



Key Reduction in Force Considerations for Construction Employers

Insights

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The construction industry is seeing a drop in job openings but also in layoffs, according to new data from labor experts. But as part of an industry with one of the highest layoff rates, it's crucial for construction employers to have a solid plan for potential reductions in force (RIFs) – even in a declining layoff environment. In this Insight, we give employers key resources and considerations for navigating RIFs in the construction industry.

Recent Labor Data

According to a Bureau of Labor Statistics report released on July 30, construction job openings plummeted by 19% in June compared to the month prior and by 28% when compared to the prior year. However, construction industry layoffs and discharge levels actually decreased by 11% in June compared to the month prior (and just slightly increased when compared to last year). This data suggests the industry is in overall good health despite slowdowns in some areas, and indicates employers anticipate slower areas will pick up momentum again soon.

Reductions in Force

Before we dive into preparing for and handling RIFs, it's important to understand what that term means – and what it doesn't.

- A **RIF** is a broad, systemic reduction in your workforce involving permanent terminations of employment.
- In comparison, **layoffs** can involve temporary or permanent terminations and do not necessarily occur on a scale as large as a RIF.
- And **furloughs** may involve reducing employees' hours or requiring them to take unpaid while they remain employed.

These distinctions are significant because **RIFs are subject to specific rules under federal, state, and local laws** that need to be considered before you proceed. They include the North American Free Trade Act (NAFTA) and the Worker Adjustment and Retraining Notification (WARN) Act, among others. Requirements under these laws will impact your timing, your decision-making, your notification responsibilities, and other aspects of your action.

Additionally, it bears noting that **RIFs, layoffs, and furloughs all may have other workplace law implications** (for example, under federal employee benefits laws such as ERISA and COBRA, not to mention standard civil rights and EEO laws).

Preparing for Potential RIFs

While construction activity and hiring has increased in some trades this year and employers appear to be confident in a demand for workers in the near future, it is always a good idea to be prepared for future uncertainties. If at some point you must make the difficult decision to reduce your workforce, you'll need to be ready to follow a few best practices that will ensure transparency, employee morale, and legal compliance.

Key Resources and Considerations for RIFs in the Construction Industry

Our Construction Team offers several resources that cover best practices for handling RIFs and can help guide you through the tough choices related to reducing your workforce and how to handle them.

- Read our [7-Step RIF and Layoff Blueprint](#) applicable to employers in any industry.
- Check out this Q&A on [Effective Communication Strategies During a Reduction in Force](#).
- Contact any member of our [Reductions in Force Practice Group](#) and [Construction Team](#) if you are planning a RIF or other layoffs.
- Consider our [RIF/WARN Toolkit](#), which provides essential resources to help employers plan and properly carry out mass layoffs.

In addition, look out for RIF issues specific to the construction industry. For example:

- **Union Pension Plans.** If you have unionized workers who participate in a multiemployer pension plan and you are planning a RIF, you must tread carefully and understand whether terminating bargaining unit employees could trigger a partial withdrawal and withdrawal liability. In contrast, *temporary* layoffs normally do not trigger a withdrawal.
- **Project-Specific Workforce Needs.** Since you often operate on a project-by-project basis with workers employed specifically for the duration of a project, you may want to assess whether workforce reductions could be managed by reallocating employees to other ongoing or upcoming projects.
- **Skilled Labor Shortages.** Skilled labor is often in short supply in the construction industry. If you're planning to implement a RIF, consider the long-term impact of losing skilled workers who may be difficult to replace when demand picks up again. You may want to explore alternatives such as temporary layoffs or furloughs for skilled positions to retain talent and be ready for future projects.

- **Prevailing Wage Laws.** If your projects are subject to prevailing wage laws, reducing your workforce could have compliance implications. Ensure that any workforce changes do not inadvertently lead to violations.

Conclusion

If you're contemplating a RIF or other layoff, your Fisher Phillips attorney is ready to help. You may reach out to authors of this Insight, any attorney in our [Reductions in Force \(RIFs\) Practice Group](#), or any attorney on [our Construction Team](#). We will continue to monitor the latest developments related to this area and provide updates as warranted, so you should ensure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information directly to your inbox.

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