

## Preparing for a Reduction in Force or Position Eliminations

Organizations will typically create a team responsible for making decisions and conducting a reduction in force (RIF) or position eliminations. The size of the team may depend on the size of the organization and the scope of the reductions, but the group should be relatively small and have diverse experience. Appropriate team members include members of senior management, HR professionals, and an employment attorney. If the organization's attorney is not a member of the team, they should review the team's decisions for legal defensibility.

The team should follow these steps:

1. **Agree to use a methodology.** This is a critical step in preparing to eliminate positions or reduce the size of your workforce. A set of job-related, objective, and consistently applied criteria, decided upon, and documented before the selections occur, is the organization's best defense against a discrimination claim.
2. **Determine the scope of the reduction.** What portion of the business will be affected? Is business slow throughout the organization, or are departments or segments of the company busy, critical, or already operating with as few people as possible? Employees in these areas may be excluded from the reduction pool. How many employees will need to be reduced? Will reductions be made all at once or over time?
3. **Decide on the job-related, objective criteria that will be used for selecting the employees subject to the reduction.** Examples of criteria commonly chosen include:
  - Years of service
  - Employee status, e.g., part-time or contingent workers
  - Critical skills may exclude some workers from consideration if they are the only employees with those skills.
  - Performance as documented on performance evaluations, disciplinary records, supervisor's notes, etc.
  - Skill Set—the ability to perform many jobs makes the employee more valuable in a leaner environment.
  - Attendance record for absences that are **not** protected under federal or state laws--Example: An employer is prohibited from discriminating or retaliating against an employee for having exercised or attempted to exercise any local, state, or federal Family and Medical Leave Act (FMLA) rights.
4. **Determine who will make the selections.** Will the team review all employee records and make the decisions, or will department supervisors make recommendations for which employees will be affected? If so, ensure the supervisors understand the criteria to be used for their recommendations. Will employees be measured against those in their department or all other employees?
5. **Decide on the positions that will be subject to reduction.** Constructing a chart for each affected area or department may be helpful, with the employees' names down the side and the criteria across the top. Rate each employee on each criterion and add up each employee's scores. Ensure there is documentation to back up those ratings. Rank the employees by score and select the lowest-rated employees for reduction. MRA has a sample [Reduction in Force Worksheet](#) that can be used for this purpose.
6. **Review the selected individuals for legal compliance.** This step is critical and intended to ensure the decisions do not adversely impact any protected category of employees. The organization's attorney can be involved in this process. List the employees to be reduced and indicate whether each is a member of any protected groups: female? over age 40? disabled? etc. Then, review how the composition of the group of employees reflects the whole of your workforce for each category. For example, if six employees are over age 40 and six are under age 40, and the employees selected for layoff consist of four over 40 and one under 40, the decision should be reviewed to ensure defensibility based on the criteria used.

*MRA—The Management Association, Inc. does not make any representations or warranties regarding the use of this document. The material and content provided in this document is being provided for informational purposes only. The material provided does not constitute legal advice and should not be substituted for the advice of legal counsel. While the content may refer to federal, state, and/or local laws in place at the time of publication, members should consult with their own legal counsel prior to relying on any content herein.*

*This document is for use by MRA—The Management Association, Inc. members and may not be reproduced or distributed to non-members without prior written permission.*

The RIF team will also need to determine what action is required or desired concerning several other legal issues related to the reduction:

- Will the RIF be large enough to trigger the organization to provide a 60-day notice under the federal Worker Adjustment and Retraining Notification Act (WARN) or similar state law?
- Will severance pay be offered to the affected employees, and will the organization require an agreement to waive any employment-related claims? If so, engage with legal counsel to ensure compliance with the Older Workers Benefit Protection Act (OWBPA) and consider the elements to include in the final agreement. MRA has a resource guide on [Preparing a Severance or Separation Agreement](#) to assist employers before they meet with their legal counsel to craft the agreement.
- Will outplacement services be provided to employees being laid off?
- How will employees on protected leaves of absence be affected, if at all? While employees on leave can be terminated through a position elimination or reduction in force, employers need to be able to prove that it would have happened anyway had the employee been actively working to avoid potential claims.

## After the RIF

### Communicate the layoff to remaining employees.

Hold meetings during or immediately after the layoff. It is not necessary to discuss all the specifics of the layoff process; the message can be neutral and concise: “Part of the operations department has been laid off.” Announce any alterations in the reporting structure, workload, supervisory assignments, and shift changes. Convey the message that the layoff will cause some changes, and everyone’s support will be necessary to help manage the changes.

Possible concerns of the remaining employees may be, “Why did she/he have to go?” or “Am I next?” The remaining employees may want to talk about the issue and assure themselves that the company has taken care of the laid-off employees. Be prepared to respond. The following are some examples:

- “This was a difficult decision made by the management team. We hope that business conditions will not require this again.”
- “Outplacement services have been provided to laid-off employees.”
- “If anyone has individual concerns about this change, please arrange a time to see me after this meeting.”

### Work on the external communication process.

If former employees had business relationships outside the company, contacting customers, vendors, and support services is important to inform them of the recent organizational changes. Provide the new contact’s name, department, phone number, and email address. Assure them that your company is doing everything to provide continuity of service. Any concerns that surface should be managed quickly and professionally.

As unpleasant as a RIF is, it is essential to take the time to ensure your employees and customers understand the changes and have their questions and concerns answered.

When organizations need to reduce their workforce or eliminate positions, they must take the time to prepare for and conduct those actions properly to avoid discrimination claims or other legal challenges by those whose jobs are affected.

*MRA—The Management Association, Inc. does not make any representations or warranties regarding the use of this document. The material and content provided in this document is being provided for informational purposes only. The material provided does not constitute legal advice and should not be substituted for the advice of legal counsel. While the content may refer to federal, state, and/or local laws in place at the time of publication, members should consult with their own legal counsel prior to relying on any content herein.*

*This document is for use by MRA—The Management Association, Inc. members and may not be reproduced or distributed to non-members without prior written permission.*