

**Introduction to Planning a  
Reduction-In-Force (RIF):  
Considerations for Management**

These materials are provided for informational purposes only. They do not constitute legal or accounting advice, and should not be relied upon as such. If you need assistance with, or have questions about, how the law applies to a specific set of facts and circumstances, you should consult with your attorney.

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*Introduction to Planning a Reduction-In-Force (RIF): Considerations for Management* has been designed to assist employers when they are faced with the difficult task of reducing their workforce.

Highlights of this booklet include:

- Alternatives to an Involuntary RIF
- Compliance Issues
- Considerations for Selecting Employees
- Preparing for Termination

This booklet can be used as a reference for you, as the employer, to consider before reducing your labor force. Additionally, employers should always seek the advice of legal counsel when planning a RIF to ensure compliance with applicable laws and to help protect against employee claims arising after the RIF takes effect.

## **Alternatives to an Involuntary RIF**

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Prior to an involuntary RIF, consider some alternatives that may enable your organization to achieve its cost-cutting initiatives without eliminating jobs.

### **Overtime Freeze**

Employers may be able to cut costs and avoid an involuntary layoff by eliminating overtime. During an overtime freeze, non-exempt employees would be prohibited from working more than 40 hours in a workweek.

**Note:** Under the Federal Labor Standards Act (FLSA), if a non-exempt employee works more than 40 hours in a workweek, he must be paid at least time and one-half his regular rate of pay. State law may be more stringent.

### **Avoid Hiring Consultants**

Before contracting outside help for a particular task, determine if anyone in the current workforce has the skills and/or abilities to do the job. Have managers utilize internal resources for tasks that can be performed by the staff.

### **Offer Voluntary Early Retirement**

Workers who are planning to retire in the next couple of years may be willing to take an early retirement package. While the company would likely offer some type of compensation package for early retirement, money would be saved in the long term by not replacing the workers and saving on future salaries.

### **Offer Voluntary Furloughs**

A voluntary leave without pay is another option that may eliminate the need for an involuntary RIF. These leaves are generally short in duration (for example, 30 to 60 days), during which time employee benefits are continued. A furlough is a common option utilized when an organization is waiting on another contract which would provide more work for employees.

### **Attrition and Hiring Freeze**

As employees leave the organization due to voluntary resignation, retirement, death, etc., do not replace the position. At the same time, put a hold on hiring. While this method may require current employees to take on additional responsibilities or some organizational restructuring, it would likely be a preferred alternative to permanent job loss.

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### **Offer Voluntary Reduced Workweek, Part-Time Work, or Job-Sharing**

For example, rather than a typical 40-hour workweek, reduce the workweek to 35 hours. Similarly, you could provide the option for part-time work or job-sharing. Although employees would experience a decrease in pay, they could avoid losing their income entirely.

**Note:** Reducing working hours may entitle employees to unemployment insurance benefits, depending on the state.

### **Reorganization**

Sometimes a company needs to reduce staff or close one area of the business while other areas are still thriving. Rather than hiring from the outside to fill these vacancies, consider transferring employees from under-performing units to these open positions. This will reduce the need to layoff, provide cross training for future business needs, and help the organization retain valuable employees.

### **Shutdown**

Some organizations institute a mandatory shutdown for a designated amount of time (for example, one or two weeks). Employees may be able to utilize earned, but unused vacation to receive pay or have the time off unpaid.

### **Salary Reduction**

Cutting salaries by a certain percentage may result in monetary savings for the organization without having to cut jobs. Taking a pay cut is generally preferred over having a position eliminated.

Regardless of the alternative chosen, employers should consider securing legal advice early to ensure compliance with the many labor and employment laws. In addition, communication by upper management is critical to the success of a cost-cutting initiative. To ensure employee buy-in, it is imperative that management explains the reasons behind the action and lets employees know that such steps are underway in an effort to avoid an involuntary RIF.

Depending on the financial position of the organization and the length of time the company has been experiencing financial difficulty, it may be determined that an involuntary RIF is necessary. The information provided on the following pages of this guide will assist employers in working through the details of such a RIF, and will also provide considerations to reduce the exposures associated with it.

## **Compliance Issues**

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Once it has been determined that a RIF is necessary, consider the federal and state regulations that may apply. The chart below provides an overview of some federal laws that may apply based on the number of employees and the specifics of a particular layoff. State law may vary and offer additional protections for employees and/or requirements for employers.

**Because of the many legal implications involved in a RIF, an attorney should be consulted in advance of, and throughout the process, in order to ensure a compliance program.**

<b>Federal Law</b>	<b>Coverage</b>	<b>Summary</b>
Title VII of the Civil Rights Act	Employers with 15 or more employees	Prohibits employment discrimination on the basis of race, color, religion, sex, and national origin.
Americans with Disabilities Act (ADA)	Employers with 15 or more employees	Prohibits employment discrimination against otherwise qualified individuals with physical or mental disabilities.
Age Discrimination in Employment Act (ADEA)	Employers with 20 or more employees	Prohibits employment discrimination on the basis of age (40 or older).
Uniformed Services Employment and Reemployment Rights Act (USERRA)	Employers with one or more employees	Prohibits employment discrimination on the basis of application for, or membership in, a uniformed service. This Act also prohibits terminating certain employees "without cause" under certain circumstances outlined in the Act.
Immigration Reform and Control Act (IRCA)	Employers with four or more employees	Prohibits employment discrimination on the basis of nationality or citizenship status.
National Labor Relations Act (NLRA)	Most private employers	Prohibits employers from taking adverse employment action against individuals who exercise their rights under the Act. Employees' rights include the right to organize, join or assist a union, and the right to engage in a concerted activity for mutual aid or protection.

Federal Law	Coverage	Summary
Worker Adjustment and Retraining Notification Act (WARN)	Employers with 100 or more workers, excluding part-time employees (those who work an average of fewer than 20 hours per week or who have been employed for fewer than 6 of the 12 months preceding the date that the notice is required); or 100 or more employees including part-time workers who work more than a total of 4,000 hours each week (excluding overtime)	Requires covered employers to provide 60 days' advance written notice for plant closings or mass layoffs (as defined by the Act) to each affected employee and other individuals/agencies, as set forth in the Act.
Older Workers Benefit Protection Act (OWBPA)	Employers with 20 or more employees	An amendment to the ADEA regulating the use of waivers/releases in which employees (age 40 and older) are relinquishing their right to sue for age discrimination in exchange for a severance package. This Act contains detailed requirements for employers to follow during a RIF to obtain a valid ADEA waiver.
Consolidated Omnibus Budget Reconciliation Act (COBRA)	Employers with 20 or more employees	Requires covered employers to offer continuation of group health plan coverage to employees and qualified beneficiaries who experience a qualifying event (such as termination of employment).
Health Insurance Portability and Accountability Act (HIPAA)	Any group health plan or health insurance issuer offering group health insurance coverage	Among other requirements, HIPAA requires Plan Administrators to provide a "Certificate of Group Health Plan Coverage" at the time an individual ceases to be covered by the group health plan and is not eligible for COBRA; when an individual becomes eligible for COBRA or exhausts continuation coverage; and anytime the individual requests certification within 24 months of coverage ceasing.

Federal Law	Coverage	Summary
Employee Retirement Income Security Act (ERISA)	Applies to employer-provided benefit plans if the employer is engaged in a business or industry affecting commerce	Establishes requirements for tax-qualified, employer-sponsored pension and retirement plans. With respect to employee termination, ERISA requires plans to pay retirement benefits no later than the time a participant reaches normal retirement age. The plans itself may provide for earlier payments under certain circumstances. Refer to the Summary Plan Description (SPD) for specific details on the Plan's rules for obtaining the distribution, as well as the timing of distribution after termination of employment.
Executive Order 11246	Employers with federal contracts or subcontracts in excess of \$10,000	Prohibits discrimination on the basis of race, color, religion, sex, or national origin. Requires a written affirmative action plan by federal contractors with 50 or more employees and contracts totaling \$50,000 or more.
Vocational Rehabilitation Act	Employers with federal contracts of \$10,000 or more	Requires covered employers to take measures to employ qualified, disabled individuals and prohibits discrimination based on an individual's disability. Requires a written affirmative action plan by federal contractors with 50 or more employees and contracts totaling \$50,000 or more.
Vietnam Era Veterans Readjustment Assistance Act (VEVRAA)	Employers with federal contracts or subcontracts of \$100,000 or more	Requires covered employers to take affirmative action in hiring and promoting special disabled veterans, Vietnam-Era veterans, and veterans who serve on active duty during a war, or in a campaign or expedition for which a campaign badge has been authorized. Requires a written affirmative action plan by federal contractors with 50 or more employees and contracts totaling \$50,000 or more.

## **Considerations for Selecting Employees**

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Making the decision to reduce your workforce is difficult. Many factors are considered to ensure the process goes smoothly and in compliance with applicable state and federal employment laws. Reducing the workforce is an agonizing decision for many employers, however, choosing who to let go is often more difficult. Some employers may view the RIF as an opportunity to let go of “poor performers.” Unfortunately, the standards for defining poor performance are often subjective. Without solid, job-related documentation to back your decision, releasing “poor performers” may be viewed as discriminatory.

The goal in any involuntary RIF is to ensure that decisions are made by the correct people and their decisions are based on complete and accurate information. Employers should first consider assembling a RIF team composed of the managers who will participate in the decision making process. Typically, this team would include: executives, human resources, department managers, and legal counsel.

Using objective, measurable standards reduces the risk of discrimination claims. The team should identify which criteria they will use for the reductions. Examples may include, but are not limited to:

- Performance record and strength of documentation
- Skill set and need in post-RIF company
- Ranking employees within departments
- Eliminating underperforming departments and divisions
- Keeping revenue producing departments vs. administrative non-revenue producing departments
- Seniority
- Regional offices and plants

The team should also decide who is going to make the decisions about how employees and departments fall using the criteria. Often, the RIF team appoints certain executives or department managers. Human resources and/or legal counsel members should review and scrutinize all decisions made and analyze whether there are any potential legal issues under the Worker Adjustment and Retraining Notification Act (WARN), or whether any adverse impact issues may be implicated by the final decision.

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## **Employment-At-Will**

Once non-discriminatory criteria for selecting which employees will be let go has been determined, it is important to ensure there are no employment contracts (explicit or implied) that may interfere with employment-at-will.

The following examples may limit an employer's ability to terminate certain individuals:

- Written employment contract
- Collective bargaining agreement
- USERRA "for cause" requirements for certain employees returning from military service
- Improperly disclaimed or poorly worded employee handbook policies, for example, promises to provide notice of termination: "Employees shall be given two weeks notice prior to any termination in employment"
- References to "probationary periods" or "permanent employment"

**An attorney should be consulted regarding any questions or concerns about employment-at-will or your ability to terminate a particular employee.**

Item	What to Look For
Employment Application	Does the application have employment-at-will language? Is the application signed?
Offer Letter	Is there any language that could conflict with employment-at-will: references to permanent employment, required notice periods, annual salary?
Employee Handbook	Does the employee handbook contain employment-at-will language? Are there any policies that may conflict with employment-at-will? Does the handbook reference permanent employment?
Handbook Receipt of Acknowledgement	Is a signed receipt page from the employee handbook in the employee's personnel file? Does it contain employment-at-will language?
Performance Evaluations	Are there any remarks made by supervisors that could conflict with employment-at-will? For example, "Jane Smith is the best employee I've ever had and she'll always have a place in our company."
Employment Agreement	Does the employment agreement have employment-at-will language?
Confidentiality/Non-compete Agreement	If applicable, is a signed copy in the employee's personnel file?
Bonus Agreement*	When is the award date?
Stock Agreement*	When is the vesting date?

**\*Any agreements that offer any form of compensation in exchange for performance or tenure should be reviewed for award or vesting dates. If the termination occurs close to an award date or vesting date, arrangements may need to be made to give the employee his bonus or vesting.**

## **Preparing for Termination**

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Once the decision for a RIF has been made and employees have been selected, termination meetings must be held. These meetings must be planned carefully and all plans should be reviewed by legal counsel. Employers must also decide what type of separation/severance package they will provide to those selected and whether it must comply with an internal separation/severance plan. Following is a list of other considerations, including preparing information for employees, dealing with company assets, and conducting the termination meeting. This list is not all inclusive.

### **Information for Employees**

Under the Older Workers Benefit Protection Act (OWBPA), employers are likely required to provide employees with certain information about employees considered for the RIF. This information includes, but is not limited to, which operational unit was considered for the RIF and the ages of the employees selected for the RIF. The regulations controlling these disclosures are very specific and failure to follow them may lead to the Age Discrimination in Employment Act (ADEA) waivers being voided. Accordingly, experienced labor counsel should be consulted in deciding what information must be provided under the OWBPA.

In addition, employees should also receive materials providing information regarding their final pay and benefits. The following chart highlights some typical information that may be provided to the employees upon termination.

Item	Notes
Final Pay	Check the applicable state wage and hour laws for final pay requirements (date wages are due and whether or not earned but unused vacation, personal days, floating holidays, etc. must be included with final wages). Where state law does not mandate, provide wages in accordance with your company policy.
Release of Claims	Any severance compensation should be paid in exchange for a signed release of claims. The OWBPA has several detailed requirements governing what language must be contained in the release to obtain an effective waiver of age discrimination claims. An experienced attorney should be consulted to draft this waiver.
Confidentiality, Non-disclosure, and Non-compete Agreements*	If employees a signed a confidentiality, non-disclosure, and/or non-compete agreement upon hire, provide a signed copy for the employee upon termination. Retain the original in the employee's personnel file.
Stock Options/Grants	If applicable, a signed copy from the employee file should be included.
COBRA/State Continuation	Either election forms or contact information for the COBRA administrator should be included.
State Unemployment Insurance	Some states require a separation notice (information about state unemployment insurance) be provided upon termination.
401(k) and Pension	Information should be provided regarding pension funds. Information regarding the rollover of 401(k) funds should be provided.
Employee Assistance Program (EAP)	To help cope with the end of employment, provide EAP materials, if available.
Service Letters	Some states require employers to provide a service letter upon termination to certain employees. The contents of such letter vary by state, but may require employers to provide a notice to terminated employees stating the truthful reason for termination.
Reference Letters	If requested, provide reference information in accordance with your company policy.

**\*Confidentiality, non-disclosure, and non-compete agreements are legal documents that should be drafted with the assistance of legal counsel and signed by employees at the time of employment.**

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### Company Assets and Information

The following should be considered regarding the return of company equipment and the protection of company assets.

Item	Notes
Physical Assets	Including, but not limited to, company car, computers, phones, keys, credit cards, uniforms, etc. Is there a document that details the company equipment an employee possesses? Is there a clear procedure for returning the items? In most states, the cost of missing equipment cannot be deducted from a paycheck without signed documentation from the employee. Even then, employers may be limited in the amount of such deduction. Check your state wage and hour laws before making such deductions from an employee's final pay.
Loans, Education Reimbursements, Miscellaneous Reimbursements	If an employee has an outstanding loan with the company, determine if these funds should be collected from the employee. Review the loan agreement, if applicable. Check state wage and hour laws to determine whether or not repayment of any loans may be made through payroll deduction.
Company Passwords	Obtain passwords for password-protected documents, if applicable. Turn off access to company networks. This includes e-mail and voicemail. This should happen after the employees have been told of their termination.
Building Access	Collect electronic badges, cards, and other identification that provide employee access to company facilities.

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### **Termination Meeting**

Determining how to inform workers that their employment is ending is a difficult task. If applicable, the WARN Act outlines the requirements for notifying employees and certain other individuals/agencies. Some states have regulations similar to WARN that affect smaller employers. Consult legal counsel for specifics applicable to your business, including what is required for an effective WARN notice, the timing of such notice, and to whom the notice must be sent.

Generally, the company as a whole should be notified that a RIF is forthcoming, along with the reasons for the RIF, affected departments, and an overview of the general package. Following the general announcement, management should communicate specifics to affected employees either individually or in a group setting.

Companies not bound by WARN or similar state specific regulations typically have two choices: 1) provide advance warning notification of a RIF, or 2) provide no warning.

Below are some pros and cons to options of advance warning or no warning.

**Advance Warning**

Pros	Cons
Can be perceived by employees as a goodwill gesture.	Creates anxiety for all employees.
Employees can start seeking new employment.	Decreased productivity. More time will be spent discussing the pending layoffs; some employees may stop producing knowing they're being let go, etc.
Employees may volunteer to leave.	Increased absenteeism.
	Employee discussions with outside vendors and customers can create a loss in vendor confidence and uncertainty.
	Sabotage or theft. Company networks could be compromised. Equipment can "disappear."
	Uncertainty. Employees not selected for termination may seek other employment.
	Fear and anxiety may create an environment that is conducive to violence in the workplace.

**No Warning**

Pros	Cons
Business as usual until the formal announcement.	Damaged company reputation. Can be perceived as being "cold blooded."
Reduced feelings of anxiety and loss of productivity.	Doesn't allow employees an opportunity to plan for future employment.
Company can control information to vendors and customers.	
Reduced risk of sabotage or theft.	
Reduced risk of employees not affected by RIF leaving the company.	

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## The Meeting

Once the decision of timing the announcement has been made, the following action items should be considered.

Action Item	Notes
Determining meeting structure.	In large companies, individual meetings can be time consuming. In addition, calling employees into an office individually or in small groups contributes to heightened anxieties and may result in rumor mills. Consider making the announcement in a group setting, but allow for individual meetings after.
Getting affected employees to the meeting.	Consider how you will get affected employees to the meeting. Schedule or calendar? Send a memo announcement? If dealing with functional groups or departments, a “mandatory meeting” announcement can be made.
Timing the meeting.	Avoid RIF meetings on Fridays. Terminations held on Fridays leave two days for affected employees to stew before they can proactively apply for unemployment or seek other employment opportunities. Friday terminations may also increase the likelihood of wrongful termination claims or violence in the workplace.
Identifying the leader.	There should be one spokesperson who leads the meeting. Other executives may be present to answer questions or be available for individual meetings following the announcement.
Determining what will be said.	The announcement should be short and to the point. Avoid comments that may send mixed messages. Direct exiting employees on who will be providing information on final pay and other benefits. Allow employees the opportunity to meet individually.
Preparing to answer questions.	Managers responsible for communicating the RIF should be prepared to handle some tough questions and comments from employees. This may include, “Why was I selected?” “Will you provide a reference for me?” “Can I see an assessment of how employees were selected?” “I feel I’m being discriminated against.”

Action Item	Notes
Personal belongings.	Boxes should be available for employees to pack personal belongings. If an employee is too upset to deal with his personal items, offer to have them packed and shipped to the employee.
Leaving the premises.	Establish a time frame by which exiting employees must be off company property. Terminated employees should not be allowed to linger in the workplace; it is disruptive and upsetting to the remaining workforce. Employers should also be prepared to provide transportation for employees who may have car pooled, been dropped off, etc.
Outplacement Assistance*	Will outplacement assistance be offered to affected employees? If so, determine level of assistance and who employees should contact for assistance. Announce information regarding outplacement assistance to employees during the termination meeting.

**\*Paychex offers a *Career Continuation/Outplacement Manual* designed to assist your employees in a successful career search once they have transitioned out of your company.**

The *Career Continuation/Outplacement Manual* will assist employees in learning the objectives of the job search process through self-analysis and self-assessment of their skills. In the self-assessment phase, employees will be asked to complete tasks which focus on what they have accomplished and what they would like to pursue. This exercise assists employees in their job searches by identifying skills they possess; providing basic building blocks for résumé and letter preparation; and preparing employees for successful interviewing by providing materials designed to enhance their skills and increase their confidence.

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### **Post Termination Meeting**

Once the RIF meeting has ended and all the affected employees are off-site, consider the following.

<b>Action Item</b>	<b>Notes</b>
Meet with remaining employees.	<ul style="list-style-type: none"><li>• Explain reason for RIF</li><li>• Communicate company status and future plans</li><li>• Communicate any policy changes (for example, bonus plans, merit increases, etc.)</li></ul>
Consult with EAP, if available.	Your EAP provider, if available, may be able to provide on-site counseling for employees.
Remind employees of company policy on employee referrals.	Remaining employees should be instructed to direct requests for references from terminated employees to a designated company representative, in accordance with company policy.

