

Planning A Reduction In Force

Major process phases. Downsizings, layoffs and mass plant closures are very difficult. Even when successful, there is sadness and much ill will generated. Businesses should view these acts as a complex process consisting of many phases and tasks that require coordination and careful decision-making.

There are five major phases in layoffs and downsizings. The major phases are:

- Establishment of a planning taskforce
- Completion of a comprehensive plan
- Announcement and implementation
- Continuous communication tactics
- Learn from the experience

The first three steps--organizing the taskforce, developing a plan and implementation--occur sequentially, however, communications planning and implementation begin at the inception of the planning and continue after the implementation of the plan.

Establish A Planning Taskforce

The taskforce must represent each decision-making unit within the organization that will be impacted or has information/tasks to support the plan. Typically, a taskforce would be composed of representatives who have appropriate decision-making power and are trusted with the level of confidentiality required of the mission. The following organizational units are usually represented:

- human resources
- operations
- finance
- public/corporate relations
- legal counsel
- senior manager of every unit that may be effected (Note: these members should be added as soon as possible if not initially known)

An executive officer should brief the taskforce on its purpose including:

- mission, history and business purpose
- role of each participant
- demand of confidentiality
- demand of candor
- specific objectives and timeframes (if known)
- pledge of support and resources

The first order of business should be a discussion and plan of how to ensure confidentiality and meet as necessary to complete the planning.

Complete A Written Plan

This is generally the step that takes the most time. It is critical that confidentiality and candor be maintained. Before a review of the committee tasks at this stage, some guidance on how to organize and process each task follows:

- Commit to finish the job and do not plan layoffs or downsizing in several steps or "waves."
- Determine by consensus how the taskforce will assign work and how that work will be completed. Options include individual assignment, small group assignment and hiring outside consultants or contractors. Some options may be better than others depending upon the task.

- Assign “devil’s advocates” for the most difficult decisions to ensure the taskforce has carefully considered all points of view. Assigning one or more individuals to function as devil’s advocates will reduce the strain and tension that will naturally arise out of the work of the taskforce.
- Do not reach decisions and closure until every member is completely satisfied that all risks have been carefully reviewed and analyzed and that all stakeholders have been identified and carefully considered.
- Assign documentation tasks. Every decision should be thoroughly documented. Consider minutes and recording meetings. Consider adding one member whose sole task is to document the decisions and preserve the record.
- For each task, determine who is responsible and accountable and a timeline for each task. Address how work and analysis in process will remain confidential.
- Determine how the committee will address members who do not fulfill expectations and responsibilities before the work begins.
- Elect or appoint individuals to the following roles--chairperson and scheduler. These roles can rotate or be permanent.

The following itemizes the tasks for the committee:

- Determine whether or not the proposed action is a layoff, reduction in force or other action.
- Review with counsel legal compliance and risks.
- Analyze and document the business purposes and objectives of the reduction.
- Compile restructuring cost projections. Budget the process. Assign accountabilities.
- Benchmark planned restructuring practices with norms.
- Address management functioning during the restructuring process.
- Review and carefully analyze all alternatives to any proposed layoff.
- Conduct workforce analyses for each stage of the process.
- Determine if the Worker Adjustment and Retraining Notification Act (WARN) will apply to the company’s proposed reduction in force. What are the requirements of federal and state law?
- Carefully review material on selecting employees for layoffs and voluntary programs.
- Discover whether comments have been made to any employees during the hiring process concerning the likelihood of layoffs or the future viability of the company.
- Determine if seniority will control and document criteria chosen.
- Review employment-at-will material to ensure that the action does not violate specific statutory restrictions or judicially imposed limitations.
- Review the pre-termination overview checklist. This checklist reviews the scope, policy considerations, documentation, implementation logistics, communication and security considerations that must be addressed in all reductions in force and layoffs.
- Consider if there are privacy issues that must be protected.
- Consider “survivor” assistance as a part of outplacement benefits.
- Have counsel determine if service letter agreements are required.
- Investigate and decide whether or not employment releases will be included. Consider if there will be a separation agreement.
- Ensure proper controls are in place to protect trade secrets and/or confidential information.
- How are the exit interviews to be scheduled? Describe any follow-up procedures post separation.
- Assign responsibility for planning and conducting the termination meeting (or meetings). Depending upon the number of employees to be terminated, additional staff may have to be selected and trained.
- Address the contents of employment references. Will the contents be reviewed with the employee?
- Research, prepare cost estimates and determine what outplacement support will be provided.
- Coordinate with company security personnel to anticipate potential employee violence. Demand that all security issues be addressed.
- Orchestrate the arrangements to remove the employee’s remaining personal property safely and securely while ensuring that the employees are not demeaned in any way.
- Insist where required, that the union be consulted and involved consistent with the contract.

- Outline and finalize the themes and facts will be communicated internally. What will be communicated externally to shareholders, customers, media and the community such as politicians and vendors? Has a press release been prepared and sent to the appropriate media representatives?

Announce The Action

- Select the implementation day. Avoid Friday (or the last day of the normal workweek if not Friday), the day after a holiday, and during a holiday season if at all possible. Start reasonably early in the workday.
- Make announcement to all concerned simultaneously if at all possible. Certainly make the announcement to all concerned simultaneously at each individual site. Be candid and straightforward. The person who will actually announce the action should rehearse the speech and critique a video of the rehearsal. Pay careful attention to body language.
- Senior management must be actively involved and highly visible throughout the process and especially on the announcement day. If possible the President, Chairman or senior division officer should make the actual announcement and handle all questions. Senior members of management should be "walking around" throughout the workplace and available to anyone who wants to talk to them.
- Write scripts for each speaker with precise wording that:
 - focuses on the future
 - clearly articulates why this action is necessary
 - do not blame past decisions or decision-makers
 - demonstrate what the company will do differently
 - layout timing and how the selection process occurred
 - voice concern and empathy for those affected
 - describe in detail all benefits and supports provided to those affected
- Prepare likely questions and answers. Read aloud and distribute copies to the workforce.
- Encourage questions from the audience. Maintain dignity and empathy no matter what questions may be asked. For example, at issue is the pay level of the CEO vs. the lowest paid worker. That question, and similar questions, should be anticipated and answered in the question and answers prepared ahead of the announcement.
- Close with a review of the benefits available to all staff and underscore those for survivors.
- In every action and statement, underscore the importance of each individual. Make sure no action erodes the dignity of any individual and especially those who will lose their jobs.

Continuous Communication Tactics

Communications in the best of times can be problematic. Communications during a downsizing or layoff is much more difficult. Some general guidance includes:

- Overcommunicate.
- Use every available communication medium including the intercom, newsletters, bulletin boards, e-mail, fax, letters to employees homes, and business signs outside of facilities.
- Stay flexible. If a communications piece is not effective, scrap it and find a better method. Unlike planning, this is not a stage where analysis and time spent determining why a specific communications tactic was not successful is a good use of resources.
- Be accessible. Walk around the site. Eat in the employee cafeteria with employees (and not a table of managers). Encourage feedback. Ask questions.
- Put a name, phone number, office and time/date on all written communications and ask for feedback.
- Involve employees if possible in every aspect of implementing the communications plans.
- Have the taskforce meet frequently, perhaps daily, post the announcement for several weeks to determine what must be done, respond to rumors and adjust planning to meet needs.
- Seek feedback by utilizing every opportunity including hotlines, suggestion boxes, EPA, e-mail, and personal contact.

Learn From The Experience

Encourage the task force to meet several times after the work of the reduction is completed. Consider the following actions:

- Did the reduction achieve the business goals? If not, why not?
- Was the financial analysis complete? If not, ensure the files are up-to-date in the event the process is repeated.
- Measure turnover post separation (at least one year after the reduction) to determine if the turnover level has increased and if the type of position being vacated has changed. Measure unemployment compensation and disability levels for cost increases. Analyze whether or not the reduction has had an impact on discrimination charges or other third-party actions. Monitor related expenses such as workers' compensation.
- Seek feedback from managers involved in the reduction and employees who may have been redeployed to determine what could have been done better.
- Prepare a final report for executive management and a summary report for employees.

Implementing Layoffs

Each reduction in force is different; however there are several common steps that generally occur.

Notifications

How will affected parties be told? Consider the following:

- *Employees affected.* These employees should be told in person by their manager and, if possible, a human resources representative. The employee should also be provided a letter that specifies the terms and conditions. Other written communication pieces can be included such as handouts, releases, confidential agreements, references, etc. Employees should also be provided with follow-up contacts.
- *Notice letter.* The letter should specify service date calculation, recap final dates and benefits. Consider having the department head sign the letter. Each letter should be double-checked carefully. If possible, do not terminate an employee on his or her birthday or service anniversary.
- *Employees not directly affected.* Employers should not overlook the employees who will remain. They should be notified as soon as reasonably possible *after* the employees who are affected are notified. There are many techniques that can be used. One of the most effective is group meetings led by senior managers that review what is happening, answer questions and provide resources for follow-up questions such as e-mail hotlines.
- *Community.* WARN situations require notice to governmental entities. Even if the reduction is not covered by WARN, some notice to the community should be considered. Minimally, the local newspaper (and television), community leaders, directors and vendors may have questions that should be anticipated and an individual within the company assigned responsibility for responding to or contacting these groups.
- *Customers.* Will customers be notified and, if so, how will customers be notified and what will they be told? If the decision is not to proactively notify customers, then will “questions” and “answers” be prepared for customer service staff? Will staff be trained to handle customer questions and concerns?

Conducting meetings

The meeting with the employee that is losing his or her job should be conducted in private and the setting should respect the employee's need for support and dignity. In addition to those meetings, there are other considerations, including:

- *General employee meetings.* How many meetings should be held for employees who are not losing their jobs and how many employees would be involved in these meetings? How long will meetings take? Who will conduct the meetings? Do the individuals who will conduct the meetings need training in order to be effective? What support materials and handouts need to be prepared? Who will prepare the materials? Who will review the handouts prior to distribution?
- *Outplacement.* How will the outplacement counselors be accommodated? Will the counselors be onsite and “pick-up” the employees immediately after being notified? What suitable space is available? What supplies and resources will be needed?
- *Paperwork.* What paperwork and notices must be prepared and approved in advance? Will a press release be generated? Are there any employment contracts? Will notices include recapping confidential agreements or is a separate document needed? Will a copy of the employment reference be given to the employee? How will references be handled?
- *Exit interviews.* Will exit interviews be conducted subsequent to the notice meeting? If not, why not? If exits are conducted, how will they be scheduled? Are there any timeframe constraints? Is there any follow-up by mail planned? How will the issues of concern raised in exit interviews be addressed?

Logistics

In addition to complex arrangements for each step, there are some general logistical issues that must be addressed, such as:

- How will employees remove their personal items from the workplace? Will the company provide boxes? If employees are leaving immediately, can the supervisor box up the employee's personal effects to avoid having the employee returning to the work area?
- Many employees may react emotionally. Tears, anger, raised voices and shocked silence are not unusual reactions. How are the individuals conducting the meetings prepared?
- In specific situations it may not be possible for the employee to leave immediately. Consideration should be given to encouraging the employee to leave for the remainder of the day (with pay). Employers should do everything reasonably possible to preserve the employee's dignity. Consider the way an employee has to leave the building and try to ensure privacy.
- If possible, do not schedule notices on Fridays or Mondays, or immediately before or after a recognized holiday. While there are no good times of the year for a reduction in force, avoid December if possible.

Communication

Communications are critical. The basic questions are:

- Who? Who is communicating and to whom are they communicating to?
- How? How will the message be sent and how will it be transmitted?
- When? When will the communication start and stop?
- What? What is the content of the communications? What is the purpose of the communication, and what does the sender want the receiver to remember?

Process. Communications should not be considered as an event but as a process. Communications strategy should include all available methods and media. Hotlines posting every question asked, newsletters, EAP counselors available 24 hours a day and frequent group meetings are some of the more effective communications techniques.

Culture. The communication style and method must be consistent with the corporate culture or the communications will not be successful. The message will lack credibility if delivered in a way that is foreign to the workplace.

External. Do not overlook the need for external communications. Employees develop relationships with customers, and customers will make inquiries. It is wise to anticipate what the questions will be and to prepare staff to respond effectively. Provide receptionists, telephone operators and other contact staff (and their relief) with information in order to answer questions.

Employee representatives. Employees may hire attorneys and/or have friends or members of their family make inquiries. These inquiries may address benefits or request information. How will the company respond? Obviously, companies must respond to legal or government requests; however, it may be wise to have a strategy to address concerns before the situation reaches that point.

Scripts. Consider providing prepared scripts. These scripts should be provided with enough time for the party to study the contents. The scripts should not be read to the employee or group. Also prepare commonly asked questions and provide answers.

Debriefing. All management participants should be debriefed, ideally by counsel and human resources. Care should be taken to explore any concerns or issues that have not been anticipated. Any new issues should be reviewed, analyzed and communicated. Hotlines, newsletter stories and future group meetings can be modified to include the new issues.

Security

Security staff should be included in planning, and potential issues must be addressed, such as:

- Will additional security staff be needed and if so, for how long?
- Who is responsible for deactivating security access? When will it be done?
- How will employees who receive notice be addressed if they return to the workforce (assuming the employees leave immediately)?

PROTECTING EMPLOYEE PRIVACY RIGHTS IN TERMINATIONS

- _____ 1. **Do not collect, use or retain information in the workplace that does not have a clear business purpose.** That purpose must, moreover, be easily articulated and understood by a third party. Check any information collected carefully for accuracy. Follow a policy that information will not be released to anyone without a clearly defined need to know.
- _____ 2. **Carefully investigate the reasons why an employee is being terminated.** Be sure there is a legal basis to act and that the information that led to the decision to terminate was not gathered at the expense of the employee's privacy rights.
- _____ 3. **Limit discussion of the termination itself and facts leading to the termination only to employees who have a need to know.** Be wary of conversations being overheard, especially in elevators, restrooms or at lunch. Do not discuss the situation with outside parties and friends.
- _____ 4. **Use the same care in transmitting records as you do in your conversations.** Consider transmitting written information in sealed envelopes. Establish procedures authorizing who can open sealed envelopes, reseal contents and documenting who has had access. Know the security limitations of e-mail and other electronic media, and take appropriate precautions.
- _____ 5. **Prohibit maintaining unofficial files, such as files maintained by supervisors, that contain sensitive information other than wage and salary data.** Periodically reaffirm this policy. Institute collection mechanisms for records when employees leave the company.
- _____ 6. **Routinely re-evaluate the procedures used to respond to requests for employment references on former employees.** Consider reviewing what will be released with the departing employee. Ask the audit department to include external employment reference checking.
- _____ 7. **Consider allowing terminated employees to contribute their version of events to the personnel file.** Maintain that information with the company's and use the same safeguards for both. Consider including the employee's information with the company's in responding to references.
- _____ 8. **Require written requests for information from third parties and written authorization from the employee to release job reference information.** Circumstances such as court demands for production of documents may override such a policy; in that case an employer may not be able to honor an employee's request not to release information. The employee should be made aware of the limitations and restrictions.

- _____ 9. **Do not incorporate insurance, security and medical records into personnel files after employees leave the company.** Procedures and safeguards that control access to paper files should also be adopted for electronic files and databases.

- _____ 10. **Establish a privacy policy or incorporate a privacy statement into the company's employee handbook.** Advise employees in writing of all monitoring devices, with particular emphasis on electronic databases and telephone surveillance, to rebut any unfounded expectations of workplace privacy,

- _____ 11. **Establish and maintain an open attitude within the workplace for employee access to information that concerns them.** When access is denied, make sure the reason makes sense to the employee and provide for the employee to appeal the denial. An open attitude will affect how employees feel when terminated.

TERMINATION NOTICE

Employee name: _____ Social Security #: _____

The above named employee has been terminated from employment with *AnyCompany* effective:

AnyCompany representatives signature: _____

AnyCompany representatives title: _____ Date: _____

HOW TO AVOID WRONGFUL DISCHARGE SUITS

Each year thousands of employers are sued by employees for wrongful discharge. In order to avoid such lawsuits, employers should carefully review their personnel policies and practices. The items in the following checklist represent issues that occur with frequency in such lawsuits.

Specific activities. Companies should review practices and procedures governing the following:

- ___ 1. employee handbooks or any official communication to employees,
- ___ 2. performance appraisal forms and procedures,
- ___ 3. hiring and termination procedures,
- ___ 4. human resources development programs, and
- ___ 5. consistency of personnel policies and practices.

Policy statements. A policy statement should not make any promise that could be construed as establishing a contractual obligation. It should be a broad and comprehensive statement of a goal, unlike a procedure, which should be specific and action-oriented. Nevertheless, a policy should still clearly communicate its intent to all employees. The policy statement itself should include:

- ___ 1. Procedures or steps used to apply or implement the policy;
- ___ 2. Management responsibilities or what managers are expected to do and methods for monitoring or controlling how the policy will be implemented or enforced;
- ___ 3. Consequences or statements indicating what will occur if the policy is violated and positive statements related to the value of following the policy;
- ___ 4. References or summaries of specific legal documents if legislation or common law is involved in the application of the policy or is the reason for the policy.

Additionally, a policy should be:

- ___ 1. Broad, leaving room for discretion and interpretation and allowing its application to be flexible;

- ___ 2. Comprehensive, covering all aspects of a relevant personnel activity;
- ___ 3. Inviolable, allowing no exceptions unless, under special circumstances, the policy itself does not apply;
- ___ 4. Authoritative, identifying responsibilities and both positive and negative consequences of decisions made within the context of the policy;
- ___ 5. Reasonable and applicable, so that managers can ensure that their decisions are fair and consistent and in accord with the company's goals.

Policy language. When constructing policy statements or procedures, employers should use:

- ___ 1. Short, clear sentences rather than technical or legal jargon or lists and outlines;
- ___ 2. A friendly responsive tone rather than impersonal legalistic language;
- ___ 3. Personal pronouns rather than impersonal words, to enable readers to clearly see how a policy applies to them;
- ___ 4. Ordinary language that communicates what the employer really means, rather than ambiguous language that may allow a supervisor to make an inappropriate decision;
- ___ 5. Action-oriented words in the form of active verbs (.01).

Company handbooks. Company handbooks should be carefully examined, and any handbooks that contain the following language should be either modified or deleted:

- ___ 1. A statement that termination will be for just or proper cause;
- ___ 2. A statement that indicates an employee will be placed on permanent status after successful completion of a probationary period;
- ___ 3. **Managers may want to consider inserting the following statements in company handbooks:**
 - ___ a. A statement that informs employees that the company retains the right to change the

employee handbook at its discretion;

- _____ b. A disclaimer to the effect that the employee handbook is not a contract, and any employee may be terminated by the employer at any time for any reason.

Performance appraisals. In order to decrease an employer's vulnerability to a wrongful discharge claim based on the company's performance appraisal system, the company should do the following:

- _____ 1. Inform employees of any decline in the quantity or quality of their performance;
- _____ 2. Advise managers to discuss each and every incident affecting performance with an employee when the incident occurs, and maintains a record of these actions as documentation for future performance appraisals;
- _____ 3. Once an employee's deficiencies have been observed, provide the employee with an opportunity to improve performance;
- _____ 4. Develop clear, objective criteria for evaluating performance;
- _____ 5. Train managers in the administration of the performance appraisal system, and instruct them in how to conduct a performance evaluation interview;
- _____ 6. Require employees to sign a statement that they have been informed of the results of their performance appraisal.

Recruitment and selection practices. Managers should carefully evaluate their recruitment and hiring policies and practices to reduce the probability of exposure to a wrongful discharge claim. The organization should consider:

- _____ 1. Including in all employment offers a statement that the employee may voluntarily terminate his or her employment with proper notice, and that the employee may be terminated by the employer at any time for any reason;
- _____ 2. Deleting from any recruitment brochures or applicant correspondence any promises of long-term employment, fast-track careers, a fixed term of employment or permanent employment;
- _____ 3. Discouraging supervisors from promising long-term employment, job security, permanent positions or termination only for just cause.

Employee discipline. Courts frequently use just cause standards when reviewing wrongful discharge claims. Therefore, employers should ensure that their disciplinary actions generally are consistent with the following guidelines:

- _____ 1. Employees are informed of work rules and the consequences of violating them;
- _____ 2. The employer makes a reasonable effort to investigate incidents before administering discipline;
- _____ 3. Incidents are investigated fairly and objectively;
- _____ 4. All rules are administered evenhandedly and without discrimination;
- _____ 5. The degree of discipline administered is related to the seriousness of the offense, the employee's prior record and other mitigating circumstances.

Resignations. Review voluntary resignations for instances in which an employee states that the company has not adequately supported the employee in performing the functions of his or her job. Pay particular attention to situations where the employee infers that the employee's working conditions were so difficult and intolerable that the employee had no other choice but to resign. In the event a resignation alleges this type of situation:

- _____ 1. Investigate each of these situations thoroughly to determine if there is any basis in fact.
- _____ 2. Determine if the employee has taken medical leave due to work related matters, such as stress, prior to the resignation.
- _____ 3. Look for independent corroborative evidence.
- _____ 4. Compare the employee's allegations to exception criteria of at-will status that can arise from public policy or failure to act in good faith.

Terminations. When terminating employees the company may want to consider doing the following:

- _____ 1. Have someone other than the terminating employee's supervisor conduct an independent review of the facts of the termination before the final termination decision;

____ 2. Monitor termination procedures to make sure that supervisors consistently apply personnel policies and procedures over time;

____ 3. When employees resign voluntarily, ask them to sign a separation agreement. In the agreement, the employees agrees not to sue the company and releases it from all future liability arising from the resignation in exchange for some benefit like a letter of reference or severance pay;

____ 4. Have a detailed written explanation of the reasons why the employee was terminated;

____ 5. Respond to any questions raised by the employee about the termination accurately, and expeditiously, giving him all the reasons for the action.

Human resources development. In order to develop a positive human resources management program while at the same time avoiding exposure to wrongful discharge claims, companies should consider doing the following:

____ 1. Inform supervisors about those personnel policies and practices affected by employment-at-will issues.

____ 2. Advise supervisors on what they should tell applicants in employment interviews or correspondence.

____ 3. Point out to supervisors those statements that they are not authorized to make.

____ 4. Inform supervisors of legal changes regarding employment-at-will issues.

MEMO TO MANAGERS: Statements to avoid in the recruitment process.

TO:

FROM:

DATE:

SUBJECT: Statements to avoid when interviewing or recruiting prospective employees

The following statements must be avoided at all times, but particularly when interviewing job candidates and when in the process of recruiting either in house or externally. To make these statements could be construed by the prospective candidate and potentially by a court of law as indicative of the existence of an employment contract when the employment is at will. When interviewing or recruiting, avoid making statements such as these:

- ___ 1. You will have a long, rewarding and satisfying career ahead of you.
- ___ 2. We will pay half your moving expenses now and the balance after one year.
- ___ 3. You will be with us as long as you do your job.
- ___ 4. You will not be fired without just cause.
- ___ 5. This is a company where you can stay and grow.
- ___ 6. In this company you'll have lots of job security.
- ___ 7. There are no layoffs within this organization.