

REDUCTION IN FORCE

There are many employment law and human resource issues to consider prior to laying off employees due to lack of work. Among these issues are:

1. Adverse effects on and/or discrimination against employees based upon their age, race, religion, national origin, or other "protected" factors.
2. Requirements under federal or state plant closing laws, such as the Worker Adjustment and Retraining Notification Act (WARN) Act.
3. Severance obligations covered by the Employment Retirement Security Act (ERISA).

Even where lay offs are non-discriminatory, employers who seek releases from employees over 40 years of age must comply with the provisions of the Older Worker's Benefit Protection Act. Below is an outline of some of the issues that employer's should consider and discuss with their advisors before, during, and after layoffs.

1. Consider and discuss alternatives:
 - a. shorter work week
 - b. work sharing
 - c. unpaid leave encouragement
 - d. rotating joblessness
 - e. transfers
 - f. pay reductions
2. Set up a job reduction committee that can provide needed data and support decisions made.
3. Establish and follow uniform criteria for determining who is to be laid-off.
4. If performance is a criteria, the performance system must be unbiased and applied in a uniform manner.
5. Conduct internal audit to determine race, sex, national origin, age, etc. of workforce at issue.
6. Review all contractual documents.
7. Evaluate effect of proposed lay off on protected class members.
8. Consider defamation and wrongful discharge issues.
9. Determine eligibility for benefits, unemployment, severance pay, etc.
10. Consider out placement assistance depending upon such factors as the number of terminations involved, the job level of the separated employees, and job conditions in the local labor market.
11. Be prepared to explain why a particular employee or group was let go and another retained.
12. Follow all legal requirements under OWBCA, WARN Act, ERISA, and other applicable laws in connection with lay offs and releases.
13. Communicate the decision to employees to be laid off.
14. Be sure media communications are consistent with reasons stated to employees.

15. Communicate decisions and plans for future with remaining employees.