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HR Tips and Talks

By Brenda Soto

Assessing your Options: Lay off Furlough and Reduction in Force

In times of economic crisis like this, employers may have to make difficult decisions to restructure their organization by reducing the number of employees in their payroll, also known as "downsizing".

The common practices for downsizing are Lay-offs, Furloughs and Reduction in Force (RIF). Let's define each one of them:

1. Layoff – Temporary full separation of employment due to absence of work. The expectation is to recall the employee once work is available again. However, there is no guarantee that the employee will be re-hired due to management decisions, business changes, etc. Which is why it can become a permanent layoff.
2. Furlough –is considered a mandatory unpaid time off. When an employer furloughs its employees, it requires them to work fewer hours or to take a certain amount of unpaid leave during the year. For example, an employer may require all employees to go on furlough, or it may exclude some employees who provide essential services. Generally, the principle is to have the majority of employees share some hardship as opposed to a few employees losing their jobs completely.
3. Reduction in Force (RIF) – it is a permanent cut in headcount without expectation that the employee will be recalled because the job position is eliminated due to lack of funds, job redesign, reorganization, etc..

In all of those scenarios above, employees can qualify for unemployment benefits. The laws regarding unemployment insurance vary by state. In some states, even business owners may be paid unemployment compensation. If you are not sure if you are eligible for benefits, contact your local state employment office for more information.

How do I go Conducting the Downsizing?

Whether you need to conduct a downsizing arising from challenging economic times or any other circumstance, it is critical that you carefully plan and implement the layoff process to be in compliance with applicable federal and state regulations. In general terms here are some of the steps that you may want to follow:

1. Identify which positions are essential, or not, to operate your business.

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2. If you decide to eliminate non-essential positions, document and establish an objective and uniform criteria to determine the employees who will be impacted (eliminated). Examples of objective criteria include skills, seniority, performance appraisals (to avoid liabilities you should have a structured evaluation systems and pre-documented evaluation before the layoff), among others. Avoid being subjective and ambiguous. Be consistent in your selection criteria without any exceptions to maintain the integrity of the process and avoid any discrimination claims.
3. Review the list of employees who will be eliminated in that position, and ensure that there is no disproportionate number of employees under any protected class by federal or state employment discrimination law (e.g. women, minorities, employees with disabilities, etc.).
4. Finally, meet individually with each employee. Remember that in challenging economic situations, you may be eliminating a good employee. Be sensitive, so they don't feel like they did something wrong. Without going into detail, explain the decision and the selection criteria for the layoff (e.g. "We decided to release those Cashiers with the least seniority").

Downsizing offers an immediate solution to reduce payroll costs. However, it is not necessarily the only alternative for it. Some of the solutions may include:

- Available federal, state or local funding or programs to assist struggling employers.
- Reduction of working hours, hiring freeze, reduction in overtime, or pay cuts.
- Streamlined work processes, which can save a business time and money, and ultimately increase productivity.
- Decrease or eliminate expenses in other areas (e.g. purchase of new equipment, outside contractors, etc.).

Before making any decisions, analyze whether your organization can absorb a layoff, furlough or RIF without any adverse impacts. This process can be complicated due to different regulations (FLSA, EEOC, WARN Act, etc.). You may want to consult a lawyer, an HR Expert, or a federal or state agency of the Department of Labor or SBA for assistance.

Finally remember that no one expected a global pandemic to happen. It is a new challenge and we are all learning throughout the process. For that reason, I encourage you to reevaluate and think about what are the talents, skills and abilities that you, your business or your employees would need to take in consideration to adapt to the potential new demands and different consumer behavior as a consequence of this global situation.