

## Frequently Asked Questions

### Q. I am looking for workplace posters. Where can I find them?

**A.** Federal laws require employers to display official Department of Labor (DOL) posters where employees can readily observe them. You can find all of DOL's required posters at the DOL's **elaws Poster Advisor** web site. The link is <http://www.dol.gov/elaws/posters.htm>.

Once you are there, you will be asked if you know which posters and federal laws administered by DOL apply to your organization.

- If you answer yes, you will be immediately directed to a listing of all posters. You can then either download the ones you want or you can request that they be sent to you.
- If you answer no, you will be taken through a series of steps to help you determine which ones you need. Then you can either download them or request that they be sent to you.

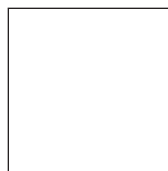
Federal law requires that the posters be 11 by 17 inches or larger. The downloaded posters come on two 8.5 by 11 inch sheets which, when taped together, meet the 11 by 17 requirement. The posters, which are available in both English and Spanish, are provided at no cost to employers.

Please note that this site is for federally required posters only. To get your state's required posters, contact your state department of labor or go to the following web site: <http://www.business.gov/guides/employment/managing/posters.html>.



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Published as a Service for  
All Members of:

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### A Reminder:

The purpose of this update is to review the latest developments in human resource matters. The information contained herein has been abridged from numerous sources and should not be construed as legal advice or opinion, and is not a substitute for the advice of counsel.

## Reducing Your Nonprofit's Risk During Employee Layoffs

Layoffs that are motivated by economic or administrative reasons – such as loss of funding or staff reorganization – are common in the nonprofit sector. The result is that employees, through no fault of their own, may find themselves unexpectedly without a job. When downsizing is necessary, the nonprofit can take steps to reduce its liability in the process of laying off one employee or several paid staff.

**Q:** We can no longer support the current number of staff on our budget. What is the chance that laid off employees will sue us if we let them go?

**A:** When economics dictate that a staff position be cut, it's critical that the nonprofit have a well-supported business reason to select which employees are to be terminated. The risk is that you'll be vulnerable to claims that discrimination played a part in deciding who was to be let go. Whenever a nonprofit is considering layoffs, alternatives should also be considered. Can the objectives of the reduction-in-force (RIF) be accomplished through a hiring freeze, a salary freeze, a reduction in hours, or a status change from full-time to part-time? Document that you've considered alternatives to the RIF. Take time to spell out in a written memorandum to the board, the business reasons for the necessary layoffs, as well as your justification for those employees selected for termination.

**Q:** Even if we have a legitimate business reason documented and we've considered alternatives to a RIF, are there other aspects of a RIF that could come back to haunt us?

**A:** Before implementing any layoffs, consider how the workforce will be impacted. Is the downsizing going to affect one particular group of employees more than others? Is the reorganization going to eliminate the only minority in the agency? If your answer to either question is yes, even if there are solid business reasons for the selection of that particular employee, there are clear liability risks involved in the RIF.

**Q:** What's the best way to select the employees/positions to be eliminated?

**A:** In selecting which employees/positions will be eliminated, it's imperative to use an objective method. Possibilities include basing retention on:

- Seniority
- Positions/job functions to essential parts of the mission or specific goals of the organization, determined by a needs assessment
- Strong past performance ratings

Whatever the method, consider:

- Convening an oversight committee to provide objectivity for the process of implementing the reductions
- Conducting a needs analysis to determine which positions are critical and which could be eliminated
- Reviewing the termination decisions for discriminatory bias

Salary shouldn't be a consideration in who goes and who stays, since typically older workers are those with longer tenure who are at the higher end of the salary scale.

**Q:** What can our nonprofit do to reduce the risk of a lawsuit?

**A:** Your nonprofit can reduce the risks of facing a lawsuit in a number of ways. First, take some time to identify ways you can support employees who will be let go. If your policies prohibit use of the nonprofit's equipment for personal reasons, consider relaxing these rules and allowing employees who will be laid off the opportunity to use your equipment to prepare resumes or search job notice Web sites. Even if you think you can't afford a severance package, it might be worthwhile to negotiate a severance package in exchange for a signed release and waiver of claims against your organization. Although a release will cost you something, you'll probably sleep better knowing you've taken an important step to reduce the possibility of a suit.

*All severance packages should be reviewed by an attorney.*

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## Reducing Your Nonprofit's Risk During Employee Layoffs

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**Q:** Whom should we tell and what should we tell about the reasons for the downsizing?

**A:** It's critical to communicate to the staff the reason for the downsizing. Management or the board should share the economic realities of the situation with the staff, and explain the business justification for the reorganization or downsizing. They might explain that the downsizing is being carried out reluctantly and only after efforts have been taken to avoid such a result. If possible, make an effort to network with other nonprofits in the community to identify alternative new positions for those being let go.

**Q:** Are there federal or state laws that affect downsizing?

**A:** In severe downsizing situations, such as a nonprofit closing its doors, the federal WARN Act (Worker Adjustment and Retraining Notification Act) or a similar state law may apply.

**Q:** How can we soften the blow of a layoff for employees being let go without jeopardizing the nonprofit?

**A:** Because layoffs are often unexpected and not the employee's fault, many nonprofit employers offer separation pay when termination is a result of economic necessity. There is a risk in having such a policy as a standard procedure because in cases where a severe shortfall necessitates layoffs, there may not be sufficient funding to cover all of the separation payments. While softening the blow of a layoff is a terrific idea, rather than codifying separation pay in personnel policies, it's better to offer separation pay as funding allows. An alternative is to clearly state in policy language that separation pay will be offered, "at the discretion of the board, as funding permits."

**Q:** Fortunately, we don't have to worry about layoffs now, but are there things we should know or could do now that would help us if this ever became necessary?

**A:** Begin by reading your nonprofit's handbook, noting any policies that might lessen your right to conduct a reduction-in-workforce or specify how RIFs are to occur. Also review all written policies given to employees. Instruct management not to make promises that they can't keep, such as there won't be any layoffs or that everyone's job is safe. Employees who feel that they've been misled or lied to are more likely to sue.

If you are considering hiring younger employees who have needed skills to replace older employees who don't possess these skills, stop. First offer to retrain the to-be-laid-off employees in new skills and document that offer.

Never use a layoff process as a way around terminating poor performers. RIFs are not an alternative to terminating someone for poor performance or gross misconduct. A layoff process should never be used for this purpose.

*This article was published by the Nonprofit Risk Management Center and HR Services was given permission to share with our members. To find out more about the Nonprofit Risk Management Center you can contact them at [www.nonprofitrisk.org](http://www.nonprofitrisk.org).*

## Happy New Year!

We at HR Services wish our members a New Year that will be one of sustainability and new opportunities in 2009. We're very proud and honored to have been given the privilege of working with you and serving so many of your HR needs in 2008.

*Maureen & Sonya*

### If Layoffs Loom, Here's Where To Get Guidance

Understandably, a layoff can be a daunting prospect for any organization. But you don't have to go it alone. If you need answers and guidance, here are two excellent sources on two important matters:

#### How To Limit Your Legal Liability

**HR Services** can advise you on how to limit liability when implementing a reduction in your workforce. We can provide you with guidelines on when and how to inform staff, sample communications, forms and checklists; and state and federal regulations regarding the WARN Act notices. You can reach us by accessing the [HR Services Hotline at 1-800-358-2163](#) or email, [hrservices@501c.com](mailto:hrservices@501c.com).

#### How To Limit Your Layoff Costs

**501(c) Agencies Trust Unemployment Program** can also advise and provide guidance on how to plan before reducing staff to keep your unemployment costs down. Please read your copy of the **501(c) Agencies Trust Winter 2008 Newsletter**. The feature article, "Plan Well Before You Reduce Staff," provides valuable information on how to ensure that your reduction in force produces the maximum amount of savings. You can also contact your [Trust Claims Manager, Paul Fountain](#), at 1-800-955-4351, ext. 7, or your [Member Services Director, Doug Adams](#), at 800-442-4867.

## Legal Ruling And Decisions

### Federal Issues

**The Americans with Disabilities Act (ADA)** underwent several significant changes affecting organizations' interactions with their employees. These are some of the tasks that organizations should be working on now: Job descriptions should be reviewed for validity, accuracy, and consistency, and revised if appropriate. Are the description's essential functions truly essential and are they being consistently practiced and met?

Documents used in addressing ADA situations should also be reviewed. This includes the document seeking medical input and the employee's written request for reasonable accommodation as well as the documentation practices supervisors use when interacting with employees in situations that raise, or might raise, potential ADA issues.

Front-line supervisors should be trained in the ADA changes that impact their interactions with employees. One inappropriate interaction or ignored employee comment can create employer liability. In addition, supervisors should be instructed on their role in the ADA interactive process and how to respond when faced with a need for that process.

**The Family and Medical Leave Act (FMLA) Regulations.** The U.S. Department of Labor (DOL) has issued a final rule that updates FMLA regulations. It becomes effective January 16, 2009. The final rule addresses various issues raised in court cases interpreting the FMLA, as well as implementation of the new military leave law. The rule marks the first significant overhaul of the FMLA regulations and implementation since its enactment over 15 years ago. Additionally, the regulation provides guidance on implementation of the new military leave benefit that was enacted as part of the 2008 National Defense Authorization Act earlier this year.

### State Issues

**Minimum Wage.** Effective **January 1, 2009**, the minimum wage will increase in the following states: **Arizona, \$7.25; Colorado, \$7.28; Missouri, \$7.05; Montana, \$6.90; Ohio, \$7.30; Oregon, \$8.40; Vermont, \$8.06; and Washington, \$8.55.**

### California

**ADA Amendments Act of 2008 (ADAAA).** While the new Federal changes to ADA mean that many more American workers will qualify as disabled under ADA, it's important to be aware that California's Fair Employment and Housing Act (FEHA) remains as strict as the newly amended ADA – and even stricter in some respects.

**No Texting While Driving.** Effective **January 1, 2009**, California drivers will be banned from reading, writing or sending a text message while driving in a vehicle.

### Massachusetts

**Personal Appearance Policies.** A recent Massachusetts case substantially restricts the ability of employers in Massachusetts to enforce workplace personal appearance or grooming policies when an employee complains that such restrictions conflict with his or her religious beliefs. Employers can deny a request for such an exemption only if they can show that it would impose a real and significant hardship on the organization.

### Wisconsin

**Milwaukee Paid Sick Leave Referendum Passes.** Effective **November 4, 2008**, Milwaukee became the third city in the United States, after San Francisco and the District of Columbia, to require that all city businesses provide their employees with paid sick leave.

## Contact Us If You Have HR-Related Questions

Please call the HR Services hotline, 1-800-358-2163, or email [hrservices@501c.com](mailto:hrservices@501c.com), if you want more details about the articles in this newsletter. HR Services can answer your human resources questions and provide you with information. We can be a sounding board to help you make important personnel decisions that can help limit your organization's liability. We can also provide you with written guidelines, sample forms, and sample policy language. Whether you need help defining HR policies or you just need a second opinion about an HR issue, please call us.