

REDUCTION IN FORCE PLANNING

Checklist of Considerations and Tasks to Complete

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

2. Consider Alternatives to a RIF.
 - Temporary or permanent wage reductions.
 - Furloughs.
 - Voluntary time off.

3. Document Reasons for RIF.
 - Document the high-level business reasons why a RIF is necessary.

4. Determine Whether RIF triggers obligation to negotiate with incumbent unions.

5. Evaluate WARN Act Issues.
 - Determine what number of separations might trigger the WARN Act.
 - If providing 60 days of notice would be problematic, work with an employment lawyer to identify strategies for avoiding the WARN Act.
 - If notice must be provided, prepare them and take into consideration the time requirements for compliance with WARN.

6. Review Documents Affecting RIFs.
 - Review all offer letters, individual (especially executive) employment agreements, personnel practices and policies. At a minimum, this review should include a review of applicable employee handbooks and union contracts. These documents may contain provisions that require severance, or that mandate the use of specific procedures or selection criteria in the event of a RIF.

7. Tentatively Identify Individuals to be Laid Off.
- Identify how the organization will look after the RIF (what positions will exist, in what organizational structure?)
 - Identify the criteria to be employed by managers to identify individuals (i.e. skills needed to best carry the new organization forward, past performance, unique skill set, attendance, ability to be a team player). Prepare the written, business-related, non-discriminatory criteria for the managers to apply when deciding who to retain and who to lay off.
 - Identify which employees will be laid off based on criteria. Have managers identify in short form how they applied the criteria to each individual to make their decisions. This serves to document the non-discriminatory reasons for the selection, help you evaluate the decisions and trigger memories if the decision is later challenged.
 - Create a tentative list subject to attorney review.
 - Have the ultimate decision-makers review each manager's recommendations.
 - Provide for some system of review of employees tentatively selected for layoff. This should be done by personnel staff sensitive to discrimination concerns and should be reviewed by legal counsel.
 - Prepare a disparate impact analysis by reviewing the tentative list of employees selected for layoff to determine if there is any statistical suggestion of discrimination that could result in a claim. **NOTE: such analysis should only be prepared under the attorney-client privilege.**
8. Identify Severance Package (if any) and Evaluate Release.
- Determine whether release agreements will be required in exchange for severance benefits. If so, determine what it will take to comply with OWBPA (making note of the applicable waiting period limitations).
 - Determine what severance benefits will be given to affected employees. If releases are desired in exchange for severance, identify past practices and any enhancements that may be needed to ensure adequate "consideration" is given.
 - Have release form reviewed by legal counsel.

9. Assess Whether Any Stay Bonus Necessary.
 - Decide whether to offer stay bonus and conditions attached thereto. This is particularly important if layoffs will be announced in advance of the separation dates or in the event of a closure where some individuals will be needed for wind-down activities.

10. Develop a Communications Plan.
 - Affected employees.
 - Employees who will be retained.
 - Media.
 - Key stakeholders, investors, shareholders, business partners.

11. Develop Plan For Implementing RIF.
 - Logistics of deploying communications plan.
 - Delivering key paperwork.
 - Efficiently terminating access to electronic systems.
 - Retrieving company equipment.