



## Reduction in Force Checklist

### Initial RIF Planning

- Have alternatives to layoffs been fully considered (*e.g.*, furloughs, wage freezes, wage reductions, sabbaticals)?
- Evaluate the costs of layoffs (*e.g.*, leave cash-outs, severance, etc.).
- Determine and document the business rationale for the RIF.
- Determine the likely scope of the RIF, in terms of work units and number of positions affected.
- Carefully review all applicable CBAs, individual employment contracts and personnel policies to understand the employer's rights and limitations in implementing a RIF.
  - Evaluate scope of duty to bargain with union(s) regarding decision to implement layoffs and/or effects of RIF.
  - Are there contractual notice requirements that affect timing?
  - Will laid off employees have bumping rights?
  - Are any employees entitled to severance pay?
  - For private sector employers, are any employees likely to be laid off subject to noncompetition agreements? If so, decide whether the company will continue to pay base salary or waive enforcement of noncompete.
- Determine whether WARN Act is likely to apply to the RIF given anticipated scope.
  - If WARN Act is likely to apply, is exception for unforeseeable business circumstances applicable?
- Determine whether there are any other notice requirements under applicable law.
  - If layoffs will occur outside of Washington, check to see whether state has mini-WARN statute that remains in effect.
  - Are there any other statutory requirements unique to the employer (*e.g.*, state employees may have a right to notice under WAC 357-46).

- Subject to any pre-existing obligations set forth in contracts or policies, and a possible duty to bargain, determine whether the employer will offer voluntary exit incentives and/or severance benefits in return for releases.
- Ensure that the planned workforce reductions will not result in the “skimming” of bargaining unit work. If it will, consider conferring with union(s) about temporary, nonprecedential MOU to address.
- Consider instituting a hiring freeze during RIF planning and implementation.
- Consider timing of layoff implementation vs. communication to employees (subject to any required notice obligations).
  - Need to delay layoffs to wind down?
  - Risk of sabotage/damage (IT systems, property)
  - Need for security precautions
  - Employee dignity
- Develop and follow a communication strategy (internal and external) that is appropriate to the circumstances.

### **Selection of Employees for Layoff**

- Identify selection criteria required under collective bargaining agreements, personnel policies, etc.
- Evaluate any bumping rights.
- If no required selection criteria, determine whether to apply performance-based selection criteria or nonperformance-based selection criteria.
- If selection will be based on performance-based criteria for some or all positions, establish process to review and document decision-making process.
  - Carefully review risk considerations where employees selected for layoff are or have been on protected leave; are in one or more protected classes (age, race, gender, disability, sexual orientation, etc.); have engaged in protected activity (*e.g.*, whistleblower, workers compensation harassment/discrimination complaints, wage claims, etc.).
  - In each case, ensure legitimate nondiscriminatory/nonretaliatory reason for selection or reconsider selection.

- Conduct EEO adverse impact statistical analysis.

### **Notice Obligations**

- Determine whether WARN Act applies once layoff numbers and duration have been determined.
- If WARN Act applies, provide required notifications:
  - Notice(s) to union representative(s) of affected represented employees
    - the name and address of each facility that will be affected and the name and telephone number of the employer official to contact for more information;
    - notice of whether the action is planned to be temporary or permanent and whether the entire plant, or just portions of the workforce will be affected;
    - the expected date of the first separation and the anticipated schedule for further separations; and
    - the job titles of positions affected and the names of the workers currently holding those positions.
  - Notices to non-represented employees affected by the RIF
    - a statement of whether the action is temporary or permanent and, if the entire plant is to be affected, a statement to that effect;
    - the expected date the layoff or plant closing will begin and date when the specific employee will be affected;
    - an indication of whether bumping rights exist; and
    - the name and telephone number of the employer official to contact for more information.
  - Notice to chief elected official for local jurisdiction
    - organization name on letterhead;
    - physical and mailing address of the layoff;
    - indication if the layoff is temporary or permanent;
    - expected layoff date and schedule of further layoffs, if known;
    - number of employees affected by the layoff;
    - job titles and number of affected employees in each job category;
    - whether any of the affected employees are represented by a union, and if so, the name of the union representative, the name and address of the chief elected officer of each union;
    - a statement regarding bumping rights (if any); and

- signature, name, and title of the agency official.
- Notice to state dislocated worker unit (ESD in WA)
  - organization name on letterhead;
  - physical and mailing address of the layoff;
  - indication if the layoff is temporary or permanent;
  - expected layoff date and schedule of further layoffs, if known;
  - number of employees affected by the layoff;
  - job titles and number of affected employees in each job category;
  - whether any of the affected employees are represented by a union, and if so, the name of the union representative, the name and address of the chief elected officer of each union;
  - a statement regarding bumping rights (if any); and
  - signature, name, and title of the agency official.
- If personnel policies, CBAs, or external laws require notice, ensure compliance with applicable notice periods.
- If any employees selected for layoff are working under a visa, confer with immigration counsel regarding notifications that may be required, both to the employee and the federal government.

**Due Process Requirements (Public Sector Employers)**

- Are any public employees with “just cause” protection being laid off? If so, provide each such employee notice of the intended layoff, an explanation of the reason(s) the employee was selected for layoff, and an opportunity to meet with management. Confer with legal counsel for risk assessment if financial exigencies and the size of the layoff preclude this process.

**Use of Releases**

- If offering laid-off employees severance pay or some other consideration to which employee is not already entitled, require employees to sign separation agreement containing release of claims (likely required for public employer to avoid gift of public funds; recommended for private employer).
- If asking employees to sign releases, consideration is being offered in return (something of value to which employee is not already entitled under policies or contract).
- Private sector employers: does separation agreement remind employee of confidentiality and other post-employment obligations set forth in previously-signed employment agreements?

- If laid off employee in WA is subject to a noncompete, determine whether company will continue paying employee during restricted period or waive enforcement.
- Ensure releases for any employees age 40 or older comply with the Older Workers Benefit Protection Act (OWBPA).
  - Release refers to claims under ADEA.
  - Release does not attempt to waive future claims.
  - Consideration (*e.g.*, severance pay) is provided in return for release.
  - Employee is advised to consult with an attorney.
  - Employee is afforded 45 days to review and 7 days to revoke.
  - Agreement contains required disclosures regarding decisional unit, eligibility factors, time limits, and job titles and ages of those selected and not selected.
- Have releases reviewed by legal counsel.
- If any employee will continue to work after a separation agreement/release is provided to them, ensure that employee does not sign until on or after final day of employment or signs a supplemental release.
- Ensure consideration is not provided until employee has signed and the revocation period has expired.

**Coordinate and Communicate Regarding Benefit Issues**

- Compile and be prepared to provide guidance to employees regarding fringe benefits; if necessary, confer in advance with plan administrators or brokers regarding appropriate notifications and documentation.
- Advise employees of their right to apply for unemployment benefits; if possible, provide basic guidance on how to apply and/or consider establishing contact person to assist employees in navigating the unemployment process.
- Ensure COBRA compliance.

**Day of Termination Issues**

- Ensure final paychecks (including any required leave cash-outs) are provided in accordance with applicable state law.

- Establish process to ensure return of employer keys, equipment, records, and other property. May need to be different than typical process while stay home order is in effect.

**Post-RIF Recommendations**

- Ensure retention of RIF records in the event of future litigation over decision-making or general layoff process.
- Plan for post-termination reference inquiries.
- If employees will have recall rights, ensure system to comply with contract.
  - Maintain current contact information for recall notices.
  - Observe rights of recalled individuals on military leave.
- If additional layoffs will be implemented, evaluate WARN Act obligations.
- Unionized workplace: ensure no skimming of bargaining unit work or explore non-precedential, temporary MOU with union.

*Please Note:*

*Recipients of this checklist are encouraged to confer with their legal counsel for guidance in implementing a layoff. The provision of this checklist is for informational purposes only. It is not intended as legal advice or to establish an attorney-client relationship. Thank you.*