

Tips for employers considering layoffs or downsizing during tough economic times

Almost 600,000 workers were laid off in January 2009, indicating companies continue to struggle through these tough economic times.

Making the decision to layoff or downsize your staff is never an easy decision. If your company is looking at conducting layoffs or downsizing, during this economic crisis, take steps now to avoid legal claims down the road. By following these tips you will be better prepared to make the best decisions for your company and your employees.

1. Look at alternatives to layoffs. Could you reduce hours, salaries or benefits, cut back on the use of overtime or on the use of temporary staff? Could you implement a hiring freeze or through attrition, downsize your staff? Perhaps you could take staff from one area and retrain them to work in another area of the company.
2. Document specific reasons for the reductions. If an employee decides to challenge who was let go, this information will provide valuable information supporting your decision.
3. Compile a snapshot of your company's profile, including items such as race, sex and age. When you look at reducing your staffing numbers you want to make sure the cuts don't create an unintentional adverse impact. Creating this list will enable you to look at whether you laid-off more females, older employees or minorities. If a disgruntled employee comes back, claiming discrimination, you could show the workforce mix didn't change and a claimant's case would be weakened. (Adverse impact can be reviewed by our HR consulting staff if you need assistance.)
4. Weigh the potential costs of downsizing. Downsizing can sometimes be an expensive decision when you start calculating attorney's fees, consultant's fees, unemployment claims, severance pay or possible litigation. Layoffs also often affect morale among the remaining employees, which can affect performance.
5. Review whether there are contractual commitments or employee benefit plans that limit the employer's options. Do you have an employment contract or a collective bargaining agreement? Do you have written severance plans or employee handbooks that outline a specific procedure for laying staff off? Are there benefit plans that provide special benefits to terminated employees?
6. Consider voluntary RIF's (reduction in force). Early retirement incentive plans offer enhanced severance or retirement benefits to a group of employees in exchange for a release against all claims against the employer. Be sure to get an attorney involved and discuss how the plan might impact ERISA and/or tax laws. The attorney should also help you write a release that employees sign in return for additional benefits and agreement not to sue you. This release must be in compliance with the Older Workers Benefit Protection Act.
7. Try to use objective methods for identifying the employees to be terminated.
 - Look at laying off those who have less seniority first. Keep in mind this method could create an adverse impact if minorities and females tend to have less seniority.
 - Consider basing layoffs on performance. Conduct a thorough analysis of the positions where you need to make cuts, and then look at the documented performance of staff in those positions.
 - Even if you do everything right, you still may be subject to liability or discrimination charges. To minimize this liability, have layoff policies and procedures in place and implement them consistently.
8. If you have over 100 full-time employees or more than 100 full-time and part-time employees who work in the aggregate at least 4,000 hours per week (exclusive of overtime), you may be subject to the WARN Act (Worker Adjustment and Retraining Notification Act). In this case, you may be required to give employees 60 days advance notice if you have a "mass layoff" or a "plant closure".

(This is a detailed Act, so seek assistance when looking at your workforce.)
9. To help reduce your liabilities, make sure employees who communicate the news of the layoff are conscientious, legally knowledgeable and properly trained.

This information is not a substitute for legal advice