

OUR PRACTICE

Reductions in Force

In tough economic times, many employers are faced with having to reduce their workforces to meet financial challenges. Reductions in force can lead to complicated and unnecessary litigation, at a significant and unexpected cost to the company. Employers must comply with federal, state and sometimes even local laws and regulations. If a severance package is to be offered to employees in return for release of potential claims, the complex requirements of the Older Workers Benefit Protection Act must be followed. And if the employer has 100 or more employees (fewer under certain state laws), the federal WARN Act may be implicated, requiring an employer to give 60 days' written notice of the layoff to selected employees, as well as state and local government officials, and where appropriate, the employees' bargaining agent. Other laws, such as ERISA, COBRA, those relating to discrimination, employee benefits, tax, bankruptcy, the Fair Labor Standards Act and the National Labor Relations Act could also be impacted in a reduction in force.

Our labor and employment attorneys, spread throughout all of our offices, are skilled at advising employers on how to minimize their risks in implementing a reduction in force. Whether the need is due to a merger, acquisition, bankruptcy, sale of the company or otherwise, we have vast experience in advising employers across numerous industries on all types of layoffs and plant closings. In addition, we have successfully tried numerous jury trials, and have many years of experience in avoiding expensive complications, such as class-action certification, that might arise should litigation result from a reduction in force. We can routinely perform the following:

- Advise companies how to analyze, structure and select employees for layoff
- Advise companies how to avoid and mitigate claims for discrimination that can arise out of a reduction in force
- Advise companies on executive and white collar layoffs, severance packages, non-compete agreements and strategies
- Prepare confidential severance agreements and release of claims and notices that comply with the Older Workers Benefit Protection Act and other laws
- Provide advice concerning the WARN Act and similar state and local plant closings laws and those relating to mass layoffs
- Provide advice on ERISA, COBRA and employee benefits issues which often arise in a layoff especially under the stimulus bill
- Counsel employers on the National Labor Relations Act and any applicable collective bargaining agreement addressing the reduction in force
- Advise on bankruptcy matters, as appropriate
- Counsel on federal and state wage and hour laws
- Defend the company in any resulting litigation, including discrimination claims, collective actions and class actions.

We understand that employees are a company's most important asset, and a reduction in force is never the easiest path to take. Our labor and employment attorneys can help employers and their human resource professionals navigate the complicated road toward a successful reduction in force.



Representative Matters

- Negotiated a separation agreement from a major corporation on behalf of a senior executive, including the resolution of non-compete concerns, and negotiated the executive's new employment agreement with a different company.
- Successfully represented employer in labor arbitration where arbitrator upheld employer's right to furlough employee.
- Advised an international sports organization, pharmaceutical manufacturer, banking institution, lighting manufacturer and polymer provider in nationwide reductions in force affecting more than 8,300 employees (none of which resulted in litigation).
- Negotiated the transition of senior executives and department managers out of the client's employment, resolving whistleblower claims as part of the agreements.
- Obtained temporary and preliminary injunctions against the client's former employee in a non-compete matter.