

## Chapter 10

# Reductions in Force: Factors to Consider in Order to Avoid Liability to Laid-Off Employees

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**§ 10.01. Overview.**

Employers are frequently faced with the necessity of downsizing operations to meet increased competition, to contain costs or to achieve greater efficiency of operations. In many cases, a significant reduction in an employer’s workforce cannot be promptly achieved through relatively modest measures (*e.g.*, hiring freezes, job sharing, elimination of overtime) and the

employer may need to consider a voluntary or involuntary reduction-in-force (RIF). RIFs can pose significant legal hazards for the unwary — both in terms of selecting employees and in implementing RIF programs. This chapter discusses what an employer must consider in determining whether to conduct a RIF, how to conduct the RIF and what benefits issues to consider when conducting the RIF.<sup>2</sup>

### § 10.02. Potential Sources of Liability.

In conducting any RIF, the employer must be familiar with the legal theories, which can give rise to liability. Otherwise, the employer cannot do a proper risk analysis for a RIF and the employer will be effectively going into a RIF blindly. Not only is defending a wrongful discharge or discrimination case costly, jury verdicts for wrongful discharge or discrimination cases often reach over six figures and, sometimes, seven figures. Accordingly, each decision to discharge a specific employee must be thoroughly analyzed. This section reviews most of the legal theories to consider when conducting a RIF.

#### [1] — Existing Obligations.

The employer may have preexisting obligations, *e.g.*, to refrain from conducting a RIF, to conduct a RIF in a prescribed manner, or to refrain from terminating certain employees or classes of employees. One of the first steps in conducting a successful RIF is to determine if the RIF will breach commitments the employer has made in documents such as collective bargaining agreements, individual employment contracts, employee handbooks, and published layoff procedures. The next step is to determine whether the employer has inadvertently implied a promise to conduct RIFs in a certain way or to forego RIFs altogether. To avoid liability, employers should verify statements made to employees as well as general custom and practice.

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<sup>2</sup> This chapter is patterned after a chapter authored by C. David Morrison, *24 Energy & Min. L. Inst.* ch. 2 (2004), pp. 42-83.