



HR Specialist Summit

September 10-11 | 1:00-5:00 p.m. Eastern

How to Conduct a Reduction in Force

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You Have Considered Alternatives

- Hiring Freeze
- Voluntary Separation Program
- Furloughs
- Salary Reductions
- Reduced Hours

Consult Past Practices & Policies

- Has the company conducted RIFs in the past?
 - How recently?
 - Is the WARN Act an issue?
 - Criteria?
- Are there policies that control how a RIF is conducted?
 - Criteria
 - Severance
 - Notice
 - Benefits like PTO/vacation

Decide the Criteria for the RIF

- What are the groups being used for selection?
 - Department
 - Entire company
 - Business line
- How are employees being selected?
 - Consistency within the groups is key
 - Some groups might be duplicative job functions
 - Other groups might be performance
 - Other groups might be transferability of skill sets

Criteria for the RIF

- Criteria can be objective or subjective
 - Objective – elimination of department or type of role across the company
 - Subjective – better skill set or performance are examples
- Document the criteria being used for the decisions
 - May choose to have a memo for each group with documentation
 - Some way of showing the reason if needed later
- How are the criteria applied to each decision?
 - Committee?
 - Manager, then review by more senior manager or HR?



Leave Time for Review of Selections

- Why is review needed? To avoid high risk selections of employees
 - Currently on leave
 - Who have made complaints
 - Who just took leave
 - Who engaged in other protected activity
- If a high risk selection is made, discuss with legal counsel
 - Ensure documentation is clear
 - Selection is appropriate
 - These employees are not all on the RIF list



Check on the WARN Act (& mini-WARN Acts)

- Does the federal WARN Act apply?
 - Requires 60 days advance notice
 - At least 50 employees AND 33% of workers at a single site of employment
 - May be exceptions
- Do state mini-WARN Acts apply?
 - Often number of employees is smaller
 - Notice can be longer



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Prepare Separation Agreements

- Provide employee with something more than what they are already entitled to receive
 - Check policies here
 - Make sure severance conditioned on a release
- Release and covenant not to sue
 - Check state law and include where appropriate
- Continuing obligations
 - Non-disclosure, non-solicit, non-compete if permitted
 - Cooperation, non-disparagement



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Separation Agreement Considerations

- Return of company property
- Check for confidential information and how it will be deleted/returned
- References for future employers
- Accrued vacation/PTO
- Bonuses and commissions
- Unemployment benefits
- Final wages
- Web site bio and social media termination date
- Passwords to equipment, profiles, User IDs



Employees Age 40 and Older

- Release of age claims governed by OWBPA
 - Written in plain language
 - Advises employees to review with an attorney
 - References the ADEA
 - Waives claims through the date of signature
 - Time period to consider the agreement in a group termination is **45 days**
 - Then, **7 days** to revoke the release after signing
 - No waiver of revocation period



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Employees Age 40 and Older

- Disclosure requirements for group terminations
 - “Decisional” unit
 - List the criteria for selection
 - Job titles and ages of all employees who were eligible for selection for the exit incentive as well as those who were actually selected

Remote Worker Considerations

- Decide how to deliver the news to remote workers – individual meetings preferred
- Have clarity on how to return equipment and confidential information – logistics
- How will the separation agreement get to the employee after the termination meeting?
- Work with IT to manage access to systems following termination
- How will employer apps be removed from personal devices?
- Do policies permit remote wiping?



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Final Plans

- Prepare for termination meeting
 - In person or online
 - Talking points
 - Separation agreement
 - Work out logistics for where the RIF is large
 - Two persons present during termination meetings
- Be ready for questions
 - FAQ might be helpful on unemployment, references, PTO, final pay
 - Eligibility for rehire



Thank you!

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