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Smart Supervision™

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STRATEGIES, IDEAS AND TIPS FOR MANAGING YOURSELF AND OTHERS

Reduce The Risk Of Litigation When Dealing With Layoffs

By Wendy Lane, attorney

There’s truth in the statement, “When people are employed and happy, they sue less.” Unfortunately, the current state of the economy has left many employers in the uncomfortable position of having to reduce their work force by engaging in group layoffs and other adverse employment actions, thereby prompting the inevitable flurry of lawsuits. Layoffs create an adversary situation. There are feelings of fear, panic, anger and betrayal. In the current economic climate, laid-off employees are not only facing a weak employment market, but are most likely already struggling with higher costs of living, plummeting stock markets and a volatile housing market. Upon losing their jobs, their survival instincts may motivate them to look for a plaintiff’s attorney, who will be more than happy to help them look for any areas in which their former employer failed to comply with labor and employment laws.

While there is nothing that an employer can do to guarantee that it will not be sued by an employee it is forced to lay off, there are a number of ways in which an employer can and should reduce its risk of litigation:

Providing Outplacement Services — Employers can go a long way toward increasing goodwill with just-released employees by offering to help them find alternative work. Providing some type of outplacement assistance can do more than keep things amicable among former employees and minimize the risk of future litigation; it can also alleviate fear among current employees who may be worried about their own job security. Career coaches and counselors can help terminated employees determine where their skills lie, explore alternative careers and assist employees in putting their résumés together. Again, an employee who feels confident about finding employment elsewhere is less likely to feel like he or she “has no choice” but to sue. Moreover, outplacement services to those employees who are laid off has the added benefit of improving the morale of those employees who survive the latest round of job cuts.

Plant Closures or Mass Layoffs — Many employers

are not familiar with the federal Worker Adjustment and Retraining Notification (WARN) Act, which requires certain employers with 100 or more employees to provide 60 days of notice in advance of (1) a “plant closing” affecting 50 or more employees during any 30-day period, or (2) a “mass layoff” that does not result from a plant closing but that will result in an employment loss of 500 or more employees during any 30-day period, or the loss of 50 to 499 employees if they make up at least 33 percent of the employer’s active work force. The WARN Act includes numerous definitions and details that affect which companies must give notice, who must receive the notice, how the time frame for notice must be calculated, what information the notice must contain and how the notice is served. An experienced labor and employment lawyer can help an employer sift through these provisions of the statute.

Employers should also consult legal counsel to determine which of their employees must be counted in determining whether a sufficient number of employees are being laid off to trigger application of the WARN Act. There is a risk of severe monetary sanctions for failure to comply with the requirements of WARN. An employer who violates the WARN provisions by ordering a plant closing or mass layoff without providing appropriate notice may be liable to each aggrieved employee for an amount including back pay and benefits for the period of violation, up to 60 days (although the penalties may be reduced in certain circumstances.) These penalties create a perfect opportunity for class-action litigation. Last

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Reduce The Risk Of Litigation ...

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November, one of approximately 100 employees laid off by Lehman Brothers Holdings, Inc. filed a \$5 million class action alleging that Lehman failed to give those employees the requisite 60 day notice.

In some instances, exceptions to the notice requirement may apply, permitting an employer to offer notice to employees less than 60 days in advance of a layoff. For example, exceptions may apply if (1) the company is faltering and has been actively seeking capital or new business; or (2) unforeseeable business circumstances have occurred. These exceptions are fact-intensive, and a company anticipating layoffs should consult counsel before relying on these exceptions.

Employers considering a mass layoff should also consult counsel to determine whether parallel or complementary state WARN-type statutes apply. For example, the Lehman employee who filed the class action also filed claims under a parallel New Jersey law.

Preventing Discriminatory Layoffs — It is important to review decisions about who will be laid off and who will be retained to avoid claims of discrimination in the layoff selection process. This includes a review of the impact of the layoff on employees in certain age, gender, racial, ethnic and other protected categories, as well as making sure that the company has a cogent business justification for its determinations as to who will be included in the layoff and who will not. This is not to say that an employer cannot terminate employees in protected classes. Indeed, there may be justifiable reasons for releasing protected employees in a layoff situation. However, in order to reduce the risk of litigation, it is essential for an employer who plans to lay off a member of any protected class to carefully track and document the reasons for the termination. If a lawsuit is filed, the employer will have to compile that information, so it makes sense to consider and document those reasons before the termination. An employer who terminates a protected employee for “performance reasons,” but who has only given the employee good reviews is asking for a lawsuit. While documenting an employee’s poor performance may require an employer to incur the expense of employing an individual for a few more months while such documentation is gathered, the cost of litigation resulting from a failure to pay attention to these details could be far greater.

Analyzing Potential for Retaliation and Other Claims — A careful review by human resources and legal counsel will help to ensure that any decision to lay off staff will be supported by legitimate business reasons, closing the door on potential lawsuits stemming from

claims of retaliation. There is also a risk that employees will be prompted to pursue other claims, such as class-action lawsuits for wage and hour violations, seeking payment of unpaid overtime or compensation for meal and rest period violations. Employers are often surprised when former employees who previously agreed to “bending” employment laws, such as skipping meals or working off the clock, turn around and sue the employer for those very infractions upon being laid off. There is not only an economic but a psychological component to such behavior; employees who once overlooked certain wage and hour slights for the sake of “teamwork” and the good of the company may actually seek revenge upon the “betrayal” of being laid off by that employer.

There is also potential for litigation whenever an employer terminates an employee who has recently taken medical or family leave, been diagnosed with a disability, filed for workers’ compensation or has complained that the employer is in violation of certain laws that are matters of public interest. Termination of such employees may expose the employer to claims that the employee was terminated in “retaliation” for asserting his or her legally protected rights.

Specific Requirements for Agreements Involving Older Workers — For employers with 20 or more employees, the federal Older Workers’ Benefit Protection Act places certain restrictions on separation agreements or severance packages involving employees who are 40 or more years old, including those involved in group layoffs (defined broadly to include layoffs of two or more employees at one time). To ensure that a layoff does not violate this act, employers should consult counsel to make sure they have the proper language for any agreements with laid off employees over 40, such as including a mandated 21-day “consideration period” (or 45-day period in a group layoff) for the older worker to review a separation agreement and an additional seven-day period to allow the employee to revoke it, and providing: (1) information about eligibility factors to participate and time limits of the layoff program; (2) job titles and ages of all employees eligible or selected for the layoff program; and (3) ages of all employees in the same job classification or organizational unit not eligible or selected for the layoff program. ■

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“Anything you can do to encourage your workers to be proactive about safety will improve your department.”

Be Proactive About Safety In 2009

Whether you are in a manufacturing plant or an office, you need to keep your employees aware of safety issues. Too often, employees regard safety as an after-thought. But accidents are expensive, damaging to morale and painful in human terms. Anything you can do to encourage your workers to be proactive about safety will improve your department.



Here is some advice to make safety a priority among your employees:

- 1. Make safety a rule.** Safety has to be a job requirement. In fact, it's something that you should include in performance reviews. An otherwise excellent, productive worker who does not follow safety rules should not get a good review. There's no other way to reinforce the importance of safety.
- 2. Provide proper training.** Don't assume that handing out a manual is going to keep your workers interested in safety. You need to provide hands-on training in a way that gets their attention. This is why fire drills are so effective — only by actually going through the motions that would be required during a real fire can a staff feel prepared for the emergency. You should have similar safety drills for a variety of situations, depending on what kind of workplace you have. Coordinate these with the safety director and rehearse them periodically — some safety directors recommend at least four times a year.
- 3. Emphasize hand washing.** Many workers don't realize that hand washing is the best way to prevent the spread of infections — and we're not only talking about health care facilities here. If you want to make sure you don't lose your entire department for two days to a stomach bug, you should encourage hand washing. That way, when one person gets sick, it's less likely that everyone else will too.
- 4. Get the proper PPE.** Personal protective equipment (PPE) is notoriously unpopular, unless (1) it fits and (2) workers understand that it can save their lives (or their sight, hearing or limbs). Yes, you must enforce the wearing of PPE. But it is also incumbent upon you, as the supervisor, to make sure the equipment fits. Vendors can be very helpful in this regard.
- 5. Be a stickler about labeling.** Make sure all of the containers in your shop are properly labeled. But don't stop there — also make sure your workers know how to interpret the labels. Likewise, they should know exactly where to find Material Safety Data Sheets for all chemicals used in your plant.
- 6. Make sure materials are properly stored.** Some inventory experts like to store chemicals in alphabetical order. Do not allow this. Proper storage requires that all chemicals be stored by hazard class. Safety is more important than accounting when it comes to chemicals.
- 7. Make it easy to obtain and use safety devices.** Make sure your workers have been instructed in the location of all safety devices, such as eye-wash stations, fire extinguishers and safety showers. They should also know exactly how these devices work. In the event of a spill or fire, quick action is essential.
- 8. Use “captains.”** While the supervisor is commander-in-chief of the department when it comes to safety, it helps to appoint one or two “captains” among the staff. This makes the workers feel that they are a part of the safety system, and it guarantees “buy-in.” It also helps because their co-workers realize that there is pressure coming from within the ranks to perform well in terms of safety.
- 9. Encourage neatness.** One of the most frustrating accidents that ever occurred to one supervisor we know was caused by a container of yogurt. It had dropped in the cafeteria and, although someone picked up the container and threw it out, the yogurt itself was splattered all over the floor. A worker carrying a hot bowl of chili slipped. Not only did he get a sore back, which kept him out of work for two weeks and required numerous visits to an orthopedist (fortunately, no surgery), but he burned his face, requiring treatment by a dermatologist. This was an obvious case of “If you see it, clean it up,” the supervisor told us. But nobody did. After that, the supervisor reminded everyone to clean up everything, all the time. “I was a nag, and I still am,” she says. “This should not have happened in the first place.” ■

“To get commitment from your workers, you need to view them as real people. They don’t want to feel like a number.”

How A High-Stress Hotel Keeps Workers Cool

Hospitality is not an easy environment in which to work. On weekends, when the rest of the world is relaxing, you are required to work. Sometimes, customers don’t treat you like a person, but like a robot. Pay is low. And through it all, you have to be cheerful and energetic. In fact, you should actually feel happy.

Happy? Yes, says Joe Corrigan, general manager of the Comfort Inn in Cleveland. The fact is, you need happy employees to produce happy customers. “We’re here to produce raving fans — our guests,” says Corrigan. “And in order to do that, we need raving employees.”

Here are some ways Corrigan keeps his employees happy and motivated:

Empowerment

It’s important, says Corrigan, to delegate authority to your workers. “Let’s say a guest wants towels,” he says. “She has three children in the room with her, and she pops her head out the door when she hears the housekeeper and says, ‘I need five more towels.’ The housekeeper has to take care of the problem. She can’t say, ‘I have to go restore my cart and I’ll come back.’ Instead, she has to say, ‘Here are your towels.’” This is the kind of small thing that results in return visits — and in new customers, because word of mouth is an excellent referral.

But in order for this to happen, the housekeeper has to be empowered to make the decision on her own. If a hotel has rules that require housekeepers to have a certain number of towels on the cart at all times, then he or she couldn’t fulfill that kind of customer request. The key is to let your employees feel in control of making their own decisions when it comes to keeping guests happy, says Corrigan.

Parties

Every month during the warmer months, Corrigan has a barbecue for employees. “This improves everyone’s attitude,” he says. “People get a chance to mingle and chat.” It’s on company time, but it is actually a casual party, he says. It doesn’t cost a lot of money (the kitchen staff prepares the food), but it pays off in terms of morale and motivation.

Bonuses

One summer, Corrigan started a bonus program to improve attendance. “I now average eight bonuses a

month for housekeepers — and I employ 12 full-time housekeepers,” he says. That means that eight out of 12 housekeepers have perfect attendance. “This is the kind of money I like to spend,” he says. “It’s not a lot of money, but it is an incentive.”

Visibility

Corrigan can’t be everywhere at once, but he walks the halls as much as possible. “My future is in the hands of my employees,” he says. “I need to say hi to people, know their names, stop and talk with them once in a while.” This is true of all supervisors, he says, not just the general manager. “To get commitment from your workers, you need to view them as real people. They don’t want to feel like a number.” Also, Corrigan, who came up through the ranks, is glad to take his jacket off and help vacuum or make a bed. “A supervisor can’t hide in an office and be title-happy,” he says. “We all started on the line and worked our way up. If you can’t remember where you came from and how you got where you are, shame on you.” ■

When It Comes To Tardiness, Use Your Judgment

Hardliners will tout the necessity of every employee arriving to work on time every day. “Old school” employers may lie in wait, looking for even a single employee who walks through the door one or two minutes past starting time. Is this the right attitude? The answer is not necessarily clear.

In some cases, being on time is critical to business operations. In other situations, it’s more a matter of keeping employees in check and trying to prevent them from feeling entitled to a few minutes here and there. Sticking to your guns also keeps your on-timers from becoming resentful and feeling as if starting time doesn’t mean a whole lot to management.

It’s also important to note that being a few minutes late now and then is not always a crisis situation. For the employee who consistently works through lunch and/or routinely works late or takes work home, the best course of action may be to overlook occasional late arrivals. The employee will appreciate your trust in him or her and you will immediately move up on the respect meter. This type of employee may become one of your most loyal and dependable. ■

“If you help your workers get training, you will benefit from a better skilled work force. You will also be making it easier for those workers who have a natural bent toward leadership to actually become leaders.”

How To Delegate Your Way To Success

Supervisors need to know where to draw the line between delegating and doing it all themselves. While the ultimate responsibility is the supervisor's, there are certain tasks that should be delegated to your subordinates, not because you want someone else to do your job, but because your subordinates need to do their jobs better. However, supervisors sometimes have a hard time telling workers what to do. Below are some strategies that may help:

Be positive. When asking an employee to perform a task, do so in a matter-of-fact, “I know you can do this” voice. Your tone will convey to the worker that (a) you trust him or her to do the job well and (b) you will be pleased when the work is done. This will encourage the worker and, at the same time, be an easy way for you to convey the message.

Don't nag. Once you assign a task, let the worker do it. Don't stand over his or her shoulder, trying to see if the work is being done. Make it clear that you are available for questions, should there be any. You can check once or twice to make sure that the worker is on the right track, but it will be easier on you and better for the worker if you allow him or her to have some autonomy.

Give a deadline. It's frustrating to be given a project, only to have an open-ended deadline. Without a deadline, it seems as if an infinite amount of work needs to be done. “I need this by Wednesday at 2 p.m.” lets the worker know exactly what is expected and how long it is expected to take.

Be selective. Some employees are better at certain types of tasks than others. Why not assign tasks accordingly? This helps with morale and is the most efficient way of getting the work done. On the other hand, some supervisors think it's a good idea to ask workers to do something they're not so good at, which allows them an opportunity to broaden their skills. Determine which method you want to use based on the workers available to do the task, their skills and the amount of time that can be devoted to it.

Avoid busy work. If you try to think up things to delegate just for the purpose of keeping your employees busy, you will be doing great damage to their motivation. They want to please you, but they want to feel that their work is also worth something. If you do need to create work, make sure it is something truly valuable to the company. ■

Five Ways To Turn Your Employees Into Leaders

Some supervisors have the knack of helping workers be independent-minded, ethical and respected by others. Those who have this ability to cultivate a leadership style have a good reputation among upper management because the employees who come from their departments generally make excellent promotion material.

How can you become known for turning your workers into leaders? Try the following:

1. Encourage compassion. True leadership means the ability to have compassion for others. Compassion is what links one human being to another; it is an essential element of leadership. The best way to encourage compassion is, of course, to be compassionate. If you have a worker who is compassionate — who listens to others and understands their thoughts and feelings — nurture him or her.

2. Cultivate competence. To be a leader, an employee should be good at what he or she does. If you help your workers get training, you will benefit from a better skilled work force. You will also be making it easier for those workers who have a natural bent toward leadership to actually become leaders.

3. Foster credibility. Supervisors know that in order to lead, they must be believed. This means keeping your promises and not making promises that you can't keep. It means being honest and always saying “I don't know,” instead of faking an answer. If you reward these traits, you will be helping to make good leaders. And if you display these traits yourself, you will be demonstrating how to be a good leader.

4. Praise courage. The courage to think a new way, to learn and practice a new style, is an important way to make effective progress. Don't let your workers think that stepping out on a limb will get them in trouble. Rather, if they have the confidence to believe in something, they should try to do it and not be afraid of failure. It's up to you to help them have that confidence.

5. Energize the attitude. Sometimes, a leader has so much energy that it spills over to other workers, creating an atmosphere that is contagious with action. The leader's activity level helps instill a sense of optimism in employees. As a supervisor, you should be grateful for this support. It makes your job much easier. If your “leader” employees aren't naturally high-energy, you can help them by being so yourself. ■

“Supervisors have found that pairing a younger and older worker together is a very effective way of bridging the generation gap.”

Manage Age Diversity In Your Department

It's not easy to run a department in which some workers are in their 20s and others are in their 60s. The technological age makes it even more difficult. But there are ways that you can cope with — and even benefit from — wide disparities of age in your group. Here are some tips:

Realize the benefits of having older workers. Ignore qualified older workers at your own peril. Most employers have found that older workers are reliable, thorough and conscientious. They have fewer accidents and better attendance than younger workers. And if you think that older workers are unwilling to take on difficult tasks, you are guilty of the same age bias that has beset corporations for decades. Let it go. This group of workers is one of the best applicant pools out there today. Furthermore, any talk that indicates you discriminate against older workers could land you in a lawsuit. And finally, downgrading older applicants will surely lead to a bad feeling among your older current workers.

Respect the young. Another sad truth about diversity today is that many employers have grasped the idea of the “apathetic” youth too literally. In fact, some employers now wonder if hiring people in their 20s will have any positive effects at all. This is unfortunate because young people, especially in combination with older workers, are your best hope for an energetic, vibrant and productive work force tomorrow.

Foster good communication. It's important for supervisors to talk to their employees, regardless of age. Ask them directly if they feel valued as workers, and ask them if there are any problems in your workplace related to age. If you hear complaints that only younger workers have a chance to move up in the organization, take those complaints seriously and do something about them. Remember, your younger workers are watching — they will be getting older themselves.

Create teams. Supervisors have found that pairing a younger and older worker together is a very effective way of bridging the generation gap. Each can learn from the other. Even if there is some resistance at first, ultimately, you will be pleasantly surprised. We know one

supervisor who asked two workers, separated in age by 40 years, to be on a team together. Not only was there an age difference, but a cultural difference as well — the older worker was African-American and the younger was Latino. At first, there was a lot of tension. The supervisor kept asking them to work out their difficulties on their own, and, eventually, they did and began to work well together. In fact, they became friends. ■

Survey Shows That Sleepiness Affects Productivity

One-half of the American work force (51 percent) reports that sleepiness on the job interferes with the amount of work they get done, according to the results of a recent poll by the National Sleep Foundation.

Forty percent of employees admit that the quality of their work suffers when they are sleepy, and nearly one out of five (19 percent) report making occasional or frequent work errors due to sleepiness. All of this suggests that the nation's productivity is not as high as it could be if Americans got more sleep.

The poll of more than 1,100 adults ages 18 and older also confirms that:

- One out of four adults (24 percent) have difficulty getting up for work two or more days per week, and 27 percent of adults say they are sleepy at work two or more days a week.
- At least two-thirds of adults report that sleepiness makes concentrating (68 percent) and handling stress (66 percent) on the job more difficult.
- Fifty-eight percent say that making decisions and solving problems are more difficult when they are sleepy.
- Listening to co-workers is more difficult when sleepy, according to 57 percent of respondents; similarly, 39 percent report sleepiness makes relating to co-workers more difficult.
- Overall, employees estimate that the quality and quantity of their work is diminished by about 30 percent when they are sleepy. ■

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