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Phone: +1 212 537 6331 | Fax: +1 212 537 6371 | customerservice@portfoliomedia.com

Your Next Reduction In Force: The Dirty Little Secret

Law360, New York (August 11, 2008) -- The news that 51,000 Americans lost their jobs in July – causing a monthly spike in unemployment to 5.7% – underscored a familiar refrain in executive suites: “costs are up, business is down, and we’ve got to reduce the size of our workforce.”

Several unpleasant realities about corporate reductions-in-force (or RIFs) usually receive less attention.

First, most RIFs cost money rather than save money in the short run.

Second, in the best circumstances, RIFs monopolize scarce management resources and cause significant hardship throughout the company.

Third, when RIFs are implemented in the worst circumstances, the responsible executives face professional humiliation and financial ruin: the best people leave, the least effective people stay, the company incurs enormous legal liability, and any last hopes for business success are destroyed.

Given such onerous problems, why are RIFs so ubiquitous in the American corporate landscape?

There are few options when business levels no longer support the size and scope of company operations. There are even fewer feasible alternatives when sagging fortunes occur in the context of a troubled economy. Even when companies make strategic changes to pursue new business opportunities, it is usually necessary to make structural adjustments in the workforce.

Executives almost always face a Catch 22 when implementing reductions-in-force. Financial, time and resource constraints require an RIF’s implementation in order to lower costs, realign the business, and retain those people who are best qualified to position the company for the future.

But few RIFs will achieve these objectives without the investment of money, time and resources – precisely those things that are in such short supply.

There are clear differences between RIFs that work, and RIFs that convert an emergency room visit into a long-term lease in intensive care.

Here are some important lessons that corporate executives have learned, in many instances the hard way:

1. **Have a Realistic Strategy.** Most workforce reductions by the time they occur may be unavoidable, but they are not a quick fix.

And without a strategy, they may not be a “fix” at all. Is the planned workforce reduction aimed solely at cost elimination? Is the business being restructured along the way? Should all businesses be affected equally? What criteria apply when selecting employees or positions for elimination? What managers make or review these decisions?

The answer to these and other questions profoundly affect what business remains standing in the post-reduction world.

2. **Speed versus Planning.** Speed counts in workforce reductions – there may be an urgent need for a rapid response to unfavorable business conditions. And while you implement a RIF, competitors will keep capitalizing on whatever advantages they can reap from your difficulties.

But speed is almost always a factor in problem-ridden RIFs that inflict strategic damage on the organization. It can do more harm than good if dozens or hundreds of managers respond to a “call for action” when nobody has thought out fundamental RIF-related decisions; when there is no opportunity for upper-management review; and when nobody can later reconstruct what occurred, who was compared to whom, which supervisors or managers made what RIF decisions, or why.

Delay is also hard-wired into many RIF situations under federal or state laws – for example, the Age Discrimination in Employment Act (ADEA) requires companies to give employees 45 days to review certain types of group waiver and release agreements, and the Worker Adjustment and Retraining Notification Act (WARN) requires 60 days’ written notice before certain layoffs, employment terminations or hours reductions.

3. **Make it Count.** The only thing more debilitating than one RIF is the subsequent need for additional RIFs. Whenever possible, it makes sense to consider alternatives to a RIF (for example, hiring or compensation freezes, hours reductions, temporary shutdowns, voluntary leaves of absence, or exit incentive programs).

But once a RIF is deemed necessary, strong leadership may be required to overcome organizational resistance and lots of activity that barely affects total headcount.

Also, many companies that attempt to keep any workforce reduction as small as possible – for example, in the hope of reducing business disruption or minimizing the number of layoffs – find it is necessary to implement successive additional RIFs which end up causing even more disruption and uncertainty for the business and its employees.

4. Let Lawyers in the Room. All RIFs should be driven by an underlying business strategy, but most RIFs also involve a high risk of litigation and potentially substantial legal liability.

This combination makes it indispensable to have meaningful coordination between business and legal professionals from the outset of RIF planning. Based on the involvement of managers and attorneys, most RIF best practices improve the quality of business decision-making in addition to reducing legal risk.

5. Talent Rush – In the Wrong Direction. The hidden cost underlying every workforce reduction includes the training and development investment made in those people who will no longer be employed. This cost increases further if the ineffective handling of a workforce reduction prompts the best people to leave or, worse, go to work with your competitors.

All RIFs make it necessary to spend considerable time focusing on those people who will no longer be employed. But careful planning and significant attention should always be devoted to those people who the company does not want to lose, who will play an even greater role (with less help from others) addressing your business challenges in the post-RIF world.

6. Severance Pay and Releases. Most large or mid-size employers make severance benefits available to separating employees in some form, which in most cases is conditioned on a release of legal claims.

Severance benefits contribute to the significant short-term costs associated with most workforce reductions, but they also create an important transition period for affected employees; they provide an incentive for departing employees to sign a release; and, equally important, they play a critical role in employee retention (by preventing high-performing employees from jumping at the first alternative employment opportunities they come across to avoid risking a later loss of employment without severance pay).

Important laws affect severance benefit plans, release agreements, and potential notice obligations, which underscore once again the importance of attorney involvement in RIF planning.

7. Union Issues. Special care is required when implementing RIFs that involve unionized operations. In some cases, employers cannot make final restructuring decisions unless unions have first been given notice, with the opportunity for bargaining which may take weeks or months to complete.

Federal law prohibits antiunion discrimination concerning many operational changes, and labor contracts may impose other requirements. If these issues are mishandled, the remedies often are onerous: the company may be required to reinstate curtailed operations and rehire all employees with several years of backpay.

Although union membership in the private sector has dropped to 7.5% (in part because so many unionized companies have experienced shutdowns and job reductions), there are formidable RIF-related risks for companies that disregard union obligations.

8. Don't Be Surprised. The best time to address RIF issues is when there is no imminent need for a workforce reduction. As many companies have experienced, implementing RIFs without effective preparation can limit the resulting cost savings, give rise to RIF-related liabilities, increase the RIF's negative impact on the business, and worse.

The newly announced 5.7% unemployment rate remains substantially lower than the 9.7% average annual unemployment rate reached in 1982, and annual U.S. unemployment has been 5.5% or higher in three of the past six years.

This data hopefully means many companies can still engage in meaningful planning before confronting any future need to implement a reduction-in-force. But not all RIFs are equal, and RIF mistakes can add to the challenges facing a company that encounters poor financial health.

Here as well, an ounce of prevention equals a pound of cure.

--By Philip A. Miscimarra, Morgan Lewis & Bockius LLP

Philip A. Miscimarra is co-chair of the workforce change practice at Morgan Lewis and a senior fellow at the University of Pennsylvania's Wharton School.