

Blog Post

Workforce Cost-Cutting: Key Legal Considerations for Employers

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In response to economic pressures, many private employers are exploring ways to reduce labor costs. Whether the approach involves reducing hours, implementing furloughs, or conducting layoffs, it is essential for companies, especially those operating in multiple states, to understand the legal environment.

Identifying Cost-Cutting Strategies

Companies should begin by clarifying business goals and the scope of any cost-cutting measures. Common options include reducing employee hours, instituting temporary furloughs, or proceeding with permanent layoffs. Each strategy presents unique legal and operational implications, making it important to select the approach that best fits the company's needs and risk profile. For example, reducing hours may help retain talent but could affect benefits eligibility, while layoffs may achieve immediate savings but carry higher legal and reputational risks.

Wage and Hour Compliance

Compliance with wage and hour laws is a critical consideration. For example, reducing hours for exempt employees can jeopardize their exemption status under the Fair Labor Standards Act if not managed carefully. Non-exempt employees must

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continue to receive at least minimum wage and overtime for all hours worked. Some states and localities impose additional requirements, such as predictive scheduling or reporting pay laws, which may affect how changes are implemented.

Notice Requirements

Advance notice obligations are a key compliance area. The federal Worker Adjustment and Retraining Notification (WARN) Act requires 60 days' notice for certain large-scale layoffs or plant closings, and many states have their own “mini-WARN” laws with stricter thresholds or longer notice periods. Failing to comply can result in significant penalties and disrupt business operations.

Discrimination and Retaliation Risks

Companies must be vigilant about discrimination and retaliation risks. Selection criteria for any reduction in force should be objective, consistently applied, and well-documented. Conducting an adverse impact analysis can help identify and mitigate potential claims under laws such as Title VII, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Decisions should not be based on protected characteristics or recent protected activity.

Benefits and Health Coverage

Changes in hours or employment status may affect eligibility for health coverage, triggering obligations under COBRA and potentially impacting compliance with the Affordable Care Act. Companies should coordinate with benefits administrators to ensure proper notices and coverage transitions.

Union, Government Contractor, and Immigration Considerations

Additional requirements may apply for unionized workforces or government contractors, including bargaining obligations and compliance with contract-specific terms. For employees on work

visas, changes in hours or employment status can affect visa compliance and should be reviewed carefully.

Severance and Release Agreements

Severance pay and release agreements can help manage risk and support departing employees, but must be carefully drafted, especially for employees over 40, where special rules apply under the Older Workers Benefit Protection Act. Clear, timely communication with affected employees is essential to maintain trust and minimize disruption.

State and Local Law Variations

State and local laws add further complexity, with rules on final pay, paid time off, and unemployment eligibility varying widely. Some states require immediate payment of final wages or accrued vacation, while others have unique notice or severance requirements. Multistate companies should map out requirements in each jurisdiction before implementing any changes.

Documentation and Planning

Documenting the decision-making process and maintaining records of analysis and communications supports compliance and provides a defense in the event of future claims. Companies should also plan for the operational impact, including knowledge transfer, employee morale, and business continuity.

What Companies Should Remember

Workforce reductions require careful planning and legal review. By proactively addressing wage and hour rules, notice requirements, discrimination risks, benefits obligations, and state-specific laws, companies can achieve cost-saving goals while minimizing legal risk and supporting employees through challenging transitions. For tailored guidance, companies should consult the Akerman labor and employment team before taking action.

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