

# THE RIGHT WAY TO IMPLEMENT A REDUCTION IN FORCE

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## 20.7 Public Employer Rights

1. Direct the work of its public employees
2. Hire, promote, demote, transfer, assign and retain public employees in positions within the public agency
3. Suspend or discharge public employees for proper cause
4. Maintain the efficiency of governmental operations
5. Relieve public employees from duties because of lack of work or for other legitimate reasons

# The employer's right to reduce its workforce is sometimes subject to statutory limitations

- Teachers
- Administrators
- Veterans

The employer's right to reduce or realign the workforce may also be limited by -

collective bargaining agreements,  
board policies, or  
individual contracts.

# Establish the Reasons for Reduction or Realignment of Workforce

- A. “Just Cause”
- B. Budgetary Considerations
- C. Personnel Reasons
- D. Realignment of other resources

# Potential Claims of Improper Motivation, such as Discrimination

1. Disparate treatment cases
  - (a) the employee is a member of a protected class;
  - (b) the employee suffered adverse employment action;
  - (c) the employee was performing at a level that met the employer's legitimate expectations, and
  - (d) the employee's position was filled by someone outside of the protected class

If an employee is able to establish a basic case of discrimination, then the employer must establish a legitimate business reason supporting its action.

The “pretext” argument.

2. Disparate impact case requires the employee to prove:

- that a policy or practice of the employer,
- although neutral on its face,
- has a significant, adverse impact on members of the protected class.

If the employee establishes a disparate  
impact case,

then the employer must establish a

business necessity for the policy/practice

3. Consider all protected classes:  
age, race, religion, creed, color, sex,  
sexual orientation, gender identity,  
national origin and disability.  
Also consider veteran status.

4. Search for evidence of violation of employee's rights
  - a. Direct evidence
  - b. Indirect/circumstantial evidence
  - c. Statistical evidence

## Retaliation Claims – employee protected activities

2. Consider all types of protected activity
  - a. Freedom of speech
  - b. Union activity
  - c. Prior complaints
  - d. Prior claims such as workers comp

# Partial Reductions

- Furloughs
- Permanent and Partial Reductions of Hours or Days
- Statutory Limitations – Chapter 279
- Collective bargaining agreement limitations

## Evidence Needed to Support the Employer's Action

1. Budgetary or financial evidence
2. Evidence regarding personnel reasons
3. Evidence to refute improper motive

# Review Policies for Employees not Covered by Collective Bargaining Agreements

A. Identify the reason in the broadest terms

B. Classify all employees

1. Narrower is generally better

2. Every employee must be in at least one class

3. Consider employees in multiple classes

4. Rules for employees on leaves

## Establish the criteria for layoff

1. Objective criteria

- a. Seniority

- b. Licenses and certifications

- c. Degree or credit hours of education

- d. Training specific to the position

## 2. Subjective criteria

- a. Define every term
- b. How will each criterion be measured
- c. How will each criterion be weighed
- d. How will the decision will be made
- e. Establish procedure for breaking ties or giving preferences

## Apply the criteria correctly

1. Identify the proper pool of employees
2. Apply all criteria to all employees in the pool

# Carefully Implement all Elements of any Negotiated Staff Reduction Procedure

## A. Classify all employees

1. Insure that every employee is in at least one class
2. Determine the proper classification of all employees who are in multiple classes
3. Determine the proper status of all employees who are on extended leaves

Review and define all criteria for layoff

1. Objective criteria
2. Subjective criteria

Apply the criteria correctly

Make sure that all contractual notification provisions are satisfied

# Consider in Advance any Possible Challenges to the Employer's Planned Reduction or Realignment

Consider the possibility that a grievance might be filed

Consider any prohibited practice complaint that might be filed