COVID-19 RESPONSE SERIES - BUSINESS RESTRUCTURING

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Littler

Presented by

KIM RIVES MIERS

Office Managing
Shareholder
Austin, Texas
(512) 982-7253
kmiers@littler.com

JENNIFER A. YOUPA

Shareholder
Dallas, Texas
(214) 880-8109
jyoupa@littler.com

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Agenda

- Business Restructuring Options
- Layoff Checklist
- Notice requirements
- Risk analysis
- Final pay requirements

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Business Restructuring Options

- Reduction in pay
- Reduction in hours
- Furlough
- Layoff

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Business Restructuring

- What is the difference between a furlough and a layoff?

Business Restructuring

- A *furlough* involves reducing the days or weeks that an employee may work.
- A *layoff* can be temporary or permanent.

Where Do We Even Start?

- Planning
  - Who should be involved?
    - Upper management
    - HR
    - Legal
    - Finance
    - Department/Site Managers

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Planning

- How should team communications be handled?

Planning

- Protect any applicable privilege
- Avoid rumors and leaks

Planning

- What should we consider in developing a plan?

Planning

- Furlough versus layoff
- Define the business justification

Planning

- Determine
  - who the decision maker(s) will be for each location
  - Needs of organization in short run/future
  - locations and the number/types of positions at each location impacted

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Planning

- Determine
  - Selection criteria
  - Leave of manager discretion
  - Forced ranking

Planning

- Selection criteria
  - Different organizations within company can choose different selection criteria
  - KEY: HR and legal must act as gatekeepers to ensure criteria applied consistently

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Planning

- Create a schedule
  - Timing of furlough/layoff
  - Timing of notification

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Planning

- Create a schedule
  - Drafting of documentation
  - WARN/OWBPA notices
  - Scripts for internal and external communications

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Planning

- Create checks/balances
  - Exceptions to plan should require high level approval

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Communications with Employees

- What should we consider in notifying employees of furlough/layoff?

Employee Communications

- Reasons for furlough/layoff
- Schedule
- Information v. rumor
- Honesty

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Layoff Notice

- When is Federal WARN notice required?

Layoff Notice

- Worker Adjustment and Retraining Act (Federal Law) requires A 60 day notice of certain plant closings and mass layoffs

Layoff Notice

- When is Federal WARN notice required?

Layoff Notice

- When a covered employer initiates a layoff that meets WARN criteria:
  - Facility or unit closing that affects at least 50 EEs
  - Layoff of 500+ at single site
  - Layoff 50-499 if = 33% of workforce at single site

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Notice Requirements

- Federal WARN does not apply to a job loss of less than 6 months
- Be aware of state law mini-WARNs

Layoff Notice

- Reduces the hours of work for 50+ workers by 50% or more for each month in any 6 month period

Layoff Notice

- What is a “covered employer?”

Layoff Notice

- Business with 100 or > full time workers laying off at least 50 people
  - Doesn't count workers with less than 6 months on the job
  - Doesn't count workers who work less than 20 hours per week

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Layoff Notice

OR . . . .

- Business with 100 or > workers who work at least a combined 4,000 per week

UBC Exception

- What about the exception for unforeseeable business circumstances?

UBC Exception

- Applies when a closing or layoff is caused by business circumstances that were not reasonably foreseeable as of the time the notice would have been required.
  - No UBC exception in some state mini-WARN acts

Layoff Release of Claims

- What are the requirements under the OWBPA?

Layoff Notice

- For employees 40 and over if offering severance in exchange for a release of claims
- Specific language in release
- Form with decisional unit data
- Seek legal guidance

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Risk Analysis

- What should we do to ensure fairness and assess litigation risk?

Disparate Treatment/Impact Analysis

- Analyze composition of selected group(s):
  - Disparate treatment (e.g. intentional discrimination)
  - Disparate impact (e.g. disproportionate impact on a protected group, even If the selection criteria are neutral)

Risk Analysis

- Clearly communicate selection criteria to decision makers
- Ensure checks/balances are in place to prevent unapproved selections, etc.
- Legal review of notices, disparate impact analysis, severance agreements, etc.

Final Pay

- Texas – wages due within 6 days of discharge
- Sections 207.049(1) and (2) of the Texas Unemployment Compensation Act state that a claimant will be disqualified from receiving unemployment benefits for any benefit period in which he is receiving wages in lieu of notice or severance pay.

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Questions?

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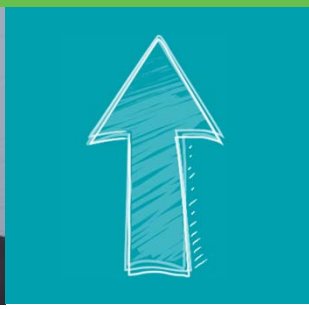

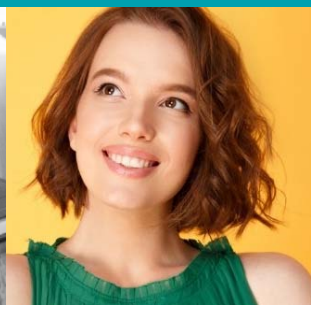

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Thank You!

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