

BizTimes Media's Next Generation Manufacturing Summit

Davis|Kuelthau, S.C.

ROUNDTABLE DISCUSSION

October 15, 2020

Considerations for Mitigating Risk with Workforce Reductions

Presented by:

Laurie E. Meyer

Davis|Kuelthau, s.c.

October 15, 2020

Presenter | Laurie E. Meyer



414.225.1419
lmeyer@dkattorneys.com

Shareholder | Labor & Employment Team

Laurie combines her experience in human resources management with over 20 years of employment law practice to provide creative, strategic counsel and defense to employers of every size on a full range of employment issues. This depth of experience allows her to provide legal assistance to employers in ways that minimize risk and avoid litigation and support long-term business goals. Laurie takes a practical approach to solving employment problems for her clients and achieving their goals in a cost-effective way.



Discussion Agenda

- Consideration for Mitigating Risks with Workforce Reductions
 - Layoffs
 - Furloughs
 - Recall/Rehire

Layoffs

- Clarify if layoff is a softer way of saying termination
 - does the employment relationship formally end?
 - Expectation employee will return?
 - “Temporary layoff”
 - “Permanent layoff”
 - Define terms
 - If substantial number of employees being laid off/terminated, consider state and federal “WARN” Act provisions

Layoffs (cont'd)

- What is selection process for reduction: department, classification, length of service, location, other?
- Evaluate demographics of workforce and employee(s) subject to layoff to assess potential for disparate impact discrimination claims (e.g. age, sex)
- If severance packages to be offered, consider effective release and waiver provisions

Layoffs (cont'd)

- Even if you call it a layoff, there is no legal obligation to reinstate or rehire the employee unless policies or contract requires.
 - Traditional layoff provisions in union contracts will establish:
 - Recall rights while on layoff before any new hires
 - When rights expire
 - Sequence for recall (seniority, job classifications, etc.)
 - Status of insurance and other benefits

Layoffs (cont'd)

- Non-union employers need to clarify what rights, if any, apply to “laid off” employees to avoid confusion or potential claims:
 - Any provisions in individual employment contracts?
 - Any employer policy or handbook provisions?
 - Any voluntary rights or hiring preferences within employer discretion?
 - If so, carefully describe and place time limits
 - If not, this is “termination”

Furloughs

- Includes sending employees home or reducing their hours – basically, forced unpaid leave.
- Non-exempt employees paid by the hour, but only for time worked – employer can control the hours.
- Exempt employees who work any portion of a week must be paid for that entire workweek, absent certain exceptions.
- Pros – employee can still seek partial unemployment; you still have control over employee (on-call, etc.)

Furloughs (cont'd)

- Cons – have to maintain employee/beneficiaries on your insurance plans (still technically an employee)

Recall/Rehire

When rebuilding or growing workforce after prior reductions, consider:

- Any contractual obligations for recall of laid off employees or right of first refusal for rehire?
- Any policy or handbook provisions pertaining to recall or rehire?
- Do former employees start over in application process or skip steps?

Recall/Rehire (cont'd)

- Be mindful of potential discrimination issues in selection process – what are criteria?
- Multiple criteria for recall/rehire consideration useful, but not in particular priority.
- Prior performance can be one of the criteria, but be sure there is documentation to support conclusions if challenged as discriminatory.
- Avoid assumptions or stereotypes in context of fitness for duty or disability issues.

Questions/Comments?



Contact Information

● **Laurie E. Meyer**

414.225.1419 | lmeyer@dkattorneys.com



www.dkattorneys.com/coronavirusguidance/

