

Human Resources in Times of Economic Uncertainty

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Aside from the obvious personal issues posed by difficult economic times, corporations are faced with important business decisions that will not only determine how a company weathers the storm, but also how it emerges on the other side to take advantage of the inevitable economic upswing.

It is my belief that a company's most valuable asset are its employees. While a company might respond to economic uncertainty by terminating a large portion of its workforce, that has to be balanced with the recognition that times will get better. When they do, your company needs to be able to maximize opportunities that will present themselves. It is much easier to downsize your employee complement than it is to hire quality individuals when things improve.

When asked by employer clients for advice, the following are the points I usually think of to frame the discussion:



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1. Remember that it is easier to fire someone than it is to hire that person back. Ask yourself whether, if you knew today that the economy would improve in six months or one year, would you still make the decision to dismiss?
2. If dismissals are necessary, how do you make the best of a bad situation? On this point, I encourage employers to evaluate their workforce and get rid of underperformers and those employees not well suited to their jobs. Secondly, think to the future of the company. Rather than concerning yourself only with the economic downturn, ask yourself whether the employee in question will be a valuable and contributing member of the company in 10, 15 or 20 years. It is worth investing in people you see leading the business in the future.
3. Is it best to concentrate dismissals on those with the highest salaries? The one risk to consider here is that those with the highest salaries tend to be the oldest employees. There was a human rights case in Ontario in which a group of older employees filed a human rights complaint alleging the disparate impact of the downsizing on their age group indicated an intention by the employer to discriminate on the basis of age. The complaint was upheld.
4. Consider that one of the factors in determining the appropriate notice period is the availability of similar employment. When dismissing a large number of employees into an already poor economy, an employer can be reasonably certain that it is going to be that much more difficult for them to find new jobs. This will tend to favour a longer notice period than might otherwise have been awarded. Essentially, dismissing people in bad economic times is likely going to cost more money than dismissing the same number of people in good times.
5. As it is in an employer's best interest that employees find new jobs quickly, so that they mitigate their damages, consider whether the company will provide confirmation letters of employment, letters of reference, or outplacement counseling services. Especially with respect to long-term employees, who have likely not looked for a job in some time, assistance writing resumes and conducting job interviews could greatly increase their chances of finding alternate employment.
6. How much severance is going to be offered? In every group downsizing, the balance you are trying to strike is between the amount of severance and the number of demand letters. If an employer offers, for example, one week of notice per year of service, that will certainly decrease projected severance costs. However, it will increase legal costs because you can expect demand letters back from a significant percentage of the dismissed employees.

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On the other hand, if you are exceedingly generous with the severance package, while you might not receive any demand letters, your total severance bill will be much larger.

7. Consider whether laying off an employee is a better alternative than dismissal. The Alberta Employment Standards Code permits employers to lay off employees. This means you are relieved of your obligation to pay (and the employee similarly relieved of his or her obligation to provide service) but the employment relationship is continued.

If benefits are not continued during the period of layoff, then an automatic termination of employment is triggered on the 60th day of the layoff. However, if an employer continues its contributions to benefits, pension, etc., the employment relationship is not automatically terminated on the 60th day, but rather continues indefinitely. Keep in mind though that while the employee might not have an Employment Standards claim, he or she might have a constructive dismissal claim at some point due to the lack of work, and the effective reduction in compensation. There is some question whether the employee could claim constructive dismissal prior to 60 days, but after that, there is a reasonable expectation that a constructive dismissal action would be successful.

On the other hand, practically speaking, when an employee finds he or she has been laid off, he or she might very well look for and find another job. Then, when you issue a notice of recall, the employee will decline to respond within the required seven days, in which case the failure to respond is treated as a resignation of employment. That means that no termination pay or reasonable notice is required and you have then effectively downsized your workforce for free (at least with respect to that employee).

Knowing the options available will help you plan for the immediate future, as well as for the long term when it can be expected things will, as they always do, get better. ▲

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