

Preparing for a Reduction in Force or Position Eliminations

Organizations will typically create a team that will be in charge of making decisions and carrying out a reduction in force (RIF) or position eliminations. The size of the team may depend on the size of the organization and the scope of the reductions, but the team should be relatively small and have diverse experience. Appropriate team members include members of senior management, HR professionals, and an employment attorney. If the organization's attorney is not a member of the team, he or she should review the team's decisions for legal defensibility.

The team should follow these steps:

1. **Agree to use a methodology.** This is a critical part of the preparation for eliminating positions or reducing a workforce. A set of job-related, objective, and consistently applied criteria, decided upon and documented before the selections take place, is the organization's best defense against a claim of discrimination.
2. **Determine the scope of the reduction.** What portion of the business will be affected? Is business slow throughout the organization, or are there departments or segments of the business that are busy, critical, or already operating with as few people as possible? Employees in these areas may not be considered for reduction. How many employees will need to be reduced? Will reductions be made all at once or over time?
3. **Decide on the job-related, objective criteria to be used for selecting the employees to be reduced.** Examples of criteria commonly chosen include:
 - Years of service
 - Employee status, i.e., part-time or contingent workers
 - Critical skills may exempt some workers from consideration if they are the only employee with those skills.
 - Performance as documented on performance evaluations, disciplinary records, supervisor's notes, etc.
 - Flexibility—the ability to perform many jobs makes the employee more valuable in a leaner environment.
 - Attendance record for absences that are **not** protected under federal or state laws--Example: An employer is prohibited from discriminating or retaliating against an employee for having exercised or attempted to exercise any state or federal Family and Medical Leave Act (FMLA) rights.
4. **Determine how the selections will be made.** Will the team review all employee records and make the decisions or will department supervisors make recommendations for which employees will be affected? If so, ensure the supervisors understand the criteria to be used for their recommendations. Will employees be measured against those in their department or all other employees?
5. **Decide on the positions to be reduced.** It may be helpful to construct a chart, for each affected area or department, with the employees' names down the side and the criteria across the top. Rate each employee on each criterion and add up each employee's scores. Ensure there is documentation to back up those ratings. Place the employees in order by score and select the lowest rated employees for reduction. MRA has a sample [Position Elimination Worksheet](#) that can be modified for this purpose.
6. **Review the selected individuals for legal compliance.** This step is critical and is intended to ensure the decisions do not adversely impact any protected category of employees. The organization's attorney can be involved in this process. List the employees to be reduced and indicate whether each is a member of any protected groups: female? over age 40? a minority? disabled? etc. Then, review how the composition of the group of employees reflects the whole of your workforce for each category. For example, if six employees are over age 40 and six are under age 40, and four of those over age 40 and one of those under 40 are being reduced, the decision should be reviewed to ensure defensibility based on the criteria used.

The RIF team will also need to determine what action is required or desired concerning several other legal issues related to the reduction:

- Will the RIF be large enough to trigger the organization to provide a 60-day notice under the federal Worker Adjustment and Retraining Notification Act (WARN) or similar state law?

- Will severance pay be offered to the affected employees, and will the organization require they sign an agreement to waive any employment-related claims? If so, engage with legal counsel to ensure compliance with the Older Workers Benefit Protection Act (OWBPA) and consider the elements to include in the final agreement. MRA has a resource guide on [Preparing a Severance or Separation Agreement](#) to assist employers before they meet with their legal counsel to craft the agreement.
- Will outplacement services be provided to employees being laid off?
- How will employees on protected leaves of absence be affected, if at all? While employees on leave can be terminated through a position elimination or reduction in force, employers need to be able to prove that it would have happened anyway had the employee been actively working to avoid potential claims.

After the RIF

Communicate the layoff to remaining employees

Hold meetings during or immediately after the layoff. It is not necessary to discuss all the specifics of the layoff process; the message can be neutral and concise: “Part of the operations department has been laid off.” Announce any alterations in the reporting structure, workload, supervisory assignments, and shift changes. Convey the message that the layoff will cause some changes and everyone’s support will be necessary to help manage through the changes.

Possible concerns of the remaining employees may be, “Why did she/he have to go?” or “Am I next?” Remaining employees may want to talk about the issue and assure themselves that the laid-off employees have been taken care of by the company. Be prepared to respond. The following are some examples:

- “This was a difficult decision made by the management team. We hope that business conditions won’t require this again.”
- “Outplacement services have been provided to those who have been laid off.”
- “If anyone has individual concerns about this change, please arrange a time to see me after this meeting.”

Work on the external communication process

If former employees had business relationships outside the company, it is important to contact customers, vendors, and support services to inform them of the recent organizational changes. Provide the new contact’s name, department, phone number, and email address. Assure them that your company is doing everything to provide continuity of service. Any concerns that surface should be dealt with quickly and professionally.

As unpleasant as a RIF is, it is important to take the time to ensure your employees and customers understand the changes and have their questions and concerns answered.

When organizations need to reduce their workforce or eliminate positions, it is critical they take the time to prepare for and conduct those actions properly to avoid discrimination claims or other legal challenges by those whose jobs are affected.