



## Recession Readyng Your Workforce To Meet New Business Challenges & Opportunities

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Slowdowns in many sectors of the U.S and international economy, rising fuel and other costs, tightening credit conditions, and other uncertainties make now a critical time for many businesses to recession ready their workforce and operations, whether to position their organization to survive or maintain profitability during business adversity or to position their business to take advantage of new opportunities.

If your business is a company concerned about surviving business slowdowns, its recession readiness or other business challenges, or looking to reposition operations to maximize on new opportunities, repositioning of your workforce management and compensation generally will be a key determinant to your success or failure.

Businesses facing downturns or other challenges often implement reductions in force as a means of preserving cash. Where a changing business model, cash flow or other challenges require a cut back in head count, a strategically designed reduction in force appropriately implemented to minimize employment and operational liabilities can be helpful if not indispensable under certain circumstances. Frequently, however, timely action to tighten up and strategically reform workforce and compensation practices can help businesses to redeploy operations to meet emerging businesses challenges or opportunities while avoiding or minimizing the need for layoffs or other more catastrophic business events. Where evolving business needs require a change or reduction in workforce, timely strategic action becomes even more critical to secure, retain, and manage the key staff and their performance. In all events, profitability and survival often turns on how quickly and how well management identifies and implements strategic workforce changes to meet their organization's emerging business reality.

For businesses seeking to enhance workforce performance and efficiency to meet changing businesses needs, steps worth considering include:

- Identifying and implementing changes in operations and associated job description and performance requirements necessary to position your organization to respond to emerging challenges and opportunities
- Re-enforcing and tightening management of existing performance requirements undermining material operational effectiveness
- Exploring and implementing potential changes in compensation, benefits, scheduling or other staffing and compensation practices to streamline costs or improve cost or other effectiveness
- Strengthening your liability shield by updating and tightening promotion, discipline, hiring, termination, pay, trade secret and other

data security and other human resources, ethics and corporate compliance policies and practices to reduce corporate risk.

Knowing and appropriately documenting and communicating the business goals and needs underlying the choices you make as part of this process plays a key role in the effectiveness of these efforts.

Since the success of these efforts depends heavily on your organization's ability to predict the specific performances necessary to your success, begin by evaluating your existing business model and operations. Closely re-examine your current operations in light of the changing economic and business environment to identify the key performances that your organization views as critical to help your business respond to these emerging challenges and opportunities. Consider both the existing performances that the business needs to continue or enhance, as well as business and attendant performance changes that management expects to need to respond effectively to emerging business environment. Documenting the specific performance changes in terms of the behavior changes desired, the timelines for implementation, and the underlying analysis and business justifications often can both enhance the effectiveness of efforts to implement these changes and promote their defensibility against potential future legal challenges.

Once management determines the performance refinements needed to achieve its goals, communicate your expectations to your employees and other members of the workforce by giving impacted workers an updated performance improvement plan that notifies them of the business' expectations about their performance, including where applicable, performance requirements and expectations, relevant performance measures, timelines, and consequences for meeting or failing to meet these expectations. To reinforce to employees and other workforce members that their performance matters and to position your organization to address potential inadequacies in compliance by members of the workforce, communicate your plans to hold employees accountable for prompt adjustment of their performance by monitoring and documenting performance, then perform on this promise my monitoring and enforcing compliance through feedback, follow up training and providing appropriate discipline or rewards.

Along side enhanced efforts to manage performance, businesses going through transitions also consider taking steps to help protect it and its leaders to workforce and compliance related liabilities. Certain employees or other service providers concerned about the potential implications of slowdowns or other changes may seek to protect their positions or to position themselves to bring whistleblower, discrimination or other claims. Businesses facing substantial reductions in force in response to bankruptcy, plant closing, or other substantial setbacks face significant legal risk unless employee benefit and certain other human resources and corporate compliance responsibilities are appropriately handled. Businesses tightening up management or experiencing other changes should position themselves to defend their promotion, demotion, termination, compensation and other personnel performance decisions. Appropriate documentation of performance expectations and measurements, their business justification, training and disciplinary efforts to secure compliance, and other strategic actions can help minimize exposures to these claims and strategies by disgruntled employees or other service providers. Reviewing and appropriately updating compensation, benefits, worker classification and other practices also can produce significant benefits. On one hand, many businesses overlook opportunities to reduce workforce expense by reclassifying workers, tightening up scheduling and documentation of hours worked, redesigning overly generous vacation or other leave, disability, health, severance or other human resources and compensation practices, changing or renegotiating vendor or worker compensation, or other making other cost saving adjustments. At the same time, numerous regulatory changes make it important that businesses operating in times of change act to minimize themselves and their leaders against potentially significant liability exposures by ensuring that their worker classification, employee benefit, wage & hour, waiver, severance and settlement, and other compensation and employment practices and documentation are up to date and

appropriately administered in accordance with applicable tax, labor, securities, and other laws and regulations.

Strategic planning and effective performance management always plays a vital role in the successfulness of operations. For businesses facing losses, bankruptcies or other business set backs, these and other preparations can help reduce workforce, benefit and compliance related liability risks and costs for the business and its management. For other businesses, enhanced effectiveness in management of performance and human resources related costs and liabilities promotes business success by supporting enhanced profitability and competitiveness and reduced operational and legal risk. In either case, prompt and effective action can produce big returns for businesses that act on a timely basis.

While effective restructuring and management of workforce can produce significant benefits, the planning, implementation and administration of these activities if not properly evaluated or implemented can produce unexpected or undesired costs or liabilities. While employment discrimination and other employment related claims always present a significant source of exposure for businesses, these exposures become heightened during times of layoffs, or other business or workforce restructuring or other change. In many situations, changes in workforce, benefit plans, and other operations or practices may necessitate or make advisable various activities to comply with applicable regulatory or contractual requirements. Failure to appropriately document business motivations or termination selection procedures, to conduct required bargaining with union representatives or other contracted parties, to give required plant closing or plan termination notices, to document, communicate and implement employee benefit plan changes or terminations, to handle payroll and employee benefit plan contributions, to make required securities disclosures and reports, to make required tax or other filings or to properly handle other concerns can undermine effectiveness at best, and trigger significant liability for the business as well as its board and management. Businesses uninformed or concerned about avoiding legal expense often unintentionally exacerbate or overlook opportunities to minimize these exposures by failing to obtain advice and assistance to appropriately negotiate the employment and employee benefit related traps hidden in the transition process. To help minimize these exposures and position sensitive discussions and deliberations to qualify for protection from disclosure under attorney-client privilege and work product rules of evidence, businesses generally should obtain the assistance in planning and implementing these and other related activities from legal counsel experienced in advising businesses about managing workforce and employee benefit risks in times of business change.

If you have any questions or need help recession readying your workforce, a reduction in force or other restructuring or change management concern, or if we may be of assistance with regard to any other workforce management, employee benefits or compensation matters, please do not hesitate to contact Cynthia Marcotte Stamer at 972.419.7188.

#### *About Cynthia Marcotte Stamer*

Management attorney and consultant Cynthia Marcotte Stamer helps businesses, governments and associations solve problems, develop and implement strategies to manage people, processes, and regulatory exposures to achieve their business and operational objectives and manage legal, operational and other risks. When working with clients, Ms. Stamer combines a client-oriented approach with an extensive practical and technical knowledge of human resources, insurance, employee benefits, health care, privacy & security, corporate compliance and other legal matters to assist clients to formulate and administer pragmatic operational and risk management strategies and effective internal controls taking into account the financial, operational, political, legal and other realities confronting the client.

Effective management of internal and external human resources and services providers is at the heart of any effective management or compliance strategy. Meanwhile, employment and employee benefit costs and liabilities are leading cost and liability drivers for all businesses and business leaders. Board certified in labor and employment law by the Texas Board of Legal Specialization, with more than 20 years human resource and employee benefits experience, Ms. Stamer helps businesses manage their people-related risks and the performance of their internal and external workforce domestically and internationally. As a core part of her practice, Ms. Stamer continuously works with businesses and business leaders to manage human resources and operational risks and liabilities through appropriate human resources, employee benefit, worker's compensation, insurance, outsourcing and risk management strategies domestically and internationally. Ms. Stamer regularly advises and represents public and private businesses, boards and other business leaders, the design, implementation, administration and defense of workforce management, compliance, corporate ethics and internal controls, employee benefits, and other human resources and risk management practices, policies and strategies. As part of this practice, Ms. Stamer has worked extensively with businesses domestically and internationally on process and cultural reengineering, outsourcing, workforce restructuring, reductions in force, and other human resources, employee benefits, services and

operational management challenges whether in arising in day to day operations or in connection with business mergers, acquisitions, restructurings, bankruptcies, federal sentencing guideline enforcement, business catastrophes and other significant workforce events. Ms. Stamer also frequently helps businesses manage employment and employee benefit exposures and compliance concerns arising out of workforce reductions, job restructuring, outsourcing, corporate mergers, acquisitions, sales, bankruptcies, and other significant business and workforce changes. She has extensive experience helping employers design, document, implement, and defend individual and mass employment transition, termination and layoff selection procedures and decisions to reduce liability under employment discrimination, whistleblower, workers' compensation, employee benefit and other applicable laws. Ms. Stamer's experience includes extensive work advising employers about the use, documentation, implementation, and defense of employment termination, promotion and review practices, voluntary and involuntary severance pay arrangements, early retirement windows and other incentive retirement arrangements, settlement agreements, ADEA and other waivers, and other employment and employee benefit risk-management strategies; amendment and termination of employee benefit and employment policies; termination, amendment, vesting, distribution, partial termination, tax-qualification, withholding, and other compliance obligations with regard to employee benefit plans; and compliance obligations under COBRA, WARN, discrimination, and other applicable laws. She also advises and represents investors, creditors and creditor committees, debtors, bankruptcy trustees, employee benefit plans and fiduciaries and others in connection with the administration, restructuring and termination of human resources and other services relationships; the administration, amendment or termination of employee benefit, compensation, and fringe benefit programs and practices, outsourcing, litigation or other investigation or enforcement actions by employees, contractors and plan participants, as well as the IRS, Department of Labor or other regulators arising out of staffing or insurance matters and other related concerns.

Recognized in the International Who's Who of Professionals and bearing the Martindale Hubble AV-Rating, Ms. Stamer is a highly regarded legal advisor and consultant, author and speaker, who regularly conducts management and other training on a wide range of employee benefit, human resources and internal controls, and other related risk management matters. Ms Stamer is the author of 100s of publications on a host of human resources and related issues, including "Managing The People & Politics In Times of Catastrophe or Change," "Mergers, Acquisitions, & Integration Solving The People Puzzle," "When Your Employee's Private Life Becomes Your Business," "Real World Compliance Strategies for Improving Operations and Managing Risk," "Bankruptcy and Employee Benefit Issues," "The Medical Coverage Continuation Requirements of The Consolidated Omnibus Budget Reconciliation Act of 1985 As Interpreted Under The Final Treasury Regs.," "Company Executives, Other Business Partners Face ERISA Liability Risks If Bankrupt or Distress Company Mismanages Employee Benefit Plan Responsibilities" and many others. Her writings have appeared in a variety of other publications, including works published by the American Bar Association, Aspen Publishers, BNA, the American Health Lawyers Association, SHRM, World At Work, Government Institutes, Inc. and many others. For a listing of some of these publications and programs, see [cynthiastamer.com](http://cynthiastamer.com). Her insights on human resources risk management matters also have been quoted in The Wall Street Journal, various publications of The Bureau of National Affairs and Aspen Publishing, the Dallas Morning News, Spencer Publications, Health Leaders, Business Insurance, the Dallas and Houston Business Journals and a host of other publications. She also serves in leadership positions in numerous human resources, corporate compliance, and other professional and civic organizations. For instance, she presently is Chair of the American Bar Association (ABA) Health Law Section Managed Care & Insurance Interest Group, and Vice Chair of both the ABA Real Property, Probate & Trust Section Employee Benefits & Compensation Group and the ABA TIPS Worker's Compensation Committee, Continuing Education Liaison for the ABA Joint Committee on Employee Benefits, a member of the IRS TEGE Council, a former member of the BNA EBCD Editorial Advisory Board and frequent contributing author to various publications for BNA, Aspen, SHRM, World At Work, HRResource and numerous other publishers, and as faculty member and planning committee member for numerous human resources related programs. She also has previously served as Region IV Chair and a National Consultants Forum Board Member for the Society of Human Resources Management, Chair of the Dallas Bar Association Employee Benefits and Executive Compensation Section, and as a State Executive Board Member and Dallas Chapter Chair of the Texas Association of Business. For more details about Ms. Stamer's experience and other credentials, contact Ms. Stamer, information about workshops and other training, selected publications and other human resources related information, see [CynthiaStamer.com](http://CynthiaStamer.com) or contact Ms. Stamer via telephone at 972.419.7188 or via e-mail at [cstamer@solutionslawyer.net](mailto:cstamer@solutionslawyer.net).

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