

When layoffs become unavoidable for your company

HAVE OTHER OPTIONS BEEN EXPLORED; GETTING THE PROCESS RIGHT

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For the past two months, my phone has been ringing almost daily with calls about layoffs, downsizing or reductions in force.

No matter what name you use, the result is the same – employers are cutting jobs in order to survive during these tough economic times.

On Dec. 16, 2008, the Society of Human Resource Management reported that 60 percent of organizations surveyed say they plan to lay off employees in 2009. Below are some guidelines to assist employers in making these difficult decisions.

Are there other options? Before cutting jobs, take the time to consider whether there are any other options. Often employees are willing to band together and take an across-the-board pay cut, a salary freeze or a temporary work furlough instead of having to say goodbye to a co-worker. Furloughs can take the form of a 4-day work week with 80 percent pay, closing down during slow work periods or offering employees unpaid sabbaticals.

This spreads the hardship (which is hopefully temporary) among all employees as opposed to having a few employees suffer permanent job loss. In addition, EDD offers what it calls a “Work Sharing Unemployment Insurance program” that allows eligible employers to reduce employees’ hours and the employees to collect partial unemployment benefits for the reduced hours.

Legal pitfalls to be aware of: 1) If instituting a furlough program, salaried exempt employees can be forced to use accrued vacation time but cannot be paid for less than a full work week if they work any time in a work week. 2) If there is a collective bargaining agreement in place, it will need to be consulted to ensure that any changes are in compliance with it.

Deciding who to let go. The riskiest step of a reduction in force is deciding which employees to let go.

Taking the following steps can help to reduce this risk: 1) Establish objective standards for selecting employees for the reduction. Objective standards include items such as seniority, sales numbers, education levels and job cross-over skills. 2) Consider eliminating specific job categories, rather than individual employees. 3) Prepare a chart analyzing the demographics of the proposed reduction in force (by race, gender, age, etc.) and determine if any protected group is being disproportionately impacted. 4) Be cautious of using the reduction as a pretext to get rid of problem employees. Such employees should be dealt with on performance grounds.

How to deliver the bad news. Once the decision has been made, act quickly. Rumors of layoffs create low morale and productivity. Create a check list of items to cover with each employee being laid off, including everything from keys to 401(k) funds. Hold the meeting with two members of the management team.

Be professional but compassionate. Allow the employees time to pack their offices and say goodbye to coworkers. Legal pitfalls to be aware of: 1) Final paychecks, including accrued vacation time, must be given to employees on their final day of work. 2) The Worker Adjustment and Retraining Notification Act requires large employers to give 60 days advance notice to employees or their unions before closing a factory or engaging in a mass layoff (50 or more employees during a 30-day period). 3) Change passwords and other computer/financial access to protect your company.

Severance pay and general releases. As a rule, employers are not required to pay severance to terminated employees. There are a few exceptions, including contractually guaranteed severance payments in an employment contract or employee handbook.

While severance is not generally required, often employers provide severance benefits in order to help their employees while they look for new employment. As a rule of thumb, employers generally use formulas such as one week of pay for every year of employment. This formula is often more generous for higher level executives. In addition, employers often cover COBRA premiums for continued health insurance for a period of time and/or provide educational or outplacement services.

If an employer is going to pay severance pay, it should always condition receipt of the severance on signing a severance agreement. These agreements contain many protections for an employer, including a release of all claims. This means the employee is agreeing that he/she cannot sue for wrongful termination or for any other reason.

Legal pitfalls to be aware of: 1) Be sure to have legal counsel prepare or review your severance agreements. 2) Employees over 40 years old must be given up to 21 days to review the agreement and seven days to revoke it under the Older Workers' Benefit Protection Act. Do not pay the severance until the revocation period has expired.

What to say to the remaining employees. Remember that your remaining employees will also be affected by the layoffs. They are losing friends and will be worried that they are the next one to go.

Consider holding either company-wide meetings or work group meetings to advise employees of the decision, share information about the company's financial situation, answer questions and to calm fears.

Remember, the way an employer handles sensitive matters in difficult times will be what valuable employees remember when the market rebounds and jobs are plentiful.



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