



CHECKLIST

Employee Layoffs Driven by Financial Pressure

In recent years many educational institutions have been forced to use employee layoffs (reductions in force) to address serious financial problems. In 2020, the coronavirus (COVID-19) pandemic accelerated the spread of these problems at an alarming rate.

Institutions implementing layoffs can't afford to disregard proper planning. Schools are still bound by federal and state laws affecting layoffs, as well as by their existing contracts and collective bargaining agreements. If layoffs proceed in violation of laws or the institution's policies, terminated employees are likely to sue — the last thing an already struggling institution wants to face.

This checklist is designed to help K-12 schools or higher education institutions plan and conduct layoffs in a way that is fair to employees and minimizes the institution's risk of liability. Not every item will apply to every institution or school. Check the appropriate box — Yes, No, or N/A (Not Applicable) — for each question. Use the designated area on the right to note any further required actions.

Legal Considerations

Consulting qualified legal counsel is a critical first step, even if addressing the institution's financial condition is urgent. Institutions face significant risk of liability if they "go it alone" and conduct layoffs without proper legal advice. For example, they could face monetary damages for breaching employment contracts, violating institutional policies, or violating federal and state civil rights laws, which usually also award successful plaintiffs their attorney fees.

■ Has your institution consulted legal counsel who has experience with:

- Higher education or K-12 institutions, as appropriate?

 Yes
 No
 N/A

- Advising on or conducting reductions in force, preferably for educational institutions?

 Yes
 No
 N/A

Actions Needed

Legal Considerations *(cont'd)*

- Federal, state, and local employment laws? Yes
 No
 N/A

▫ Laws governing wage-and-hour issues, including:

- The federal Fair Labor Standards Act (FLSA)? Yes
 No
 N/A

- Equivalent state laws? Yes
 No
 N/A

▫ For employees covered by collective bargaining agreements (CBAs):

- The National Labor Relations Act (NLRA) and other federal laws applicable to unionized employees? Yes
 No
 N/A

- Equivalent state laws? Yes
 No
 N/A

- The federal Employee Retirement Income Security Act (ERISA), if employee retirement benefits are affected? Yes
 No
 N/A

- Immigration law, if any employees subject to layoff are foreign-born and not naturalized U.S. citizens? Yes
 No
 N/A

▫ Employment-related laws that specifically address the effects of COVID-19, including:

- Federal laws, such as the Families First Coronavirus Response Act (FFCRA)? Yes
 No
 N/A

- Relevant state laws? Yes
 No
 N/A

■ Has your institution reviewed with counsel its internal policies, procedures, and other documentation, such as:

- Faculty and employee handbooks? Yes
 No
 N/A

- CBAs (for unionized employees)? Yes
 No
 N/A

- Applicable state laws or regulations (for public institutions)? Yes
 No
 N/A

Actions Needed

Legal Considerations *(cont'd)*

Actions Needed

- Individual employment contracts and appointment letters? Yes
 No
 N/A
-
- Policies prohibiting employment discrimination? Yes
 No
 N/A
-
- Employee benefits plans, including state retirement plans for public institutions? Yes
 No
 N/A
-
- Severance policies? Yes
 No
 N/A
-
- Appeal rights for terminated employees? Yes
 No
 N/A
-
- Documents (if they are a basis for the layoffs) referring to:
- "Financial exigency"? Yes
 No
 N/A
-
- Financial emergencies that do not qualify as exigent? Yes
 No
 N/A

■ Has your institution determined whether it must provide written notice under:

- The federal Worker Adjustment and Retraining Notification (WARN) Act? Yes
 No
 N/A
-
- Equivalent state WARN Acts? Yes
 No
 N/A

■ Has your institution determined whether state law or institutional policy requires providing terminated employees payments including:

- Severance pay? Yes
 No
 N/A
-
- Accrued vacation benefits? Yes
 No
 N/A

Legal Considerations *(cont'd)*

■ Has your institution consulted counsel about:

- Required or recommended documentation regarding layoffs, including how long to preserve that documentation? Yes
 No
 N/A

- Measures to protect general confidentiality of the process, including restrictions on disclosing discussions, disseminating documents, or forwarding emails? Yes
 No
 N/A

- Designating appropriate materials as attorney-client privileged? Yes
 No
 N/A

Layoff Planning

Once an institution retains counsel and reviews applicable laws and relevant internal policies and documentation, it can begin planning for layoffs. Ideally, planning involves a team approach that includes high-level representatives of all important functional areas and departments. Early in their planning, however, institutions should consider potential alternatives to layoffs and document that process — this can help when communicating to the campus community and other stakeholders that lesser measures are insufficient and layoffs are the only feasible choice.

Layoff Alternatives

■ Before announcing layoffs, has your institution attempted, or considered, alternative cost-saving measures such as:

- Salary freezes or reductions? Yes
 No
 N/A

- Hiring freezes? Yes
 No
 N/A

- Leaving vacant positions unfilled? Yes
 No
 N/A

- Reassigning employees? Yes
 No
 N/A

- Reducing work hours? Yes
 No
 N/A

- Implementing job-sharing? Yes
 No
 N/A

- Offering voluntary, unpaid leaves of absence? Yes
 No
 N/A

- Suspending retirement plan contributions? Yes
 No
 N/A

Actions Needed

Layoff Planning (cont'd)

■ Has your institution documented its consideration of alternative measures, including reasons for rejecting them? Yes
 No
 N/A

■ Has your institution considered offering a voluntary separation program, such as an early retirement incentive program? Yes
 No
 N/A

▫ If so, has your institution:

• Determined the qualification criteria, such as job classification, length of service, or (for early retirement) age? Yes
 No
 N/A

• Decided on a formula for employee severance packages? Yes
 No
 N/A

• Estimated how many employees are likely to accept the offer and ensured appropriate funding is available? Yes
 No
 N/A

• Considered its course of action if significantly more — or fewer — employees than anticipated accept the offer? Yes
 No
 N/A

• Reviewed the proposed separation program with legal counsel? Yes
 No
 N/A

■ Has your institution considered implementing furloughs instead of layoffs? Yes
 No
 N/A

▫ If so, has your institution:

• Addressed whether furloughs would apply to “non-exempt” (generally, hourly) employees, “exempt” (generally, salaried) employees, or both? Yes
 No
 N/A

• Considered how requirements of the federal FLSA or equivalent state laws affect whether to furlough employees for partial or full weeks? Yes
 No
 N/A

• Reviewed proposed furloughs with legal counsel? Yes
 No
 N/A

Actions Needed

Layoff Planning (cont'd)

The Planning Team

■ If your institution must proceed with layoffs, has it established a planning team that includes senior representatives from:

- Administration? Yes
 No
 N/A

- Financial affairs or business office? Yes
 No
 N/A

- Human resources (HR)? Yes
 No
 N/A

- Risk management? Yes
 No
 N/A

- Academic affairs, especially if faculty are affected? Yes
 No
 N/A

- Unions, if employees are covered by CBAs? Yes
 No
 N/A

- Affected departments, schools, or other business units? Yes
 No
 N/A

- Communications or public relations? Yes
 No
 N/A

■ In consultation with legal counsel, has the planning team created a written, comprehensive layoff plan that includes:

- The business justification for layoffs? Yes
 No
 N/A

- Specific objectives for the layoffs, such as reducing operating costs by a certain percentage or consolidating functions or services? Yes
 No
 N/A

- The expected time frame for layoffs? Yes
 No
 N/A

- The likely scope of layoffs, such as the number or percentage of employees to be terminated? Yes
 No
 N/A

Actions Needed

Layoff Planning (cont'd)

▫ Layoff selection criteria that:

- Are facially neutral and nondiscriminatory on the basis of employees' age or other protected characteristics? Yes
 No
 N/A

- Do not have a disparate impact on employees based on age or other protected characteristics? Yes
 No
 N/A

- State whether employee performance, including numeric ratings or written evaluations, will be considered? Yes
 No
 N/A

- Specify other factors to be considered, such as job categories or functions, length of service, particular skills, or geographic location of positions? Yes
 No
 N/A

Layoff Communications

■ Has your institution:

▫ Worked with internal or external public relations professionals to:

- Develop a comprehensive communication plan explaining the layoffs to the campus community, alumni, donors, the public, and the media? Yes
 No
 N/A

- Create a concise written summary, which can be distributed as needed, outlining the institution's financial situation and the need for layoffs? Yes
 No
 N/A

- Develop a social media strategy for addressing why layoffs were necessary, including an approach to negative posts that may damage the institution's reputation? Yes
 No
 N/A

- Designated senior officials to hold department or group meetings (either in person or virtually) with employees to present the justification for layoffs and answer questions? Yes
 No
 N/A

- Identified institutional spokespeople who are sufficiently high-ranking to be credible and who also can explain the layoffs in a straightforward manner? Yes
 No
 N/A

Actions Needed

Selection and Notification of Employees

Selecting individual employees and notifying them about their terminations are the most traumatic parts of the layoff process — for both the employees and those making and communicating these difficult decisions.

Depending on the institution's size, the planning team might not participate directly in selecting employees. But the team should retain general oversight of the process to ensure adherence to established selection criteria. Appropriate training for supervisors or other officials who notify employees of their layoffs is crucial; careless statements or otherwise poorly handled termination meetings can prompt employees to question the bases for their selection and in some cases pursue legal action against the institution.

- | | |
|--|---|
| ■ Has your institution appointed individuals or groups to select employees for layoff, consistent with the planning team's established criteria ? | <input type="checkbox"/> Yes
<input type="checkbox"/> No
<input type="checkbox"/> N/A |
| <hr/> | |
| ■ Before selections are finalized, does legal counsel review and approve the preliminary list of termination candidates? | <input type="checkbox"/> Yes
<input type="checkbox"/> No
<input type="checkbox"/> N/A |
| <hr/> | |
| ■ If unionized employees are affected, has your institution analyzed whether the CBAs provide "bumping" or other seniority rights? | <input type="checkbox"/> Yes
<input type="checkbox"/> No
<input type="checkbox"/> N/A |
| <hr/> | |
| ■ If your institution is laying off foreign-born employees working in the United States on certain visas (such as H-1B visas), has it considered whether the effect of termination on visa status creates any institutional obligations? | <input type="checkbox"/> Yes
<input type="checkbox"/> No
<input type="checkbox"/> N/A |
| <hr/> | |
| ■ If your institution intends to ask employees to sign waivers or releases in exchange for a severance package, will it: | |
| ▫ Comply with all requirements of the Age Discrimination in Employment Act (ADEA), including those allowing covered employees to: | |
| • Consider the document before signing (which an employee may waive)? | <input type="checkbox"/> Yes
<input type="checkbox"/> No
<input type="checkbox"/> N/A |
| <hr/> | |
| • Revoke acceptance after signing (which may not be waived)? | <input type="checkbox"/> Yes
<input type="checkbox"/> No
<input type="checkbox"/> N/A |
| <hr/> | |
| ▫ Comply with applicable state law requirements governing waivers and releases? | <input type="checkbox"/> Yes
<input type="checkbox"/> No
<input type="checkbox"/> N/A |
| <hr/> | |
| ▫ Advise employees to seek advice from their own lawyer and tax advisor about the legal and tax implications of signing the waiver or release? | <input type="checkbox"/> Yes
<input type="checkbox"/> No
<input type="checkbox"/> N/A |
| <hr/> | |
| ■ Has your institution decided who will conduct termination meetings with selected employees, such as their immediate supervisors? | <input type="checkbox"/> Yes
<input type="checkbox"/> No
<input type="checkbox"/> N/A |
| <hr/> | |
| ■ Does your institution require a second employee, such as an HR representative or next-level supervisor, to attend termination meetings? | <input type="checkbox"/> Yes
<input type="checkbox"/> No
<input type="checkbox"/> N/A |

Actions Needed

Selection and Notification of Employees *(cont'd)*

■ Does the institution provide training for managers conducting termination meetings, including:

- General suggestions for speaking and behaving in a compassionate but professional manner?
 Yes
 No
 N/A

- A script that briefly explains the reasons for layoffs and why the employee was selected?
 Yes
 No
 N/A

- Examples of statements to avoid, such as "I didn't agree with this decision"?
 Yes
 No
 N/A

- Documentation to give employees, including waivers or releases if applicable?
 Yes
 No
 N/A

- Information about the ability to continue health coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA)?
 Yes
 No
 N/A

- Employee eligibility for outplacement or career counseling services?
 Yes
 No
 N/A

- Information about applying for unemployment benefits?
 Yes
 No
 N/A

- Explaining who at the institution handles requests for reference and employment verification checks?
 Yes
 No
 N/A

■ If in-person termination meetings are not possible, has your institution:

- Selected a platform for conducting virtual meetings?
 Yes
 No
 N/A

- Assessed that platform for security weaknesses and developed a plan to address such problems?
 Yes
 No
 N/A

- Provided managers who will conduct the meetings with:
 - Training on the platform's operation?
 Yes
 No
 N/A

- Easy access to information technology (IT) resources in case of problems?
 Yes
 No
 N/A

Actions Needed

Selection and Notification of Employees (cont'd)

■ Has your institution created a process for collecting from terminated employees institutional property, such as:

- Phones, laptops, and other electronic devices? Yes
 No
 N/A

- Keys or access cards? Yes
 No
 N/A

- Identification cards? Yes
 No
 N/A

- Parking permits? Yes
 No
 N/A

■ Has your institution advised managers conducting termination meetings on recommended actions and responses if employees become extremely emotional or angry? Yes
 No
 N/A

■ If your institution has reason to believe that one or more employees being laid off may become aggressive or threatening, has it made appropriate security arrangements in advance, such as notifying the workplace violence or threat assessment team? Yes
 No
 N/A

■ Will your institution provide support for employees who were not terminated but are suffering low morale or taking on additional duties after the layoffs of colleagues? Yes
 No
 N/A

Actions Needed

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