

AN EMPLOYER'S 7-STEP RIF AND LAYOFF BLUEPRINT FOR 2023

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An unfortunate result of the current state of economic uncertainty is that many employers have begun to consider reductions-in-force or other layoffs. However, you need to ensure you carry out any RIFs or layoffs correctly if you hope to salvage anything of value from such actions. They bring considerable risks with significant consequences – placing them among the most critical actions you'll ever take as an employer. If you believe a RIF is in your future, you should start planning now. The first step would be reviewing the seven-step blueprint overview provided below.

Step One: Identify Your Desired Goals and Objectives

This might be better categorized as “step zero,” because you should determine whether a RIF or series of layoffs is even necessary for your business before even looking at any blueprint. What is the business rationale for your planned action? What is the intended result? Do you hope to achieve cost savings? Do you hope to improve efficiency? Are there less-drastic alternatives that would help you achieve the same results, such as temporary furloughs, compensation reductions, worksite relocations, etc.?

Step Two: Make Initial Logistical Decisions

Once you have decided that you have no other course of action, you should establish a decision-making team to take charge of the RIF. It should include a representative from each stakeholder area (e.g., human resources, legal, upper management, supervisors in affected areas, etc.) and closely coordinate with your workplace law counsel. That

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team should then make initial decisions about the planned actions, including:

- The depth of RIF necessary (how many positions to reduce);
- Whether voluntary separations will be solicited;
- The budget for your RIF (including legal fees, severance payouts, unemployment insurance, etc.);
- The timing of the layoffs;
- And various other critical conclusions.

Step Three: Create a Selection Process for Involuntary Layoffs

Perhaps the most scrutinized part of any RIF – and therefore the most critical – is the selection process used to determine which employees will be let go. There are a whole host of legal standards to consider in such a decision, and therefore you should only proceed once you have clear guidance from your workplace law counsel. What criteria will be used to make your selections? What are the safest options and will those accomplish your business objectives? Will you use different selection criteria for different types of jobs – such as hour and salaried positions? If any employees impacted are unionized, then you need to evaluate your bargaining obligations. And before finalizing your plan, you need to run a statistical discrimination analysis of your intended selections to determine if the numbers suggest discrimination.

Step Four: Understand the Various Intersecting Laws

Of course, RIFs are subject to a number of federal, state, and local laws that need to be considered when proceeding with layoffs. They include the North American Free Trade Act (NAFTA) and the Worker Adjustment and Retraining Notification (WARN) Act, among others. These will impact your timing, your decision-making, your notification responsibilities, and other aspects of your action. You first need to understand the legal landscape – and whether and which laws apply to any RIF – before you proceed.

Step Five: Create Legal Documents



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Once you have decided how to proceed, you should work with your legal counsel to develop applicable severance policies. These crucial documents need to take into consideration your company policies, federal benefits law (ERISA), and other related factors. You also need to develop any applicable release agreements required in exchange for severance benefits. There are a number of individual questions that need to be answered for each worker as these are crafted, focusing on vacation and other PTO benefits, retirement/severance overlap, unemployment, and the Older Worker Benefits Protection Act (OWBPA) for those age 40 or older.

Step Six: Communicate

Perhaps the hardest part of a RIF is communicating the news to not only those selected for layoff but the rest of your workplace. You need to carefully craft such messages and deliver them with empathy and understanding. You need to provide the proper support to those who are being laid off and to those remaining at your business. You should also consider whether public announcements are necessary to the local community.

Step Seven: Miscellaneous Considerations

You should prepare for the various additional steps necessary to carry out an effective RIF. This could include developing outplacement and other support resources for your workforce. These final steps will largely be tailored by your company's own individual circumstances.

Conclusion

We will continue to monitor the latest developments related to workplace law, so you should ensure you are subscribed to [Fisher Phillips' Insight system](#) to gather the most up-to-date information. If you have questions, please contact the authors of this Insight or your Fisher Phillips attorney.