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### **Re: Legal Risk Employers Face When Downsizing in 2009!**

In this challenging economy every employer must give serious consideration to the painful reality of reducing the size of its work force. In some cases this will involve letting go a few employees. Other situations will require a full scale termination of a large number or percentage of employees. These events are often referred to in the Human Resources world as a reduction in force or a RIF.

The purpose of this letter is to remind you that every reduction in force must be carefully planned with an eye toward avoiding the risk of violating one or more of the numerous federal and state laws which regulate the employment relationship.

#### ***Exposure to Lawsuits, Government Claims and Expenses***

If you violate any of these laws, or even if an employee thinks that you have, you may face serious legal exposure and at least the risk of substantial legal fees to prove that you did not violate the law. There are many lawyers out there ready to pounce on any perceived violation of the employment law; and the federal and state Departments of Labor as well as the federal, state and local human rights agencies (EEOC, State Division of Human Rights, etc.) are all ready and willing to prosecute claims on behalf of terminated employees.

#### ***Laws that Govern Downsizing***

There are several laws that were specifically enacted to govern down sizing situations. For example, the federal "plant closing" (the Worker Adjustment and Retraining Notification Act "WARN") requires employers with 100 or more workers to provide at least 60 calendar days advance written notice of a plant closing and layoff affecting 50 or more workers. Moreover, on August 5, 2008 Governor Paterson signed the parallel New York State law which applies to far smaller employers that lay off far fewer workers.

Likewise the federal pension laws (ERISA) provide that employers with a qualified retirement plan must accelerate the vesting of all participants when 20% of the workforce is terminated in a calendar year.

### *Other Laws to Consider when Downsizing.*

Many other statutes are designed for general application, but take on additional significance when applied to reduction in force. For example, in efforts to reduce payroll, companies often let go the more highly compensated workers. Since these are often likely to be the older workers, these RIFs may give rise to age discrimination claims by the older workers that are let go.

### *Who Should Be Concerned?*

You must remember that this exposure **is not** confined to big companies. Federal equal employment laws often apply to companies with fifteen or more employees; and parallel state laws may apply to companies with as few as four employees!

### *How We Can Help You!*

Richard H. Waxman, P.C. will answer your questions about reductions in force and other legal matters that affect employers in these difficult times; and we will help you prepare the necessary legal documents. In providing advice and other support, we will not lose sight of the economic reasons for these workforce reductions and will take all measures to ensure that the fees for our services are reasonable.

Very truly yours,

*Richard H. Waxman*

*If you wish to learn more about our **Employment Law practice**, visit the **Employment Law section of our website at: [www.waxmanlaw.com](http://www.waxmanlaw.com).***

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