Tread Carefully When Implementing a Reduction in Force

February 10, 2015

With recent price drops in the oil and gas industry it is likely that reductions in force (RIFs) are looming on the horizon. But employers need to tread carefully when implementing any RIF, as it can raise thorny issues under both state and federal law. In addition, an often overlooked aspect of RIFs is the spillover implications for the community where a facility is located. These issues may include the effect a RIF can have on customers, investors, media relations, governmental agencies and the morale of remaining employees.

Likewise, employees who are affected by a RIF often feel that their selection was unfair or that they are being discriminated against in some way by virtue of their selection. Thus, it is often in the employer’s best interest to have a carefully devised strategy that will pass any “smell test” in the face of possible legal action. Employees who believe a system or process is fair and thoroughly explained from the outset are less likely to bring a legal challenge. Conversely, employees who feel unfairly treated will often seek redress with federal or state investigative agencies and may even file lawsuits. Federal or state agency investigations may take actions such as reviewing the process employers used in deciding to implement a RIF and how the employers selected the individuals subject to layoffs.

As a result, employers should develop and implement a well-planned strategy before carrying out any RIF. Employers can and should take all feasible precautions to insure that any RIF implementation complies with all state and federal legal requirements and is handled in a manner that makes employees feel as though they have been treated fairly.

Major Legal Issues That Employers Should Consider When Developing a RIF Plan

Retaliation

Employers should be cognizant of the timing of any layoffs in relation to any recent Family and Medical Leave Act leave, workers’ compensation claims, harassment allegations, or claims of discrimination. Employees may view their inclusion in a RIF as retaliation for engaging in rights protected under either federal or state law.

Disparate Impact

Similarly, employers should—in conjunction with legal counsel—conduct an overall statistical analysis of employees selected for RIFs based on merit. RIFs that disproportionately affect a particular protected classification (i.e., age, race, sex, national origin, etc.) may open employers to disparate impact allegations based upon employee comparators in similar jobs and classifications.
Unionized Workforces

Furthermore, employers undertaking a RIF in a unionized facility will need to take precautions to ensure that the layoffs are conducted in accordance with the collective bargaining agreement in effect.

WARN

Finally, employers engaging in large-scale layoffs will want to ensure that all state and federal notice compliance requirements imposed under the Worker Adjustment and Retraining Notification (WARN) Act are met in advance of the RIF.

Voluntary Layoffs and Severance

Employers may also want to consider voluntary layoffs in conjunction with severance packages for employees. Severance agreements may include a release and waiver of claims against the employer. However, employers will need to ensure that all tax and employee benefits implications (such as those under the Employee Retirement Income Security Act) are addressed before offering severance packages. Employers should also ensure that any release agreement is compliant with the Older Workers Benefits Protection Act of 1990 for any individuals over 40 years of age.

These are just a few of the myriad issues that may arise in any RIF. There is no one-size-fits-all strategy for implementing a RIF, and any layoffs should be tailored to fit an employer's specific needs. As a result, employers should consult with counsel to address any matters that are unique to their local legal, business, and civic environment prior to implementing any RIF.