

# HR QUESTION ? of the month



## ***Position changed. What do we do with the employee?***

**Question:** We hired an employee last year. The company was looking for someone with a certain background. However, since then, our company has changed directions and will no longer require someone of this caliber. We will be keeping the position but changing the rate and experience to less than what the current employee is at. Can we terminate for these reasons? If not is there another way that we can handle this?

**Response:** The employer is well within its rights to restructure any one or more positions within the organization to better meet the needs of the company. You indicate that although the employer hired an employee last year with a certain background, since then the company has changed directions and will no longer require someone of that caliber. Essentially, you advise that the employer is looking to lower the requirements of the position, and with it, the rate of pay. There is no law that prohibits the employer from proceeding with this course of action if there are legitimate business justifications for its decision. If the incumbent is employed at will, there is no law that requires the employer to retain him or her if the position has been downgraded and the employee is now over-qualified (and overpaid) for the newly-revised role. To this end, absent a contract that governs otherwise and assuming no policy or past practice is to the contrary, the employer can seek to terminate the employment relationship on these grounds and then seek to hire someone with lower qualifications, to be paid less.

That said, to minimize adverse employee relations issues and/or a potential claim, the employer may want to consider giving the employee the right of first refusal; presumably he or she is still qualified for the new role (if, perhaps, over-qualified). If so, we recommend explaining to the employee the reason for the employer's decision to downgrade the position and describe the employer's vision for the new role and new direction, along with its new and lower rate of pay. If the employee is amenable to the arrangement, the employer should be clear what is expected of him or her in the new role, and what the rate of pay will be. If he or she is not (or if there is a legitimate business reason why the employer is not amenable to offering the incumbent the opportunity to remain employed, albeit at a lower rate of pay), the employer should candidly let the employee know that it will terminate the employment relationship. The employer can then seek to recruit a candidate who better meets the new criteria for the revised position.

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