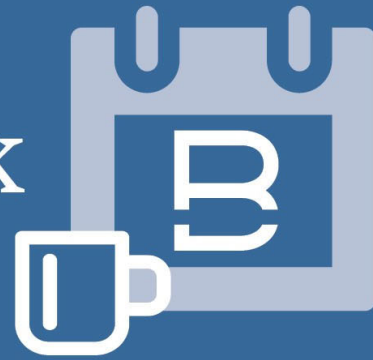


The Work Week

Bassford Remele Employment Practice Group



May 30, 2023

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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The Unfortunate Workforce Reduction ***How to approach layoffs and terminations in this turbulent economy***

In an opening scene in the hit HBO Series *Succession*, there is a heartless mass layoff at a cable news network. Essentially, hundreds of employees are laid off in one fell swoop, on Zoom, with everyone's cameras on. It's chaotic. Although there are many things questionable in the satirical series, any lawyer-minded brain lights up at such a scene. This is because there are many legal concerns to consider prior to a mass layoff, and the characters in *Succession* likely did not take those concerns into question.

With the debt-ceiling crisis dominating news headlines in real life, hopefully the *Succession* scene remains fiction for most employers. But in the event you are considering implementing a layoff or reduction in force, there are several items an employer must consider, regardless of the circumstances surrounding the reduction: (1) federal and state regulations governing providing employees notice of a mass layoff; (2) the Minnesota legal requirements for paying an employee's wages and commissions after discharge and; (3) how to approach payment of severance and benefits after discharge.

(1) Key Regulations Governing Notice of Mass Layoffs

When conducting mass layoffs, certain employers are required to comply with the Worker Adjustment Retraining Notification ("WARN") Act.

- If you have more than 100 full time employees at all sites combined at your company, you are required to give 60 days' advance written notice before conducting a plant closing or mass layoff, subject to a few exceptions. Notice requirements may be different depending on whether the workforce is unionized, as certain obligations are required if there is a "collective bargaining agent."

- Generally, if the layoff was due to an unforeseen circumstance at the time notice would have been required, employers may argue that the layoff is not “reasonably foreseeable.” However, employers must still give notice as soon as it is apparent the reduction in force will be necessary.
- Specifically, in Minnesota, employers with 50 or more employees are required to report “a plant closing, substantial layoff, or relocation of operations located in this state” to the Minnesota Dislocated Worker Program. This is considered a “Mini-WARN” obligation, or a state law that requires stricter compliance than the federal WARN law.
- Many other states have “mini-WARN” laws. Be sure to consult with an attorney prior to any mass layoff to ensure you are abiding by state law.

(2) Requirements for Paying Wages after Discharge

Although the Fair Labor Standards Act (FLSA) does not require employers to provide severance to employees, a reason for discharge, or immediate payment of final wages to terminated employees, certain states like Minnesota have stricter laws which protect employees. Specifically, in Minnesota, an employee may demand their wages earned and unpaid at the time of discharge, and subject to certain exceptions, the employer must pay such wages within a 24-hour period of receipt of demand. If a discharged employee’s wages are not paid timely, the employer is in default, and the employee may seek remedies provided under Minn. Stat. § 181.13. Additionally, employees entitled to commissions must be paid their commissions earned through their last day of employment. Finally, an employee who has been involuntarily terminated may, within 15 workdays following their termination, request in writing the reason for the termination. If the employer fails to provide an explanation within 10 workdays of receiving a written demand, an employer may be subject to civil penalties and the employee may be entitled to backpay and/or reinstatement.

(3) Approaching Benefits & Severance After Termination

Companies may have their own internal policies and protections for discharged employees. To reduce liability, employers must maintain a standardized written process for calculating severance pay or extending insurance benefits.

Whatever the company policy is, make sure to apply that policy universally to every discharged employee. This is to reduce any perception of treating some employees different than others.

If your company chooses to offer severance agreements in exchange for a release of claims, it is best to bring in outside counsel to ensure compliance with the Older Workers Benefit Protection Act and to conduct a disparate impact analysis.

In short, do your due diligence. Be respectful, be concise, and reach out to outside counsel when tackling workforce reductions and terminations. At Bassford Remele, our experienced attorneys can assist you and ensure your company is complying with both state and local laws in the midst of the unfortunate workforce reduction.

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