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# Preparing to Downsize:

## Legal, Practical and Human Perspectives

**Helping Employers Manage and Develop an  
Outstanding Workforce.**

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## Key Constituents

- Company
- Employees being laid off
- Managers
- Retained Employees
- Public/Community

## Common Goals

- Maintain or improve productivity
- Avoid lawsuits
- Negatively impact as few as possible
- Manage retained employees
- Support laid off employees' transition
- Control public perceptions
- Be consciously responsible to all constituencies
- Manage expectations
- Others?



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Limits liability

Builds confidence

## The Five P's

Proper planning prevents poor performance

AND

Builds resiliency

Manages expectations

Makes change easier



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# Identify and Document Reasons for Layoff

## Why

- Helps to evaluate likely success of alternatives
- Justifies the decision
- Can have legal ramifications

## Possible Reasons

- Unforeseeable circumstances
- Loss of key customer
- General unfavorable economic conditions
- Unprofitable business units
- Streamlining processes
- Restructuring or re-engineering operations
- Other

Anything you put in writing is potentially discoverable



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## Consider the Alternatives

### Why

- Other options may achieve the same goals
- Shows good faith effort to minimize damage
- Aligns with common goals of constituents

### Tips

- Analyze alternatives in terms of alignment with common goals
- Document the alternatives you seriously consider
- Involve employees



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## Establish a Timeline

### Why

- Legal ramifications
- Avoid last minute mistakes
- Allow for appropriate communications

### Tips

- Assign roles and responsibilities
- Start with the date of the layoff and work backwards
- Determine if temporary or permanent reduction



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## Critical Timing: The Worker Adjustment and Retraining Notification Act (WARN)

- Applies to employers with 100 or more employees
- Requires 60 day notice to employees, union reps., state dislocated worker units and local government officials
- Covers plant closing or mass layoffs where:
  - Layoff exceeds six months
  - 500 or more employees at a single site lose employment within a 30 day timeframe
  - 50—499 employees at a single site lose employment AND the total number is at least 33% of employees
  - At least 50 employees lose employment due to closure of the facility or operating unit
- A 90 day rolling period applies to WARN notices



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# Critical Timing: The Worker Adjustment and Retraining Notification Act (WARN)

## Exceptions

- Faltering business
- Unforeseeable business circumstances
- Natural disaster
- Business is sold and ALL employers are absorbed
- Workers are transferred to new location



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# Establish Job Functions/Positions Being Eliminated

## Why

- Legal ramifications – eliminating positions, not people
- Productivity and efficiency
- Maximum cost savings, minimize employee impact
- Alignment with strategic goals and objectives

## Tips

- Analyze in terms of alignment with common goals
- Document the reasons, affected departments and number of positions
- Develop and document workflow plan remaining employees
- Goal is to attain targeted savings in one layoff



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# Establish and Document Selection Criteria

## Why

- Avoid lawsuits– protected classes, ADEA, ADA, family leave, injured workers
- Justify your decision
- Creates a record
- Consistency
- Alignment with strategic goals and objectives
- Employee communications

## Tips

- Criteria needs to be objective
- Have a policy and follow it, review your CBA
- Provide selection criteria in writing
- Consider requiring specific reasons for selections to be in writing
- HR reviews selections at every level



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## Evaluate for Discriminatory Impact

### Why

- Avoid lawsuits– protected classes, ADEA, ADA, family leave, injured workers
- Justify the selection

### Tips

- HR should run statistical analysis (standard deviation is best) at every stage
- If adverse impact is identified, review for legitimate business reasons
- Consider changing selection criteria



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# Determine Payment of Benefits, Severance, Other Resources

## Why

- Legal liability
- Consistency
- Manage expectations
- Reputation
- Manage costs
- Help employees transition

## Tips

- Run an analysis with several alternatives
- Document who is eligible for which benefits and when
- Review for discriminatory impact
- Consider separation agreements
- Follow your employee handbook



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# Develop Plan to Communicate and Implement

## Why

- Legal liability
- Minimize disruption
- Manage expectations and perceptions
- Manage the change transition

## Tips

- Be open and honest with communications – decide your message early
- Train your supervisors and provide them with consistent tools
- Develop a script
- Prepare an information sheet for managers and employees (include FAQs)



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## Communications

- Decide on “the message” early – what you’re doing and why
- Maintain confidentiality until the appropriate time
- Prepare your supervisors and managers (what do you say, to whom and when)
- Prepare employees for change
- What needs to be written, what needs to be verbal
- What other stakeholders need to be informed (who, how, when)
- Keep employees apprised of upcoming changes



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## Determine Logistics

- Will advanced notice be given (may be legally required)
- When will employees be notified
- Who will notify employees (requires coaching and consistent tools)
- How will employees be notified?
- Where will employees be notified
- How will retained employees be notified
- Determine what resources will be available to laid off employees and those that remain – how will this be communicated



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## The Notifiers and Managers

- HR prepares information sheet with relevant information and FAQs
- HR prepares a script, including how to respond to questions
- Notifiers should receive specific coaching for conducting the meetings
- Train supervisors and managers how to assume their new roles
- Train supervisors and managers how to provide leadership and support to remaining employees



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## Your Managers

**Managers are trained to build.**

**Are they now trained to tear down and re-build?**

- How much have they been involved in planning
- How much do they understand and identify with the reasons for the transition
- How prepared are they to plan and lead the new workloads
- How much training and assistance is available to help with the survivor workforce
- What are productivity and morale plans



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## To Do List:

- Obtain and prepare COBRA notices
- How will unused vacation, sick, PTO be paid
- How will previously scheduled vacations be handled
- How will bonus and commission programs be paid
- Contact retirement plan administrator
- How will other fringe benefits be handled
- Will anyone be eligible for severance (who and what criteria)
- Contact Employment Department
- Contact Employee Assistance Program provider
- Contact outplacement services provider
- Consider in-house workshops on leading change, preparing employees for change, career choices



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# Prepare Notices and Other Termination Paperwork

## Why

- Legal liability
- Consistency
- Avoid last minute mistakes
- Manage expectations
- Help employees transition

## Tips

- Prepare packages in advance
- Review contents of package with notifiers
- Confirm with outside resources such as EAP, Employment Department, outplacement
- Confirm details with benefit providers
- Confirm final paycheck timing with payroll



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## What Can You Do Now?

- Involve employees early on
- Communicate - Be open and honest
- Train your supervisors and managers:
  - Leading transitions, understanding change, managing change
  - performance management
  - documentation
  - leadership
  - basics of supervision
  - employment law
- Prepare your staff for change – understanding change, leading change, managing change, career choice workshops
- Update your employee handbook
- Ongoing performance management



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## Transition and Change

- Don't forget about the needs of your managers
  - Managers need to deal with their own feelings, reactions and expectations
  
- Help people understand change
  - Change disturbs our habits and creates a sense of disorientation
  
- Help manage change
  - Success depends on the ability and willingness to see change as a positive opportunity for growth



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**Thank you!**