


# Layoffs:

## Which Employees to Terminate?

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**F**inancial constraints may put your organization in a position where personnel layoffs are necessary. Careful consideration must be given when determining which employees will be terminated. Layoffs increase exposure to lawsuits for wrongful termination, discrimination and claims. Moreover, employee morale and retention are always concerns as the remaining workforce scrutinizes whether the layoffs were determined fairly and conducted compassionately.

### Document Decision Making Process

An organization should document its analysis in making layoff determinations. If the employer is ever called into question about the fairness of its decision of who to terminate, it will serve the organization well to be able to point to documentation drafted at the time which demonstrates the objective, non-discriminatory reasons for choosing one employee over another.

### Who Decides?

An organization should take a team approach to determining which positions and / or employees will be eliminated. Senior management staff, Human Resources and possibly a Personnel Committee from the Board of Directors can participate in the decision-making process. It is important to involve those who can remain neutral and can keep matters strictly confidential.

The organization should conduct a conflict of interest check with those decision makers to ensure no one with a direct conflict of interest plays a part in job elimination. It is also a sound risk management step to seek advice from locally retained labor and employment counsel.

### Assess Job Positions

The organization should analyze the job positions that potentially could be eliminated. What skills, education and experience are required for the positions in question? What are the essential job functions or duties according to job descriptions? Which positions' skill sets are most easily and successfully transitioned or cross-trained to internal or external resources? What positions can be eliminated without jeopardizing the mission of the organization?

This article provides risk management analysis for determining which employees should be let go. There is no simple formula to follow because every employer, job position and individual worker is unique. Yet, sound business practices should be followed to make the best decisions possible.

### Positions and People

While objective financial reasons often dictate layoffs, it is impossible to avoid personal feelings when employees' jobs and livelihoods are at stake. A job position may be eliminated, but a person serves in that position. Therefore, those responsible for making layoff decisions must always remember that positions are people.

While it may soften the blow a bit to inform an employee that his or her job position is being eliminated, all that employee hears is, "I am being let go." Questions immediately run through the terminated employee's mind like:

- Why me? What did I do wrong as an employee?
- Why am I being let go as opposed to other employees?
- Is there some "hidden reason" why I'm being terminated? Is it because of my age, race, gender, nationality, religious

views, disability or other legally protected grounds?

- Does my layoff have anything to do with me previously lodging an internal complaint, filing a workers' compensation claim, exercising other benefits I was entitled to receive (i.e., family and medical leave)?
- Are finances the "real reason" for the termination or was the organization simply looking for a less direct way to terminate me?
- Is favoritism or nepotism a factor in deciding who gets laid off?

An organization facing layoffs must examine both job positions and the individuals holding those positions. The dual process of assessing positions and people is essential to making equitable decisions that are in the best interests of the organization.

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## Layoffs: Which Employees to Terminate?

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### Analyze Employees' Job Performance

The organization must assess the people in the positions up for possible elimination. Who have been the best employees both from a "hard skills" or operational standpoint as well as from a "soft skills" perspective?

An employee may have good attendance and complete tasks and duties from an operational perspective, but may be the most difficult person in the organization to get along with because of significant "soft skills" deficiencies. Examples of "soft skills" include:

- ✓ Strong work ethic
- ✓ Initiative
- ✓ Professionalism
- ✓ Treating others with dignity and respect regardless of position within the organization, gender, race, age, ethnicity, religion, sexual orientation, and other characteristics or perspectives
- ✓ Ability to work well with, teach, coach or assist others
- ✓ Teamwork (knowing when to lead and when to follow)
- ✓ Avoiding unnecessary conflict
- ✓ Leadership
- ✓ Positive and optimistic attitude (problem solver or problem maker?)
- ✓ Willingness to change or be flexible for the betterment of the organization
- ✓ Communication (good listener; comments contribute to conversations)
- ✓ Speaking in a respectful manner with supervisors, peers and subordinates
- ✓ Excellent customer service
- ✓ Providing constructive ideas to improve aspects of the job or work environment
- ✓ Not participating in gossip or spreading rumors
- ✓ Upholding the values, mission and ethics of the organization

Compile objective data to make layoff decisions by reviewing employees' personnel files and job performance documentation. With discretion, solicit feedback from coworkers and supervisors to help measure who is the most productive, exhibits strong "soft skills" and is most difficult to replace. There cannot be some "pretextual" reason for choosing one employee over another for elimination, especially unethical or unlawful reasons such as nepotism, retaliation or discrimination.

### Tenure?

It is not recommended that an employer adhere to the "last hired / first to go" doctrine, which means automatically eliminating the most recently hired employees. When assessing which individuals should be laid off, tenure should not be the sole or necessarily the primary factor. The length of time an employee has been with the organization should be considered, but not a guarantee of job security.

For instance, what if a long-term employee has been "coasting" for a number of years and there is documentation to support declining job performance? On the other hand, a long-term employee could have a record of outstanding performance, service and loyalty to the organization that would make that employee less likely to be laid off.

Overall, duration of service should not insulate an employee during layoffs. Also be aware that layoffs resulting in a disproportionate number of older workers being eliminated can increase the risk of age discrimination lawsuits.

### Document Financial Realities

At the time of the layoff, you should

document the financial realities and hardships the organization is facing. Out of business necessity, the organization is forced to make difficult decisions about severing ties with people in order to protect financial integrity. It is preferable to show that other expenses have been cut before layoffs were considered.

### Other Considerations

Always consider past practices within the organization regarding terminations or layoff decisions. Also, check whether any workers may have individual employment contracts or are covered under a collective bargaining agreement. Also consider whether a severance agreement is appropriate and feasible for departing workers.

### Conclusion

While unfortunate, sometimes layoffs are nearly impossible to avoid. Take the time to assess which job functions, positions and employees are the most essential to the success of the organization. Understand that the organization may be asked to produce documentation of the objective and equitable decision-making process developed at the time of layoffs. ♥



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