



Planning For Reorganizations And RIFs

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(Healthcare Update, No. 3, August 2011)

Historically, the healthcare industry has not experienced layoffs of the magnitude seen by manufacturing and other sectors during the recent economic downturn. But with changes in healthcare, including changes in reimbursements, some employers may be faced with difficult choices, including reorganizations and layoffs.

Proper planning for a reduction in force (RIF) requires time. Human Resources professionals are wise to ensure that management is aware of all that's required. You do not want your CEO to tell you Tuesday that a reduction in force must occur on Friday.

Here are several of the key steps that should be considered if a reduction in force may be in your company's future.

Step 1 – Planning the RIF: Advance planning is the key to success, and effective planning requires an understanding of the business rationale and objectives of the reduction in force. Therefore, as part of the planning, it's important that you review relevant policies, agreements, commitments, collective-bargaining obligations, and anything else that could affect selections.

Step 2 – Prepare a Program Document: We recommend that you work with counsel to prepare a program document which includes an EEO statement, documentation of the business case for the RIF, and documentation of the selection process for both hourly and salaried employees. The program document should also require training for supervisors and managers on the selection process, and should establish a review committee to analyze all proposed selections.

Finally, include an appeals process so that those selected for job elimination have the opportunity to appeal their selection. This gives you a second opportunity to ensure that proper processes have been followed.

Step 3 – Voluntary vs. Involuntary: Voluntary reductions in force are certainly easier from an employee-relations standpoint. Of course, in this economy, to incentivize people to leave, voluntary programs typically require a more significant investment by the company. And many companies find that it is their best employees who volunteer, because they can most easily find new employment. When conducting a voluntary reduction in force, decide first whether you need to establish caps on

the number of volunteers you will permit, and exclude individuals who may have special skills that you need to retain.

Step 4 – Determining the Selection Process: One of the most litigated issues is the method of selections used. Issues with selections can lead to both disparate-treatment claims and disparate-impact claims.

Generally, seniority-based selections are considered to be the most defensible, but are not always appropriate for a white collar workforce. Most companies prefer to use merit or skill to make selections. Unfortunately, the subjectivity that often creeps into these selection processes can lead to litigation.

Selections break down into two categories: position elimination and position consolidation. With respect to position eliminations, if all employees in the affected job classification are terminated, the selection is a fairly low risk process. But if not all those who are in the job classification are to be terminated, you must develop a non-discriminatory method for selecting individuals.

Position consolidations can also be problematic. Generally, if two positions are being consolidated into one new job, both of the former incumbents will consider themselves qualified. In reality, one or even both of the incumbents may not be qualified. Documentation regarding the new position, as well as the skill set required to achieve your objectives, is critical when defending these decisions.

Step 5 – Consider Notice Requirements: Under the Worker Adjustment Retraining and Notification Act (WARN Act), employers are required to give 60-days advance written notice to employees and certain government and union officials before implementing a layoff. Because all of that must occur before notice can be provided, this often means that a reduction in force requires planning of four to six months in advance of the proposed termination date. And some states have additional notice requirements.

Step 6 – Severance Issues: While not usually required by law, many companies provide severance for employees that are displaced during a reduction in force. If you decide to pay severance, you must also decide whether you will require a release and waiver of all claims in exchange for this severance. While we certainly recommend such releases, this again requires advance planning and the involvement of your employment counsel. Federal laws, such as the Older Workers Benefit Protection Act, and many state laws, have certain requirements that need to be incorporated into these documents to ensure the release is valid.

Step 7 – Legal Review: Once the steps above are completed, carefully review the entire process and all draft documentation before initiating the layoff. Simply re-using notices and documents from the last reduction in force, or that the hospital next door used, is not acceptable and often leads to serious errors and liability.

Step 8 – Implementing the RIF: Treating employees with dignity and respect is key to implementing a reduction in force. Good employee communication is important both to those employees departing and to the employees remaining. It's important that your surviving employees see that you have handled the layoff in a fair manner.

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