

Legal Compliance Strategies and Best Practices During Pandemic Related Layoffs, Reductions-In-Force, and Furloughs

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PRELIMINARY CONSIDERATIONS

- Employee Contracts
- Unions
- Furloughs vs. Layoffs

VOLUNTARY REDUCTIONS

- Severance Packages
- Release Agreements

INVOLUNTARY REDUCTIONS: A STEP-BY-STEP APPROACH



STEP 1: DECIDE WHO TO LAYOFF

- Performance vis-à-vis Peers Using Objective Criteria
Be Consistent!
- High Earners
- Seniority, Skills, & Training
- Elimination of Redundancies
- ADEA/OWBPA
 - Is your RIF subject to OWBPA?
 - Notice/Disclosure Requirements
 - 45-Day Consideration Requirement

STEP 2: REDUCE EXPOSURE TO LIABILITY

- Conduct Disparate Impact Analysis, Preferably Through Outside Counsel
- Recent Protected Activity
- Family, Medical, and Military Leaves
- Adjust List

STEP 3: WORKER ADJUSTMENT AND RETRAINING NOTIFICATION (WARN) ACT

- Mini-WARN Acts
- Unforeseen Business Circumstance Exception:
“A government ordered closing of an employment site that occurs without prior notice also may be an unforeseeable business circumstance.”
(20 C.F.R. § 639.9(b)(1); see (29 U.S.C. § 2102(b)(2)(A).)

STEP 4: LAYING OFF EMPLOYEES



STEP 5: OTHER CONSIDERATIONS

- COBRA
- Immigration
- References for Future Employment

CONTACT US



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THANK YOU

Legal Disclaimer: This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.

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