

Four Compliance Issues to Consider as Layoffs Tick Up

HR Brew | Courtney Vinopal | January 22, 2024

As job cuts continue into 2024, here are four rules HR must comply with when layoffs occur.



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The year is off to a less than auspicious start for some parts of the workforce, as large companies including Google, Amazon, Citigroup, and BlackRock all announced their plans to lay off employees.

This is a continuation of job cuts that started last year, with the tech sector being hit particularly hard. And as some recent high-profile cases have illustrated (looking at you, Twitter), skirting legal obligations for departing employees can land firms in hot water.

Here are four compliance issues to consider when navigating layoffs for US workers.

WARN employees. Under the Worker Adjustment and Retraining Notification Act (WARN), employers with 100 or more employees that intend to conduct a mass layoff at a single site of employment must give affected employees at least 60 days' notice before they take action. Under the policy, "mass layoff" refers to a layoff that results in at least 33% of active employees, and at least 50 employees, losing their jobs.

There are a few exceptions to this requirement. Employers don't have to give affected workers a heads up if they offer at least 60 days of severance pay, or if they believe "in good faith" that doing so could make investors nervous and thus harm their business, HR Brew previously reported. They may also argue layoffs were prompted by an "unforeseeable business circumstance," such as a natural disaster.

It's worth noting that some states have their own WARN laws, which go further than the federal policy. In New York State, for example, employers with just 50 or more employees must notify them ahead of layoffs.

Conduct a disparate impact analysis. Before conducting a layoff, employers should conduct an analysis of affected workers (sometimes called a "disparate impact analysis") to ensure the decision doesn't result "in the disproportionate dismissal of older employees, employees with disabilities, or any other group protected by federal employment discrimination laws," according to the Equal Employment Opportunity Commission (EEOC).

The EEOC recommends making a list of employees who would be laid off under the company's criteria, and determining "whether certain groups of employees are affected more than other groups." This might look like calculating the share of female employees affected, for example, and comparing it with the employer's overall female workforce, to determine if women will be disproportionately impacted.

Look over severance agreements. Employers aren't required to provide severance to laid-off workers under federal law, though many do so to recognize departing employees, as well as protect themselves from legal action.

HR should steer clear of including a non-disparagement or non-disclosure clause in a severance agreement, as the National Labor Relations Board banned this practice last year.

Additionally, be aware that adults over 40 are entitled to enhanced protections when they sign severance agreements. Under the Older Workers Benefit Protection Act, if employers ask these employees to forfeit their right to sue for age discrimination in order to receive severance, a waiver must be included in the agreement. This waiver must meet seven requirements, among them to advise the employee in writing, to consult an attorney before accepting, give them 21 days to consider the offer, and allow them seven days to revoke their signature.

Ensure final paychecks arrive in time. Though employers aren't required to pay laid-off workers severance, final checks are non-negotiable. Employers' obligations differ by state: In California, for example, terminated employees are entitled to their final paycheck immediately, while in other states businesses may wait until the next payday.