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Legal Counsel to Employers and Schools

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10 Steps to Minimize Liability When Reducing Staff

As cities and towns grapple with the current fiscal crisis, many may look at workforce reduction as a means to balancing shrinking budgets. However, layoffs can often result in employment practices claims such as discrimination or wrongful termination. Claims can be minimized by planning ahead. The following steps will help guide you through the process.

- 1. Make your case for reductions.** Gather information to demonstrate the necessity of staff reductions and use it when discussing layoffs with elected officials, employee organizations, and non-union employees.
- 2. Consider alternatives to reductions.** Demonstrate that you have acted fairly and made every attempt to minimize layoffs. Consider: freezing or reducing overtime (directly or through scheduling changes in public safety departments); voluntary or involuntary furloughs, layoffs or leaves; reduced hours; wage freezes, deferrals or reductions.
- 3. Use objective criteria in the selection process.** Demonstrate that selections were based on merit and therefore non-discriminatory. Criteria may include the need for particular functions or the ability to combine functions, as well as performance, experience, or seniority.
- 4. Analyze all applicable policies:** Collective bargaining agreements, personnel by-laws, and other personnel policies and procedures.
- 5. Fulfill Bargaining Obligations.** If contemplated reductions will involve or impact unionized employees, provide a notice of the contemplated reductions sufficient to give the union a reasonable opportunity to exercise their rights to bargain about criteria for selection for layoffs (if not already established by law or contract), possible alternatives to layoffs, and the impact of any layoffs on employees. Respond quickly and fully to requests for relevant information.

6. **Consult labor counsel** with questions on collective bargaining, civil service (including hearing requirements), employees on leave, employment contracts, outstanding offers of employment, protected groups, notice requirements, and the requirements for releasing claims.

7. **Consider offering severance to certain staff.** Severance offers can be made in exchange for release of future claims, or in lieu of notice if you need to eliminate staff quickly.

8. **Send a clear and thorough separation letter.** Discuss the need for reductions, alternatives considered, criteria used, final payment terms, extension of benefits, and provide information about COBRA rights, unemployment rights (required D.E.T. notice), and access to retirement funds or benefits.

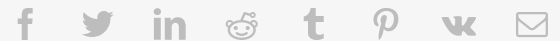
9. **Anticipate unions' and employees' questions and know what your response will be.** Provide guidance to others responsible for notifying particular staff, and warn supervisors not to make 'stray comments'. Afford separated employees the opportunity for an exit interview.

10. **Document, document, document.** Document all steps taken and information presented. Keep copies of all documentation and correspondence, including notes regarding potential claims identified during exit interviews or grievances.

Please keep in mind that this publication is intended as informational only and is not legal advice. Consultation with labor counsel is always recommended.

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