

VOLUNTARY BUY-OUTS AND EARLY RETIREMENT INCENTIVE PROGRAMS

Checklist of Considerations and Tasks to Complete

1. Involve your employment and labor lawyer early on in the process.

2. Determine objectives, strategies and types of exit incentive plan(s) to offer:
 - Voluntary resignation plan without regard to retirement eligibility
 - Voluntary early retirement incentive
 - Combination or sequence of layoffs with voluntary plans?

3. Determine components of voluntary resignation plans:
 - Severance – lump sum or salary continuation
 - COBRA subsidy (impact of new statute)
 - Outplacement assistance
 - Accelerated vesting
 - Payment of partial year bonus

4. Determine components of early retirement plans
 - Earlier age to qualify for retirement benefits
 - Reduced actuarial reduction for early retirement – add 5 years?
 - Add 5 years to determine benefit calculation?
 - Additional COBRA subsidy?

5. Determine other key components of the plan(s):
 - Eligibility – employees in certain job functions, organizational units, job classes, poor performers, and/or employees over a certain age (but not maximum age limits)
 - Exclusions: temporary employees, contractors, nonemployees, project employees?
 - Start and length of window time period during which employees can accept plan; typically 1-3 months
 - Evaluate potential for legal claims by those employees outside the window period
 - How to handle eligibility of employees on leaves of absence – usually lawful to exclude except for legally mandated leaves
 - Whether to require employees to sign a release of claims as a condition – recommended
 - Whether to retain some ability to deny certain key or valuable employees the ability to participate in the program

6. Take appropriate steps to make certain that participation in the plan is voluntary
 - Adequate time for employee to decide whether to accept the offer – probably at least
 - Make sure that the plan is communicated in a non-coercive manner – avoid references by supervisors to likely layoffs if employees fail to accept “voluntary” plan
 - Make sure that communications about the operation and details of the plan are clear, complete and accurate
 - Consider advising employees to seek legal counsel or other advice before deciding whether to accept offer
 - Include voluntariness representations in release or other documents relating to employee acceptance of program.