



Too Many People, Not Enough Cars: 5 Considerations if Your Dealership Needs to Conduct Reductions-in-Force

Insights

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Until now, having a reduction-in-force in the sales department of a retail automotive dealership was about as rare as selling vehicles at MSRP. Thanks to a combination of factors, including the pandemic and the chip shortage, both longstanding realities may no longer hold. In today's market, selling vehicles at or above MSRP is commonplace for many dealerships. For many, those same factors have resulted in an inventory that is too small and sales staff that is too large.

Until recently, many dealerships faced the almost-daily challenge of recruiting, hiring, and retaining salespersons and other sales support staff with various degrees of success. Many dealerships often worked with fewer sales staff than they needed or wanted. Few envisioned ever having a surplus of salespersons and the prospect of having to reduce staff size due to a lack of inventory problem that has no foreseeable end.

For those dealerships finding themselves with too many people and too few vehicles to sell, reducing the size of the sales staff (or any other employee group) or "rightsizing" to match needs may be an option if attrition or some other alternative does not eliminate the problem. Other alternatives include hiring freezes, pay adjustments, voluntary separations, hours reductions, and transfers to other departments where the skills and services of the surplus employees may be utilized.

If a reduction-in-force is the only or best viable option, proper planning prior to implementing the program should reduce legal risks and minimize disruption. Below are five critical considerations you should keep in mind:

1. **Prepare a Program Document:** Once you have decided to separate unneeded employees, make sure you have documentation in place that definitively shows the reasons for taking the action you did. For example, if low inventory is the reason for reducing headcount, your documentation can be as basic as an internal memorandum explaining that fact. Your program document should reference your EEO policy, describe the selection process, and reference your "review committee" designated to review recommendations before final decisions are made. Some employers include an appeals process in their program documents that allows those selected for job elimination to appeal their selection which gives the dealership another chance to ensure that it followed the proper processes.
2. **Determine the Selection Process:** The biggest and arguably most important decision you will

face is how to select the employees for the layoff. One of the most litigated issues by employees who challenge their selection for job elimination is the selection method the employer used. Issues with the selection process can lead to discrimination claims based on theories of disparate treatment and disparate impact.

Generally, seniority-based selections are considered the easiest and most defensible if challenged. Seniority, however, often is not a factor in dealerships that do not have a unionized workforce. Additionally, making seniority-based selections may result in the dealership retaining employees who are less productive than those who are laid off.

In situations where some but not all employees in a specific job classification, such sales, are losing their jobs, the dealership must develop a non-discriminatory method for selecting individuals for separation. For salespersons, the method selected could utilize one or a combination of factors, such sales, profit on sales, CSI scores, discipline record, etc. The method selected should be spelled out in the final version of the program documentation and strictly followed during implementation of the program.

1. **Legal Review.** Before initiating the layoff, the dealership should review or test the expected outcome from using the selection process it developed to ensure that no group or groups of employees are more significantly impacted by the process than others. For example, if the selection process negatively affects mostly older employees or minority employees, you may want to revisit the process, even though those results were unintended. The dealership also should review all documentation created for the program to ensure that it matches the process that will be used.
2. **Implementing the RIF:** Treating employees with dignity and respect is key to implementing a reduction-in-force. Good employee communication and treatment are important both to the employees departing and those remaining. Both groups must see that you handled the layoff in a fair and honest manner which should increase your chances of rehiring those departing employees later.
3. **Severance Issues:** While usually not required by law, some companies provide severance for employees displaced in a reduction-in-force. Many employers that provide severance pay in these situations require the employee to sign a release and waiver of claims agreement in exchange for the severance. To ensure any such agreement is valid, proper planning and advice of employment counsel should be utilized in the planning stages.

Hopefully the days of not having as many as salespeople as needed return soon and that the light at the end of the tunnel is an oncoming truckload of new vehicles. Until then, if you are contemplating a reduction-in-force, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Automotive Dealership Practice Group](#). We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox.

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