

PRE-LAYOFF CHECKLIST

These are trying times for employers. Many companies have begun layoffs and many more are on the way. An estimated 1,000,000 jobs will be cut in 2008 resulting in unemployment rates not seen since 2003. Estimates are that unemployment rates could hit 7% by 2009, the highest since the 2001 recession. You can see the latest layoff statistics by going to www.bls.gov.

Layoffs are a high risk area. Not only is the company under financial strain, they tend to be fertile ground for EPL claims. Many EPLI policies exclude coverage for claims during layoffs, so be sure to check that policy language!

Before considering a layoff or downsizing you should plan to address the following checklist:

- If you don't have one, *prepare a layoff policy*. Include the importance of objective factors such as company needs, financials, seniority, quality of past work performance, anticipated needs for skills and experience, and compliance with EEO laws. Create a "ranking" process using these factors, and follow it consistently through a form-based approach.
- Have your *attorney* and *review team* analyze your layoff or Reduction in Force (RIF) procedure before and after it is implemented.
- In larger companies, consider hiring an industrial relations *statistician* to review a RIF decision before they are implemented to prevent *disparate impact* discrimination claims.
- Possible *alternatives to downsizing* include wage reduction, benefit reduction, and elimination of overtime. Approach your employees and find out if they can think of *new ways to generate business*. Look for old projects that can be expanded or old clients that can be reactivated.
- Make a decision and *act quickly*. Studies show the psychological drag on organizations and careers that take too much time making decisions.
- Increase company communications* including company and individual expectations, benchmarks, guidelines, and feedback mechanisms.
- Be open with information*. Share your financial position with your employees through open book management. Don't leave them guessing.
- Assist those who will be leaving through small severance packages, out-placement opportunities, consulting agreements, counseling services, employee assistance programs, etc.
- Offer *early retirement* or *voluntary resignation* with a severance package. If you want employees to stay beyond a certain date, state that the severance will be paid only if employees stay through that date. Require the signing of a release as consideration for any severance package.
- Prepare an *information sheet* to hand out to employees explaining the layoff or downsizing process. Consider a question and answer approach.
- Restructure* the organization. Involve your employees and create flexibility, performance agreements, and a compensation system that is based on the value contributed by each employee. Downsizing without restructuring is a formula for disaster!

- ❑ Avoid claims and litigation by departing employees through separation agreements, and a *strict adherence to company guidelines*. Be particularly sensitive to older workers, long term employees, women, and minorities.
- ❑ Remember that there is a *cycle of change and loss* that applies to the workplace as well as the home life. That cycle is denial, anger, bargaining, depression, and eventual acceptance.
- ❑ Use a grievance system, ombudsman or hotline program to handle complaints of unfairness. Survey folks or use exit interview to ferret out potential claims.
- ❑ Provide departing employees with *required handouts* and *pamphlets* related to continued medical benefits and unemployment rights.
- ❑ Consider if the WARN Act applies. The WARN Act requires an employer with more than 100 employees to give 60 days advance notice of plant closings or mass layoffs to affected workers. A layoff will constitute a “mass lay-off” if a total of 50 employees are laid off and the number of employees laid off also constitutes at least 33% of the workforce. To learn more go to <http://www.dol.gov/compliance/laws/comp-warn.htm> Beware of state-based WARN Acts. Check with your state agency at www.dol.gov/esa/programs/whd/state/state.htm
- ❑ The California WARN Act differs in significant ways from the Federal WARN Act. First, it applies to businesses with 75 or more employees, and doesn't exclude part-time employees during any 30-day period; and it affects 50 or more full- or part-time employees who have been employed by an employer for at least six of the 12 months preceding the date on which notice is required for lack of funds or lack of work.

California law therefore defines "mass layoff" more broadly than federal law. The California act does not specify "full-time" employees, and its definition of "employee" does not exclude part-time employees. Consequently, a layoff of any 50 or more employees (full-time or part-time) can trigger the state notice requirements. To learn more go to http://www.edd.ca.gov/Jobs_and_Training/Layoff_Services_WARN.htm.
- ❑ *Celebrate* the emergence of the new company!