and solicitation of the employer's customers and/or employees during and after the termination of employment.²⁴

Beyond the information that companies want to protect to maintain a competitive advantage, public companies are prohibited by state and federal securities laws from tipping or selectively disclosing material nonpublic information (*i.e.*, nonpublic information that could reasonably be expected to affect the price of the company's securities) to outsiders.²⁵

Employees do not always understand the importance of confidentiality, why post-termination restrictions are necessary, and the scope of their confidentiality obligations and employment restrictions during and after employment. An employer who communicates with employees about these issues on a regular basis will increase the likelihood of compliance and court enforcement of agreements in instances of non-compliance.

- ***Communicating Expectations***

Employers should be communicating expectations on a regular basis so that employees know what is expected of them and by whom. Criticism of tasks that are not part of the employee's job description or that are otherwise beyond the expectations communicated to the employee can lead to a perception of unfair treatment and morale problems, which are often what drives employees to file discrimination complaints. Employees are less likely to perceive an employer's conduct as unfair when they are told in advance what is expected of them, what will happen if they deviate from those expectations, and that all employees will be receiving wages, benefits, and disciplinary action based on consistently-applied criteria.²⁶

Expectations can be communicated in job descriptions, value statements, policies addressing performance and behavioral standards, training, assignments, evaluations, work plans, and

work to perform. *See, e.g., Koeppling v. Tri-County Metropolitan Transportation Dist.*, 120 F3d 998 (9th Cir 1997) (employees asserted contract claim based on manager's oral statements that they would not be terminated if they did "good work"); *Seibel v. Liberty Homes, Inc.*, 305 Or 362, 365, 752 P2d 291 (1988) (employee could reasonably interpret manager's statement that light duty job would be available "as long as we have production to run" as a guarantee of continued employment as long as employee was needed until he retired).

²⁴ In Oregon, such agreements are void unless they are signed when the employee starts work or receives a *bona fide* advancement. ORS 653.295.

²⁵ *See generally*, 15 USCA § 78j, 78t-1; 17 CFR 240.10b-5; ORS 59.115-59.137.

²⁶ *See generally*, Deborah A. Schmedemann, Judi McLean Parks, Contract Formation and Employee Handbooks: Legal, Psychological, and Empirical Analyses, 29 Wake Forest L Rev 647 (1997).

disciplinary actions. Goals can and should be communicated and/or reinforced through regular, one-on-one communication from front-line supervisors.

Employees should be praised for good work and advised immediately when they are not meeting expectations, so that they have an opportunity to correct any deficiencies. Employees who are not informed of deficiencies in their performance are the most likely to believe they have been treated unfairly and look for reasons other than their own behavior or performance.²⁷

When communicating a deficiency to an employee, the employer should identify the problem with reference to the job description, assignment, or other written standard violated. It is important to be specific and provide examples or a description of the event. If the problem cannot be addressed with reference to a particular standard (*e.g.*, general negativity, poor attitude, failure to cooperate, etc.), describe what the employee said or did that was unacceptable and why. Unless the employee understands the problem, there is little hope that the employee will be able to correct it.

Many employees who challenge a termination often claim they were never advised of the problem prior to discharge. It is, therefore, advisable to document communications with the employee about performance deficiencies and provide a copy of the documentation to the employee. Employees are less able to refute the fact that they received a warning if the warning was documented, they signed it, and/or it was placed in a personnel file to which they had access.

- ***E-mail***

E-mail is an easy and convenient method for communicating with employees, but can be problematic due to the casual, conversational nature of the e-mail medium. The e-mail medium often seduces employers and employees into using a casual style that does not always come across well when read by others. There is also a misconception that e-mail is transient -- that once it is sent, only the intended recipient will see the contents. Of course, this is not true; e-mail may be forwarded by the recipient to others, printed, copied, accessed without authorization, and stored electronically even after the sender and recipient believe they have "deleted" the message. As a result, the use of e-mail as a method of communicating certain subjects may be inconsistent with the company's privacy and confidentiality policies, and provide potentially damaging evidence in the event of a dispute (remember Microsoft?).

The bottom line is that e-mail messages should be treated with the same care as any other formal method of business communication. Employers must assume that e-mail is a permanent record that may be discoverable in the event of a lawsuit. Consequently, if e-mail is used as a primary or frequent method of communication, it should be carefully reviewed prior to sending, and treated as if it will be seen by a judge or jury.

The following are examples of communications you would never want to see in your company's records, including e-mail:

²⁷ Claims of illegal discrimination come up primarily in connection with discipline and discharge. The most common problems associated with disciplinary action are failing to address the issues immediately, failure to communicate them clearly, and lack of consistency in the administration of corrective action or discipline.

- References to protected status. Protected status includes race, sex, sexual orientation, marital status, age, disability, religion, national origin, or veteran status, employee complaints about discrimination, harassment, or violations of the law, an employee's use of or request for employment-related benefits, such as family medical leave, reasonable accommodation, or worker's compensation.
- Statements suggesting or admitting wrongdoing by the company.
- Inaccurate, false, or misleading information. The publication of false and defamatory information could result in a claim for libel or slander. This could come up in connection with the circulation of inaccurate or misleading information about the reason an employee is no longer with the company or is subject to discipline.
- Medical information. Failing to maintain the confidentiality of medical records violates the Americans with Disabilities Act and the Family and Medical Leave Act (FMLA), which require that medical information be collected and maintained on separate forms and in separate, confidential, medical files, and shared only with individuals who have a need to know.
- Privileged documents and communications. Attorney-client communications are privileged only when they are kept confidential by the client. Forwarding or sharing e-mail from the company's attorneys, particularly if it has no appropriate identifier (like "Attorney-Client Privileged Communication") or it is shared beyond the top level of management, will result in a loss of the attorney-client privilege. This means that the company's discussion with its lawyers (not just the e-mail but all discussions on the same topic) may be discoverable in litigation.
- Subjective evaluations or opinions of employee conduct or performance, personnel actions taken or contemplated (except when you are communicating directly with the employee at issue), information about an employee complaint or the investigation of an employee complaint.
- Other personal, non-work related information about employees. Information that is generally inappropriate to have on hand includes records of after-hours behavior, arrest records, personal finances, family background, club memberships, religious affiliations, union memberships, and political beliefs.

E-mail may also be an inappropriate vehicle for communicating about trade secret or other confidential company information.

- ***Communications About Disciplinary Actions and Terminations***

Disciplinary actions and terminations are extremely stressful events, no matter which side of it you happen to be on. When communicating with employees in these situations, it is helpful to develop an outline of the communications in advance. This helps the process stay focused, objective, and calm. It is also helpful to be as respectful, kind, and as generous as possible. Poorly-handled

disciplinary actions and terminations are more likely to leave employees feeling angry, resentful, and litigious.

While employers in most states are not required to provide reasons for terminating their employees,²⁸ it is generally a good business practice to do so. Employees left to speculate about the reasons for termination will most often look for reasons other than their own performance or conduct.

When providing a reason for termination, it is important to be accurate and truthful. It is not necessary or advisable to go into detail, but employers should provide *all* of the reasons for the decision. Employees are more likely to benefit from the truth, and the employer may avoid an argument that its reason was “pretextual” in the event the termination is later challenged.

Employers should not disclose the fact or details of a disciplinary action or termination to any employees other than those who have a specific need to know. Disclosing such information to employees or others who have no need to know could expose the employer to claims for defamation, invasion of privacy, and tortious interference. If it is necessary to notify others that an employee is gone or will be replaced, it is best to say only that the employee is no longer working for the company and the company wishes them well.²⁹

- ***Mergers, Acquisitions, and Reductions in Force***

Mergers, acquisitions, and reductions in force (RIF) are all events guaranteed to bring about significant changes in any workplace. Change is unsettling for most people. How major changes are made, announced, and implemented have a significant impact on employee morale and the success of the change.

Employees are more likely to resist change when they don't see it coming or have no opportunity to participate in the process. Employees who hear about changes after the fact or through unauthorized sources (such as outsiders) are more likely to be angry, resentful, and uncooperative than those who are engaged in the process early on and given an opportunity to buy into it.

While a merger, acquisition, or layoff is simply an economic event to an employer, it can be a devastating and life altering event to an employee. Even where early notice is not legally required, the earliest possible notification to employees is desirable to allow them time to adjust, assess their alternatives, and get their affairs in order.

Organizations contemplating any major changes should develop a communication strategy and consistently follow it. A spokesperson should be identified to answer questions. A summary of frequently-asked questions and answers can be developed and circulated to managers and/or employees. Managers should be trained to respond to employee questions and concerns.

²⁸ Some state laws require employers to provide a written statement of the reasons for discharge. *See, e.g., Cal. Unemployment Ins. Code, § 1089; 22 Cal. Code Reg. §1089-1.*

²⁹ Employers often feel the need to quell gossip and disruption about an employee's departure by discussing the circumstances that led to the separation. While this may not be illegal, it is usually ill-advised. Employers can avoid the need to provide explanations by developing, communicating, and abiding by a policy of not discussing personnel matters except with the affected employee and those with a specific need to know.

Employees losing their jobs are more likely to feel they have been treated fairly, and employees who are staying will feel more secure, if the organization has regularly communicated with employees about its plans well in advance of a RIF, including the reasons for it, consideration of alternatives to the layoff, how the RIF will be conducted, what compensation, benefits, and outplacement assistance will be provided, and the company's business plans, if any, going forward.

- ***Communications About Internal Investigations and Litigation***

Organizations often find it desirable (or legally required) to conduct internal investigations in connection with employee complaints and reports of illegal activity or other wrongdoing. Companies typically want to control access of third parties to employees and insure that all investigations and their results remain strictly confidential.

Employers should have a policy requiring all employees to cooperate in internal investigations by (1) providing truthful information, (2) maintaining strict confidentiality regarding the fact and details of any complaint or investigation of which they become aware during their employment, and (3) and informing the employer whenever they are contacted by a lawyer on a matter relating to their employer or asked to be a witness by a co-worker or third party in a dispute involving the employer. Employees should be told what methods of communication, if any, are permissible in connection with a particular investigation and with whom.

- ***Exit Interviews***

Exit interviews can be an extremely useful tool for gathering information about the organization. Employees who are leaving the company are more likely to express their true feelings because they have less or nothing to lose. Exit interviews may reveal ways to improve the organization, identify potential problems, and afford employees an opportunity to vent frustrations that can head off litigation. Exit interviews also provide an opportunity to remind employees about their obligations under confidentiality and noncompete agreements.

- ***What Kinds of Communications Are Appropriate for Your Organization?***
- *How does the company inform employees of its policies and procedures?*
- *How does the company communicate its compensation and benefits policies?*
- *Does the company conduct market research, employee surveys, or focus groups? How does the company determine what employees want and need to remain engaged and committed?*
- *How does the company communicate expectations?*
- *Does the company have an open door policy?*
- *Does the company have a mechanism for employees to present ideas? Does the company have an established procedure for providing a timely response to employee suggestions?*

- *How does the company evaluate employee performance?*
- *How are employees notified of deficiencies in performance or conduct?*
- *Does the company afford opportunities for employees to communicate with upper management (e.g., “Breakfast with the Boss,” “town hall” meetings with management)?*
- *Does the company have a mechanism for employees to communicate with others at the company (e.g., Bulletin Board/E-Mail/Blogs/Intranet)? Who can use these resources and for what purposes? Are there any rules applicable to using these resources?*
- *Does the Company have a formal grievance mechanism for resolving disputes? Is the procedure available to address termination of employment?*
- *Does the company conduct exit interviews?*
- *Does the company audit its communication methods?*