

CONSIDERING A REDUCTION IN FORCE? DON'T LET A JURY DECIDE WHETHER YOU HANDLED IT CORRECTLY

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Given the current economic conditions (actual and perceived), a number of Nebraska employers have begun the process of analyzing and implementing reductions in their workforces.

Reductions in force raise a number of significant issues for employers, especially when implemented around a holiday season such as the one that is approaching. Not surprisingly, jury research suggests that employers are penalized for implementing terminations around Christmas and New Year's, and are more likely to award jury verdicts for employees in such cases.

Before considering a reduction in force, at a minimum employers should consider:

- Establishing and documenting a written plan for determining the number of positions to be eliminated and the legitimate, nondiscriminatory reasons why certain positions were selected and others were not;
- Give due consideration to the timing for implementing the terminations, not only the month but the day of the week and hour of the day;
- Determine whether the federal Worker Adjustment and Retraining Notification ("WARN") Act is triggered;
- Review your benefit plans to determine how terminated employees will be affected and what obligations you have to provide notice under the plans;
- Take proactive steps to secure employer resources in the event of a reduction in force, including terminating external access to computer and voice mail and access to financial accounts and other confidential and proprietary information;
- Consider using a written severance agreement under which the employer would be released from most legal claims in exchange for the payment of specified severance benefits to the affected employees. ***Be sure the agreement complies with federal law, including the Older Workers Benefit Protection Act;***
- Develop a communication plan for telling the affected employees about their termination as well as the remaining employees and, where necessary, the community and relevant business partners.

For over three decades the attorneys at Rembolt Ludtke LLP have advised employers in making difficult decisions such as a reduction in force. If you wish to discuss a possible reduction in force, use of severance agreements, or any other legal matter, please contact us.

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