

Your Employer Wants You to “Resign”: How to Fight Back

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I recently was offered a new job with my current employer. However, I chose to not accept it, and now my employer is calling for my letter of “voluntary resignation.” Can they do that?

It should be noted that there was no prior agreement or expectation that the job offered to me was my next career step. Additionally, I was never informed that if I don't accept the job offer that I would be “let go” or asked to leave.

Can they do that? Absolutely. Almost all US, non-union employees are “at will” employees, which means that you can quit or they can fire you for any reason not prohibited by law (such as because of race, gender, age or pregnancy status), or for no reason at all. So, yes, they can do this.

Should they? No.

Now, I suspect that there were huge warning signs that your current manager wasn't happy with you. Bad assignments, cold shoulder and the like. When your manager is strongly encouraging you to apply for an internal position that is not a promotion, that may be a sign that you're not appreciated there. (Although this isn't always true. I once had an employee that struggled with some aspects of her job, but she was smart and a fabulous worker. A position opened up that I thought she would be perfect for and I strongly encouraged her to apply for it. My boss helped the process move forward as well. She got the new job. I was absolutely thrilled when her next year's performance appraisal crossed my desk, and I saw that her supervisor had given her the highest possible rating and a special award. But, if she'd turned down the move, I wouldn't have tried to terminate her.)

The problem you had, though, was that even if there were warning signs there were no direct statements of “you're not a good fit for this position.”

I wish managers would stop being so freaking lazy and wimpy and actually talk to their employees about problems. So many things can be resolved if the employee just knows about them, and the manager is clear about expectations.

On the other hand, sometimes employee denial runs deep. You can talk, coach, explain and warn until you're blue in the face and then when you finally say, “As per what we've talked about for the past 6 months, since you have not yet mastered task A, you'll be terminated and your last day is today,” the person freaks and acts like this is a complete shock.

So what should you do? Well, there is rarely any benefit to resigning in a situation like this. Sure, you can say “reason for leaving: resigned” on future job applications, but the next company you interview with will want to know why you resigned without a new job lined up. With a resignation, you aren't eligible for unemployment. With a termination that is not for cause (I'm assuming this is more of a “you're a bad fit” and not “you've been coming in late and stealing office supplies” type of situation), you generally are eligible for unemployment. (Note: Unemployment eligibility is determined by the state, not the company and not, technically, by the company's assigned reason for termination.)

So, now is the time to negotiate. First, you can ask if the transfer offer is still available. If it is, swell. Take it. But, assuming it's not, here are four items to negotiate.

Unemployment eligibility: Now, I may have you scratching your head. Didn't I just say that the state determines that, not the company? Yes, yes, I did. But if the company agrees not to fight unemployment, it's almost always granted.

Severance: They want you gone. They don't want to do a straight out termination. Ask for money. I don't know your industry, area, or level. If your job has been cashier at the local grocery store, severance is far less likely than if you've been a marketing manager for a major biotech firm. I would start out asking for something around 2 weeks of severance for every year of service. If it's a big

company, don't start out asking for anything less than 3 months severance. If you can discreetly ask around, find out what others have been given.

References: Most companies have this super-lame policy of only confirming dates of service and title. Yes, yes, I know it's to protect themselves, but the reality is that managers do talk. Any good recruiter will be able to tell you stories of how they get references. You need to be crystal clear on not only what the official "company" response will be, but what your previous manager will say. Can you have people contact the manager who offered you the position you turned down? Now might be a good time to ask for a letter of recommendation to go along with the termination.

Termination of any non-compete clause: Depending on what you've signed in the past, you may or may not be subject to a non-compete. Many of these are designed specifically with the "voluntary termination" in mind. They want you to resign; they better revoke the non-compete consequences.

At the end of this, they'll want you to sign a "general release" which basically is a document saying that you won't sue them in exchange for whatever things they've offered you. This is a binding legal document. It's always a good idea to have an attorney review it. My attorney doesn't charge a great deal for a contract review, so I'm making the assumption that it shouldn't be too expensive. I could be wrong, depending upon where you live and what you need. If you're an executive or there are complicated legal and financial issues, you'll want to hire an attorney that specializes in this area.