



Cynthia Marcotte **S**tamer, P.C.  
SOLUTIONS LAWYER™

# COVID-19 WORKFORCE CHANGE PLANNING & IMPLEMENTATION PROCESS FLOW

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# Establish

- Core leadership team to lead and implement change
- Attorney-client privileged relationship with qualified legal counsel experienced in workforce reductions and change and conduct all discussions and planning within scope of attorney-client privilege to protect sensitive discussions from discovery.
- Official spokesperson
- Process to monitor, report to leadership, leadership triage, and response to emergent developments



- Freeze hiring & other new obligation creations to the extent possible.
- Abstain from making premature communications or providing reassurances or promises.
- Maintain confidentiality of all communications and information until cleared through management & legal counsel review process.



- Document specific reasons why change needed or happening including implications on business plan and operations.
- Document performance outcomes and timelines necessary to address business needs.



- Create new business plan and post-organizational structure to be achieved
  - Create written business structure
  - Detail specifics of number of personnel, functions,
  - Create organizational charts, wage and other relevant goals but, at this stage, make no consideration of individual employees



- Define and arrange for leadership team to attorney-client privileged legal & operational review of existing proposed operational and workforce changes.
- Arrange for legal counsel to evaluate legal obligations and risks arising from written employment contracts, labor agreements, corporate policies and procedures, and affirmative action plans.



Leadership team weighs options and decide actions to promote business needs taking into legal and operational short and longer term costs, obligations & liabilities within attorney-client privilege.





# Workforce Restructuring Options Might Include

- ✔ Consider alternative work force reduction plans.
- ✔ Cost savings plans such as wage freeze/reductions, elimination or modification of recruitment and fringe benefits.
- ✔ Furloughs
- ✔ Reductions in hours
- ✔ Eliminate jobs and/or terminate less meritorious employees
- ✔ Other



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- ✔ Document new business plan and structure for new business plan
- ✔ Determine and reduce to writing the ideal job criteria for post change business plan
- ✔ Define and document policy, benefit, policy, job description and other changes for new configuration



- Plan implementation of workforce RIF or other change consistent with the employer's articulated goals and rationale:



1. Decide what job functions must be retained, which can be consolidated, and which can be eliminated;
2. Use objective criteria such as skills, credentials, experience, training, seniority, etc. with documented connection to performance/business plan only or first;
3. Only use subjective criteria after applying objective criteria and subject to review and documentation of justification with assistance of legal counsel s, and written performance appraisals to the extent possible accompanied by business justifications for selected criteria;
4. Define and prepare documentation and communications for legally mandated and voluntary rights and benefits for workforce members not selected.



1. Identify employees qualified under documented criteria to identify candidates for each position
2. Evaluate each qualified employee in affected disciplines against the agreed-upon criteria to select candidates to fill each post change position; and
3. Prepare a written report to the RIF committee concerning the employer's selections. The report should explain which selection criteria were used, and which employees were chosen. The report should also identify comparable employees, and explain why those employees were retained.



## Leadership team:


- Review with counsel within attorney-client privilege all initial decisions to confirm to selection criteria and for potential inappropriate disparate or other questionable employment discrimination, retaliation.
- Finalize selection decisions
- Adopt any policy, benefit, compensation or other changes
- Prepare and finalize written communications and process for announcement.



## Leadership team:

- ✔ Prepare and finalize written communications and process for announcement.
- ✔ Identify and brief any other management or other team members that will participate in implementation of decisions
- ✔ Notify relevant HR and other impacted team members of required actions in response to decisions
- ✔ Begin announcement of impacts individually





A furlough, reduction in force or other workforce naturally entails significant business concerns and risks, but careful planning and preparation, including comprehensive statistical analysis as well as documented, uniform, objective criteria used to execute the reduction in force can greatly reduce the employer's liability.



# COVID-19 Specific Dynamics

- Plan and Implementation Must Consider Both Short-Term Exigencies and Long Term Recovery Plan
- Legislation & Other COVID-19 governmental action may create special opportunities and obligations
- Actions & their implementation should consider effect on workforce, vendors and customers as they impact opportunity for successful recovery



# CONCLUSION

Implementing the right business plan the wrong way can do more damage to the business and management leaders than doing nothing at all.

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**For additional information, resources, or republication or other inquires, contact:**

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