

VOLUNTARY AND INVOLUNTARY STAFF REDUCTION

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I. INTRODUCTION

Staff reductions, both voluntary and involuntary, are sometimes necessary. Changing financial circumstances require parishes and schools to carefully monitor income, expenses, student enrollment, and other factors. Parish closure, parish clustering, parish mergers, and other restructuring can also lead to a careful examination of the most efficient way to manage personnel costs. Even changing the focus of ministries within the parish can result in staffing changes. It is possible that reducing expenses in areas that do not involve personnel can achieve the necessary savings. If expense reduction in areas other than personnel are insufficient to achieve a balanced budget, reducing staff via a voluntary retirement program or an involuntary layoff should be considered.

Early exit or incentive programs are permissible provided the employer can show that the employee is given a free and voluntary choice to accept or reject the offer. If the plan is construed as giving the employee the choice of “quit or be fired,” the plan will likely be challenged and the employee’s resignation will be construed as “coerced.” In the case of an involuntary layoff, it will be important to follow Justice In Employment requirements, state and federal law mandates, and any special employer policies. Failure to do so could result in a successful challenge to the layoff decision and exposure to significant financial payout.

Note: Justice In Employment requires that the employer “seek and follow the advice of an attorney qualified in employment law and familiar with these policies” before making any Reduction In Force discharge decisions. Failure to satisfy this requirement could jeopardize insurance coverage.

II. INDICATIONS OF NEED BY EMPLOYER TO CONSIDER VOLUNTARY OR INVOLUNTARY STAFF REORGANIZATION OR LAYOFF

It is important that the employer be able to articulate the “business reasons” for the RIF. If the employer’s actions are consistent with the stated reasons for a layoff, a court is less likely to second-guess an employer’s business judgment and conclude that the terminations are discriminatory. Examples of legitimate business reasons for a RIF include:

- A. Parish closure, parish merger, or parish clustering results in excess staff capacity in certain positions.
- B. Changes in focus of parish ministries.
- C. Continued inability of parish to pay current obligations without borrowing or using financial reserves.
- D. Successive years of flat or declining income and increased expenses.
- E. In the case of a school, successive years of declining enrollment.
- F. No reduction in staff even though number of registered parishioners or school enrollment has declined over the years.

Note: Employers are occasionally tempted to use the staff reduction procedures as a way to remove an unpopular or underperforming employee from the workplace. If the claimed “restructuring” cannot be supported by verifiable economic facts or JIE factors, it will likely be shown to be a pretext for the discharge.

III. ALTERNATIVES TO INVOLUNTARY STAFF REDUCTION

- A. Hiring freeze, including not filling positions opened because the incumbent retired, moved, etc.
- B. Staff-wide spending cut or increasing employee cost for benefits (pension/insurance)
- C. Mandatory reduction in work hours

Note: In some instances, the pay change resulting from fewer work hours could allow the employee to reject the change, quit, and still be eligible for Unemployment Compensation benefits (assuming the employer is enrolled in the U.C. program).

IV. VOLUNTARY BUY-OUT OPTION

When considering ways to reduce their workforce, employers sometimes conclude that the best way to address overstaffing is to offer voluntary exit incentives, such as special early retirement benefits or special severance benefits. The Age Discrimination in Employment Act (ADEA) allows employers to offer voluntary exit incentives only to older workers who satisfy certain eligibility requirements. Early retirement incentive plans are generally lawful if they are truly voluntary, made available for a reasonable period of time, and do not lead to arbitrary age discrimination. A key component of a special retirement or exit plan is that it be completely voluntary. A plan is likely not voluntary if a reasonable person would conclude, under the circumstances, that there was *no choice*, but to accept the offer. A court is more likely to conclude that a plan is truly voluntary if the employee receives sufficient information about the choices, if the information and choices are free from fraud or other misconduct (such as misleading statements or coercive “quit or be fired” statements), and if the employee has sufficient time to consider the options. If the voluntariness requirement is not met, a court would likely treat the coerced resignations as constructive discharges or involuntary layoffs.

A. Advantages:

1. Program is voluntary so less impact on staff morale
2. Less likelihood of legal challenges
3. Allows employer to retain lower-paid and potentially higher motivated employees
4. More potential savings from personnel costs over long term

B. Disadvantages:

1. To be successful, substantial incentives must be offered, thus more costly. A careful examination of the specific needs of eligible staff should be conducted so severance incentives can be more narrowly tailored to those needs.
2. Sacrifice more experienced staff
3. Increased costs in the near term

Note: It takes approximately two months to complete the voluntary incentive program from the date eligible employees are notified about the program. Additional time is necessary to properly plan for that program and prepare complete and accurate materials. That process should be started early enough so an involuntary RIF can also be conducted if too few employees accept the voluntary buy-out.

V. REDUCTION IN FORCE (“RIF”) - STARTING THE PROCESS

A. Preparation of Case Statement that identifies objective and neutral reasons for RIF. Facts to consider:

1. Analyze parish and/or school income over prior 2-5 years and note any trends.
2. Analyze parish and/or school expenses over prior 2-5 years and note any trends.
3. In case of school, review enrollment over past 2-5 years and note any trends.
4. Project income, expense and enrollment information in next 1-3 years.
5. Review any applicable handbook policies for any policy that imposes certain requirements on the employer when making termination decisions (i.e., two-week advance notice required to be given to employer prior to termination).

B. Savings Target from RIF

Based on the financial analysis, an amount of savings from the RIF should be identified. This “target” amount is essential to RIF planning.

C. Make “Deep” Cuts

To avoid making staff reduction in successive years, it is important to make staff cuts that will address projected budget challenges in future years, not merely adequate staff changes to close budget gap for one year. Involuntary staff reductions in successive years has a devastating effect on staff morale.

D. Timing of Analysis

1. Conduct financial analysis early and continuously during the school/fiscal year.
2. Obtain enrollment information as soon as possible.
3. Reach consensus on savings target with appropriate decision-makers (e.g., finance council, parish council, trustees, school advisory board) as soon as school enrollment, tuition rate, and financial budget information are established. Don't wait until May to finalize.

E. Who is Involved in Analysis

1. Finance Committee volunteers can assist with financial analysis. This committee should avoid making recommendations concerning staffing changes.
2. School volunteers may have data on enrollment projections.
3. To maintain privilege and privacy protections, analysis of staff reduction decisions is usually made by pastor and business administrator, in consultation with an attorney. In the case of a school RIF, a president and/or principal can be involved.

VI. REDUCTION IN FORCE - IMPLEMENTATION

A. Notice to Staff

Decide when to provide notice of RIF to staff. Consider providing written notice of the basis for the expected RIF early in process:

Do: Provide general information about the business reasons for the RIF, such as projected budget deficit amount and/or decline in student enrollment. Also list JIE factors for making RIF decision (needs, qualifications, performance, seniority).

Don't: Don't promise a specific date for communicating RIF decision. Don't quantify specific planned changes (e.g., one less teacher needed in Grade 2 and elimination of part-time administrative assistant position).

1. Advantages to providing early notice of planned RIF:
 - a) Staff can begin search for other employment in a timely manner.
 - b) Can motivate employee who is contemplating voluntary resignation (retirement, planned move, health concerns) to do so, thereby reducing or possibly eliminating scope of involuntary reduction.
 - c) Avoids surprise
2. Disadvantages to providing early notice of planned RIF:
 - a) Risk loss of stronger staff.
 - b) Increases staff anxiety.

Note: Consider whether notice of financial issues and need for staff reduction should be provided to parishioners via announcement from pulpit, bulletin announcement, or both.

B. Compile Demographic Data for Each Staff Member

1. Age - Date of Birth
2. Race
3. Hire Date
4. Probationary Status
 - Has employee achieved “regular” status under Justice In Employment?
5. Progressive Discipline per JIE
6. Educational Background
7. Licensure - Certification

8. Whether employee is covered by parish or school health and medical insurance.
 - Important to consider when evaluating voluntary buy-out benefits or RIF severance benefits.
9. Disability Issues
10. Whether employee has taken medical leave (FMLA or otherwise) during past 18-24 month period.
11. Does employee have children enrolled in school?
 - Tuition benefit may be severance benefit option.
12. Any whistleblower, OSHA, workers' compensation or other claims
13. Other

C. RIF Criteria

1. Apply Factors from Justice In Employment:
 - a) Needs of parish or school (i.e., reduce school staff because of reduced enrollment or consolidate positions following merger)
 - b) Staff member's qualifications, including education, training, and work skills, and how those qualifications correspond to parish or school needs
 - c) Past performance
 - d) Seniority
2. Objective criteria (i.e., seniority) is more difficult to challenge. Raises other issues, such as leading to termination of motivated, well-trained, more recent hires.
3. Subjective criteria (i.e., performance) is more prone to challenge.

Note: Under Justice In Employment, all employees affected by a RIF are to be advised *in writing* as to the criteria used and decisions made. This must be prepared carefully and tailored to each employee who will lose his or her job. It will be closely scrutinized by the employees.

D. Avoid RIF Selection Based on Protected Class Status

1. Age
2. Race - National Origin
3. Disability
4. FMLA
5. Sex
6. Sexual Orientation
7. Pregnancy
8. Marital Status
9. Religion
 - May be permissible basis for RIF decision in some instances.
10. Other

Note: Generally, employees may not be displaced by individuals placed at the workplace through a program that provides governmental assistance.

E. Disparate Impact Discrimination Analysis

An employment decision that is neutral on its face may still be discriminatory if it has a disproportionate impact on employees in protected classes. These kind of claims are often referred to as “disparate impact claims.” They typically have little application to staff reduction involving a few staff members. It is a mathematical model more applicable to staff reduction involving a large number of employees.

VII. SEVERANCE AGREEMENT AND RELEASE ISSUES

A. Separation Benefits

Who gets severance?

Note: Justice In Employment requires that “an appropriate level of severance be [paid] to those affected” by the RIF. It is strongly encouraged that the employer obtain a release of all claims from the employee in exchange for the payment of severance benefits. Consult with your attorney about the proper release agreement.

Question: What does “appropriate severance” mean? Is that adequate payment in exchange for a release of claims?

Determine “appropriate” severance, and review and consider severance options.

1. Severance Pay
 - Rule of thumb formula: 1 week of pay for each year of service.
 - Can be modified based on other financial considerations.
2. COBRA benefit
 - Full or partial payment benefit
 - Single or family coverage benefit
3. Letter of reference
4. Outplacement services
5. Tuition remission
6. Consider effect of enrollment or non-enrollment in state unemployment compensation program (as discussed below).
7. Other

B. Unemployment Compensation

1. Determine enrollment status
 - Is parish/school enrolled?
 - Have employees been told (accurately or inaccurately) of the parish's enrollment status? Check handbooks and other communications to employees.
 - If enrolled, is the school a reimbursing or tax-paying employer?
 - Answering these questions can be complicated in the case of mergers.
2. Calculate when unemployment compensation payments would begin
3. Calculate approximate benefit payment amounts

NOTE: The information set forth in these materials is intended to provide an outline of the law existing as of the presentation date. It is not intended as, nor should it be considered, "legal advice." If you are presented with a specific issue, you should consult with legal counsel.