



REDUCE RISKS ASSOCIATED WITH LAYOFFS OR OTHER REDUCTIONS IN FORCE (RIF)

No employer welcomes the prospect of having to lay off employees or face a reduction in force (RIF); however, in these challenging economic times, difficult decisions like these may be unavoidable. Here are some tips designed to try and help your company and your employees if you are considering a layoff or RIF, and some suggestions on how you might minimize liability and hopefully avoid making any costly missteps during the process.

Before deciding on layoffs or a RIF consider possible alternatives:

- Where feasible, discontinue use of temp/contract employees and reassign staff to handled work currently being outsourced; consider internal transfers where appropriate.
- If possible, restrict or eliminate overtime.
- Encourage or require job sharing/flextime or position restructuring.
- Consider reducing workweeks or shifts or offer voluntary, unpaid leaves of absence; while this may not be popular, in the end some work is better than no work.
- Consider offering voluntary early retirement or other exit incentives, however, you should review these offerings with an attorney before implementing.
- Impose a wage and/or hiring freeze. This could also help bolster your justification for any reductions made later (see below).

If layoffs or a RIF can not be avoided:

- If you have a policy in your employee handbook regarding layoffs or RIF's review and follow it.
- Clearly document the business needs behind the reductions. Identify and be able to articulate the legitimate business justification for the reductions and how you determined which positions to eliminate.

The Closely Held Business Team attorneys at Harrang Long Gary Rudnick are committed to serving the needs of business owners in a responsive and proactive manner. They understand the challenges and the opportunities provided by the law in today's business climate, and are focused on the advancement of each client's success in business.

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- Keep it objective: Focus on bona fide job requirements and establish objective criteria to be used to evaluate employees for layoff and to identify particular job functions to be eliminated. If you already have such criteria in a collective bargaining agreement or handbook, follow them; if not, consider creating a matrix of objective factors that can then be scored and evaluated.

- Consider forming a selection committee to review and score the criteria but ensure that the committee is comprised of a variety of personnel to avoid appearing discriminatory. Senior management can then review the findings of the committee before making final decisions. Unfortunately discrimination claims, particularly age discrimination claims, are all too common following a layoff or RIF.

- Consult with an attorney to determine if the federal Worker Adjustment and Retraining Notification (WARN) Act applies. Employers with at least 100 employees are required to provide at least 60 days notice of a “plant closing” or “mass layoff” as defined under the law.

- Prepare managers and others who will be involved in informing affected employees about the reductions; explain what to say (and what not to say) and prepare them to deal with questions regarding final paychecks, continuation of employee benefits, etc.

- Keep lines of communication open and consider an exit interview to allow employees to discuss what is happening and, quite possibly, to provide advance warning of potential problem situations.

- Consider offering services designed to facilitate finding replacement employment and refer impacted employees to available local and state resources.

- If warranted, consider offering a severance agreement and release for particular employees or if age discrimination is a concern; keep in mind that for employees over 40 there are additional federal law requirements covering such agreements and releases that should be reviewed with an attorney.

- Before any decisions are made, review personnel files for completeness.

Layoffs and RIFs can raise a number of potentially time consuming and costly legal issues and can be a trap for the unwary. If you have any questions regarding a potential layoff, RIF or any of the items covered above, please contact our closely held business group members Randall L. Duncan or Christian F. Boenisch. Christian is also a member of the firm’s labor and employment group.

Nothing in this communication creates or is intended to create an attorney-client relationship with you, constitutes the provision of legal advice, or creates any legal duty to you. If you are seeking legal advice, you should first contact a member of the Closely Held Business Team with the understanding that any attorney-client relationship would be subsequently established by a specific written agreement with Harrang Long Gary Rudnick P.C. To maintain confidentiality, you should not forward any unsolicited information you deem to be confidential until after an attorney-client relationship has been established.

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