



## EMPLOYER BULLETIN: WORKFORCE REDUCTIONS

In the current economic climate, many companies have had to cut costs in a variety of areas including personnel. When planning downsizing, layoffs or other forms of job elimination, companies should follow a comprehensive plan that clearly identifies the reasons for the elimination, the selection process and post-termination considerations.

**The Reason:** As part of the planning process, it is important that you identify objective, business reasons when making a decision to reduce the workforce. Examples could be: reduction in business, organizational restructuring or job consolidation. You should take steps to collect data to support your decision and document alternate steps or measures that were considered prior to implementing the reduction. Further, you should specify which organizational changes will be made and how this will affect specific jobs or departments, result in a reduced headcount and meet your business objectives.

**The Selection Process:** Unless you are covered by a collective bargaining agreement or policy which dictates the selection process, there are no specific criteria which you are required to use as part of the process. Rather, the decision as to which employees will be subject to the reduction should be based upon objective criteria such as: length of service, qualifications, documented job performance, transferability of job skills, cross-training, outsourcing of certain skills, and job elimination/consolidation. You should not deviate from the reduction criteria in selecting employees; otherwise, an employee could claim the decision was discriminatory or unlawful because he/she did not meet the selection criteria. Consistent use of specific, neutral, business related criteria will result in fewer claims than a termination decision was for a discriminatory reason.

**Documentation:** You should memorialize the workforce reduction decision making process in a memorandum along with all supporting documentation and data. Adequate documentation will help protect your company against claims that the decision was discriminatory and not based upon a legitimate business need. Also, all termination meetings should be subject to the same “script”, by the same individuals, so that there is consistency in how the termination meetings are conducted and there are no ambiguities as to what was said at each meeting.

**Post Termination Considerations:** You could consider offering severance pay to employees, in exchange for release agreements, in order to avoid discrimination claims. Keep in mind, there are specific requirements that must be set forth in the severance agreement in order to release claims under the Age Discrimination in Employment Act. Further, if you want to prevent a laid off employee from competing, you should consider including a non-compete clause in the agreement. If you are covered by COBRA (20+ employees), you must also offer eligible employees and their dependents the option to continue their health care benefits. Make sure you are up to date on the new COBRA rules under the recent stimulus package which provides, in part, a premium reduction to certain qualified industries and expands eligibility for COBRA. Further, avoid filling any positions of those employees that have been laid off because a quick replacement of the individual will call into question the legitimacy of your reasons for the reduction in force.

**We are experienced, proactive and aggressive legal counsel providing superior service in all areas of employment law. If you would like further information regarding the issues raised in this newsletter or any other employment related issues, please contact Heather G. Ptasznik at (313) 259-8586 or John T. Below at (313) 259-8597. For more information about Kotz Sangster, please visit us at [www.kotzsangster.com](http://www.kotzsangster.com). This newsletter is provided as general information service and should not be construed as and does not contain legal advice on any specific matter, nor does this message create an attorney-client relationship.**

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