Workforce Transitions and Legal Traps: Navigating RIFs, OWBPA, and WARN

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Introduction

- Managing workforce reductions while complying with key laws
- Focus Areas: WARN Act, ADEA, and OWBPA
- Session Goals:
  - Understand employer obligations
  - Identify common legal traps
  - Apply practical compliance strategies

Terminations Framework

RIF Planning Checklist

- Legal Requirements
- Compliance with company policies
- Consider past practices
- Consistency Pretext-free
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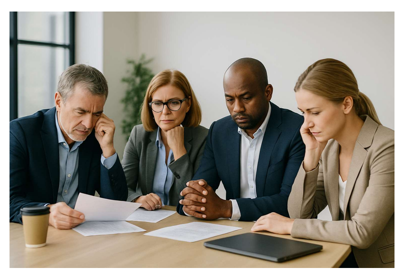
Common Reasons for Work Force Reduction (RIF)

- Cost reduction or restructuring
- Redundancy or role elimination
  - Lack of work
- Changing skills needs
- Physical relocation or site closings
- Outsourcing or offshoring



Workforce Reductions (RIFs)

- Definition: Permanent or temporary layoffs due to business necessity
- Common Reasons: Cost reduction, restructuring, mergers
- Legal Imperative: Consistent criteria and proper documentation

Key Statutes in Play

- WARN Act: Advance notice requirements
  - 100 or more employees (federal law)
- OWBPA: Waivers of age discrimination claims
  - Employees age 40 or older
- Other Laws: ADEA, Title VII, ADA, state mini-WARN laws

WARN Act Overview

- Purpose: Protect workers from sudden job loss
- Coverage: Employers with 100+ full-time employees
- Triggers:
  - Plant closing: 50+ employees
  - Mass layoff: 50+ employees & 33% of workforce

Group Layoff/Reductions In Force

- WARN Act
  - Covered employer – 100 or more employees or 100 or more employees collectively working at least 4,000 hrs./week
  - Affected employee – employee that reasonably may be expected to experience an employment loss as a result of a proposed plant closing or mass layoff

Group Layoff/Reductions In Force

- WARN Act:
  - Plant closing – permanent or temporary shutdown of single site of employment, or one or more facilities or operating units at single site, resulting in employment loss at the single site occurring within any 30-day period, for 50 or more employees (excluding part-time)
  - Mass layoff – RIF, not qualifying as a plant closing, resulting in employment loss at the single site within any 30-day period, for 50-499 employees and that number is at least 33% of active employees or for 500 or more employees

WARN Act Notice Requirements

- WARN Act
  - Detailed analysis required to determine whether obligations triggered
  - Covered employer must give at least 60 days' notice of plant closing or mass layoff to affected employees, state dislocated worker unit, and local government (some exceptions apply)

What Must Notice Contain?

Unrepresented Employee Notices

- Whether planned action is permanent or temporary
- Statement that entire facility is to be closed (if applicable)
- Expected date plant closing or mass layoff will commence

What Must Notice Contain?

- Expected date individual employee will be separated
- Whether bumping rights exist
- Name and telephone number of a company official to contact for further information

State Dislocated Worker Unit/ Local Government Notices

- Name and address of the employment site where the plant closing or mass layoff will occur
- Name and telephone number of a company official to contact for further information
- Expected date of the first separation
- Number of affected employees
- **Additional information must be maintained on-site and accessible to state and local official, if requested**

Requirement to Update Notice

If **date** of plant closing or mass layoff is **delayed**:

- Less than 60 days: New date, reason for postponement, reference to initial notice
- 60 days or more: New notice required

WARN Exceptions

- Faltering Company: Attempting to secure capital
- Unforeseeable Circumstances: Sudden and unexpected downturns
- Natural Disasters: Direct result of natural events
- Exceptions narrowly applied; document justification carefully

Other Special Circumstances

- Short-term layoff extension
- Certain sale of business transactions

WARN Act Common Problems

- Applying the part-time employee rules
- Identifying single-site of employment
- Counting employment losses (which employees, which reasons, over what period)
  - Overlapping terminations within 30/90 day windows
- Changes in termination date
- Calculating notice date
- Content of notice

State Mini WARN Acts

- Mini-WARN Acts and other notification laws
  - California, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, New Hampshire, New Jersey, New York, Tennessee, Vermont, Washington, and Wisconsin
- Often lower thresholds or longer notice periods

WARN Violations & Penalties

- Employer Liability: Up to 60 days' back pay and benefits
- Civil Penalties: $500/day for failure to notify local officials
- Mitigation: Early or partial compliance reduces risk
- Often presents as class action lawsuits

OWBPA Overview

- Amended ADEA
- Purpose: Protect employees 40+ from uninformed waivers
- Key Principle: Waivers must be knowing and voluntary
- Applies To: Individual and group layoffs

OWBPA Release Requirements

- Plain language
- References ADEA rights
- Cannot waive future claims
- Consideration beyond owed pay
- Advice to consult attorney
- Review Periods: 21 days / 45 days (group)
- 7-day revocation period

Group Layoff Disclosures

- Required for group RIFs involving employees aged 40+
- Must include: decisional unit, eligibility criteria, time limits
- Job titles and ages of those selected and not selected

Group Layoff/Reductions In Force

- Waivers of age discrimination claims with exit incentive or other employment termination programs offered to a group or class of employees
  - Must provide 45 days for consideration of agreement
  - Must provide disclosures as to the class, unit or group of persons covered by the program, eligibility factors and time limits, as well as job titles and ages of all individuals eligible or selected for the program, and ages of all individuals in the same job classification or organizational unit who are not eligible or selected

Release Considerations

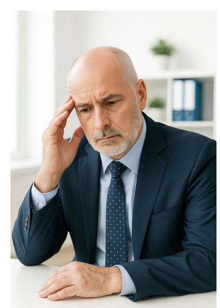
- Age discrimination waivers:
  - Understandable
  - Waiver must refer to rights/claims under ADEA
  - No prospective waiver
  - Consideration must be in excess of anything to which employee already is due
  - Advise employee in writing to consult attorney
  - 21 days for consideration (45 if offered with exit incentive or other termination program to group/class)
  - Seven days for revocation (regardless of whether review period is 21 or 45 days)

RIF Planning Checklist

- Identify legitimate business reason
- Establish objective selection criteria
- Conduct adverse impact analysis
- Align WARN and OWBPA timelines
- Plan communications and documentation

Common Legal Traps

- Subjective or inconsistent selection criteria
- Late WARN notice or incomplete disclosure
- Noncompliant OWBPA waiver language
- Poor documentation of decision rationale



Severance Agreements

- Include: Release, confidentiality, non-disparagement, non-admission
- Must meet OWBPA standards for validity
- Avoid vague or coercive language

Integrating WARN and OWBPA

- Step 1: Determine WARN applicability
- Step 2: Coordinate with severance timing
- Step 3: Ensure consistent messaging and disclosure
- Step 4: Track review and revocation periods

Communication Best Practices

- Clear, transparent messaging minimizes litigation risk
- Provide FAQs and designated HR contact
- Offer outplacement support to preserve morale
- Do you need crisis PR help?
- Consider attorney-client privilege issues

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