HOW SHOULD YOU DETERMINE WHICH JOBS WILL BE ELIMINATED?

Once an employer determines a reduction in force is a viable business solution to specific problems or challenges, then the issue of how to select employees or positions is raised. There are some situations that are "easier" than others, such as the closing of a remote business site or a specific line of business. Assuming that all of the positions at the site or within the particular business are eliminated, the impact of the reduction on the continuing business and the employer's liability are minimal. Few reductions in force, however, are "easy."

Selecting employees for reduction in force decision process

Generally, the decision process is as follows:

Document the business event. One or more events occur which mandate that the business take this action. The business should document why this action, and not other less drastic action, is necessary.

Common events include:

- declining profits,
- selling or discontinuing a business line,
- outsourcing functions,
- merger,
- closing a plant,
- business consolidation,
- restructuring departments or business lines, and
- other market pressures, including competitors and maximizing shareholders interests.

Whatever the event(s), it should be known, documented and completely analyzed.

Decide to reduce staff. All alternatives should be considered. Any studies, analyses or decisions should be documented and preserved. The employer should be able to respond to any challenge by documented proof of the rationale and intent of the reduction. All levels of management should approve the action.

Identify the impacted group. Once the decision is made that one of the methods the company must use is reducing staff, the process must further focus on how to implement the decision.

- What units, departments and/or sites will be affected?
- Is the reduction across-the-board or limited to certain positions, jobs, shifts and/or locations?
- What skills and knowledge will be needed in the organization after the reduction in force?

Some experts encourage companies to form committees or taskforces to perform the tasks associated with selecting employees in order to remove any possibility of bias on the part of management or human resources.

Use established performance measurements, accounting reports, organization charts and other available company materials to determine the appropriate group. Consider working with counsel to create a document that itemizes the criteria and outlines the process.

Research reduction in force methods and determine what method (or methods) the company will use. Using the criteria of the reduction in force method selected, identify the employees that will be terminated.

It is critical when the company makes the selection decisions that the company be able to articulate why one employee was retained and one dismissed if challenged. Therefore, the company must have a detailed and comprehensive "view" of what the future organization consists of. The company must be able to document the future organization's structure, types of positions, and how the positions were filled, including skill levels needed.

Once the impacted groups are known, perform a workforce analysis.

Methods of selecting employees. There are two basic methods of selecting employees for reductions in force -- involuntary and voluntary. In any given reduction, a company may use both methods. For example, if enough staff does not volunteer to leave, then the employer has little choice but to continue the reduction by selecting staff. Therefore, both methods should be planned.

Voluntary selections methods. As a general rule, voluntary methods are "safer" from challenge than involuntary methods. However, no method is lawsuit-proof. Generally, there is less anger and short-term ill will in the workplace when employees volunteer.

Involuntary selection methods. If an employer does not believe there will be enough volunteers, or the reduction is limited to a specific group or skill set, then an involuntary method is usually used.

Involuntary selection methods

It is an unfortunate reality that involuntary reductions in force are the rule rather than the exception. How to select staff? In a word, carefully! Once the group is identified, careful research and analysis must occur to determine who will be selected to leave.

Attrition. At this point, it should be clear that the selection process may focus on those employees who will be terminated; however, employees in the group that are not selected may also decide to leave. Consideration must be given as to how the employer will respond to attrition in both groups. For example, will employees who have received notice that they were selected for termination be asked to apply for or be given jobs that become vacant and that will remain after the reduction in force? If yes, how will the employee be selected to be retained? How will vacancies in jobs that are likely to be eliminated in the future be filled?

Size and complexity. The size of the reduction in force is important, in that the larger the reduction is the more staff must be involved. Staff must be trained, confidentiality must be maintained, and decisions must be reviewed. Size makes these steps more time consuming and harder to manage.

Criteria. The first step is to define the criteria for selection. Common criteria include:

- Location
- Seniority
- Performance
- Skills and abilities
- Position held
- Business unit
- Ranking using one or a combination of factors

Seniority. Selection based on seniority, last-hired first-fired, is a relatively safe method. If using seniority, consider:

- Will you use the most recent hire date for employees who have been rehired or will you use a calculation of total service, including former employment?
- Will you measure length of service to the employer or length of service in a specific job or position?
- Are there other seniority measures that should be considered?

One of the disadvantages of using seniority is that it may result in the loss of workers with skills that are important to the business.

As a general rule, most employers use seniority as a basis to decide who to lay off or downsize *unless there is a business reason not to do so.* Using seniority as a criteria for selections has many advantages:

- It is easy to administer.
- It is acceptable as a reason among the workforce.
- It is easily defended when challenged.

However, using seniority without further analysis and thought may not be in the employer's long-term best interests.

Performance. There are two types of performance indicators: (1) performance appraisals and (2) performance measures such as sales, fees earned, or the number of items handled. Another type of indicator --ranking --can be utilized specifically for the reduction.

Performance appraisals. Employers must rely on the documented file. The time to question the validity of evaluations is not during a reduction in force. Failure to take action to ensure a valid performance measurement system and trained supervisors that follow the rules is a serious management shortcoming that cannot be addressed during a reduction in force. If the performance system is seriously flawed, do not use it as a method of selection and change the system as soon as possible after the reduction is over.

Accept as fact that if challenged, every positive statement in a performance evaluation will be accepted literally. While employees with good evaluations can be selected, employees with "better" evaluations should be retained over those with good evaluations. One of the dangers in using performance appraisals as a basis for reduction decisions is that the performance system was never designed for comparison of one employee to another. Consider having a current evaluation prepared that does include comparison and rankings.

Eliminate those with inadequate performance first. However, assume that you will have to "prove" that the evaluation is valid and be prepared to be able to do so. If it cannot be done, do not use the evaluation as criteria. If challenged, a company document, such as a performance appraisal, is suspect. Therefore the employer must prove that the document is true and valid.

Performance measurements. Since these factors are not generally based solely on another's opinion, they have more credibility; however, they also are not without possible error. Carefully review the process to ensure that there is no bias. Be sure the timeframe that is used has no unusual occurrences that would skewer the results.

Rankings. Consider creating a list ranking all employees based on several factors including performance. Factors that could be considered and weighted include:

1. Several performance appraisals
2. Awards and other workplace achievements
3. Skills and abilities needed in the revised organization
4. Peer appraisals
5. Customer input such as complimentary letters

Generally human resources and the legal department design the ranking process and the immediate supervisor prepares the ranking. Each level of management reviews the ranking and approves. Once the entire group is ranked, the next step would be to determine who on the list, based on the number that must be selected, will be released.

Carefully review all files before a final selection. Understand and resolve why there are differences. When there is a difference between prior ratings and current ratings, proceed very carefully. Be absolutely clear that the differences can be explained and justified and ensure management understands their role and their personal potential liability.

Skills and abilities. Like performance, this criteria aims to retain talent for the business. Increasingly, identifying those with outdated skills to be terminated or identifying those to be retained on the basis of skills is used in order for the company to remain competitive. The process is similar to performance measurements. Ranking techniques can also be used.

Management input and sign-off. No matter what method is used, consider having members of line management use previously established criteria and actually select the employees to be terminated. In the event an action is challenged, management staff will be called to testify. Do not isolate them from the process. Involve them as much as possible, including requesting rankings of staff with detailed explanations.

Double-check. For every person in the group, those who are being released as well as those who are not, there should be a check that includes:

- review the personnel file
- review performance appraisals
- consult with line management
- ask whether there is anything else that should be considered

If the human resources staff or designated managers are unfamiliar with the employees, managers and/or the workgroup, they should carefully check all records and ask open-ended questions. For example, determine whether or not any of the employees to be released has just returned from a leave of absence. The fact that a person has just returned from a leave does not preclude that person from being released; however, there should be no animosity or bias that arose from the leave in the decision to release that person.

Also, determine if any representations were made during the hiring or transfer process that would lead an employee to rely on comments concerning the company's future viability.

Final checks. Check the following prior to announcing the reduction in force:

- Are there any required notices that should be sent?
- Are there union contracts that must be considered?
- Are there personnel manuals or other benefit plan promises or commitments that must be incorporated into the process?
- Are there employment contracts or other relationships that must be considered?
- Is there pending litigation that involves any of the parties?

Source: ***CCH***