



What criteria should be used in selecting employees for a workforce reduction?

Carrying out workforce reductions can pose great challenges and risks to employers in terms of disparate treatment, or adverse impact on protected employee groups. Several options are available when planning necessary workforce reductions, which are discussed below. In addition, it is a good idea to research the federal EEOC and the state fair employment practice laws to minimize inherent risks of potential discriminatory charges.

Although it is virtually impossible for any employer to ever truly obtain risk-free status in implementing workforce reductions, carefully orchestrated and executed downsizing plans used in conjunction with good documentation and layoff policies (which have been reviewed by legal counsel) can be an employer's strongest defense against allegations of discrimination. Employers in unionized environments need to take additional precautions to ensure that any existing collective bargaining agreements are not violated.

Seniority-Based Selection

With seniority-based selection, the "last hired/first fired" concept is used. Because seniority-based systems reward employees for their tenure, there is a lower risk that older workers will sue employers for age discrimination under the ADEA. However, using seniority does not protect the employer from further risks for potential discrimination against other protected groups. In addition, using seniority-based selection may require the employer to retain employees with outdated skills or less technologically savvy employees.

Employee Status-Based Selection

Employers who have part-time or contingent workers on their payrolls may want to lay off those workers first to ensure greater job security for remaining core workers. Unless an employer's workforce is made up largely of contingent workers, this method alone may not be sufficient to meet downsizing needs, and it may need to be used in conjunction with other selection criteria.

Merit-Based Selection

Although this method of selection is often a preferred choice among managers because of its added flexibility for weeding out marginal or poorly performing employees, it should be scrutinized carefully. Because merit selection criteria are based either in part or in whole on performance information (which is not always objective, may contain rater biases and may not be well

documented), this method has not been proven to provide an accurate qualitative means for ranking the differences among individual employees' performance in selecting employees for layoff. Employers choosing to use this method should carefully document the decisions for retaining or reducing all employees in the selection pool.

Skills-Based Selection

With this type of system, it is sometimes possible for employers to retain those workers who have the most sought-after skills. However, be aware that this method may cause a company to retain younger workers with needed and versatile skill sets, and to lay off older workers who may not have the necessary skills. The older workers are protected from discrimination by the Age Discrimination in Employment Act. Once again, clear documentation should be maintained.

Multiple Criteria Ranking

Although all of the above methods can be equally effective when planned carefully, perhaps the most effective method of selection is using a combination of all the criteria previously discussed. Below is a sample of the ranking criteria used by some organizations that have implemented selection policies that are based on multiple criteria such as seniority, skill, and performance considerations.

- Employee's long term potential and attitude
- Employee's skills, abilities, knowledge, and versatility
- Employee's education and experience levels
- Employee's quantity and quality of work
- Employee's attendance history
- Employee's tenure within the company

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