NONPROFITS NOW: ADDRESSING THE CHALLENGES OF A CHANGING SECTOR

In a Tough Economy – What To Do?
Downsizing, Furloughs, and Alternative Means to Saving Money

Money is tight and your organization is looking to cut employment expenses. There are many options to downsizing, also called layoffs or reductions in force (RIFs), such as early-retirement incentive plans, work-sharing, organization-wide pay cuts, and furloughs, to name just a few. Budget reductions that don't involve layoffs, revenue generating ideas, and behavior changes can help an organization avoid the most drastic measures.

First Consider Capital, Operations and Non-Personnel Budget Cuts

Gather staff and the management team to create charts that contain budget-reducing ideas, revenue-generating ideas, and behavior changing ideas that can save money and delay employment-related cuts. The following chart contains a couple of examples of how to approach this task.

SAMPLE BUDGET-REDUCING IDEAS		
Cost-Savings Ideas and Plans	**Organization Cost/Savings**	**Implementation Steps and Legal Risks**
Downgrade/cancel holiday party	$1,500	- Cancel hotel and caterer - Inform staff of decision and purpose behind decision - Hotel could refuse to cancel contract
Reduce and/or eliminate mileage reimbursement	$34,000 for the year	- Inform staff at least one month before mileage reimbursement elimination goes into effect. - Give employees information on how to claim a deduction for mileage on their personal income tax forms.

Spend time brainstorming and being as creative as possible. Don't discard any ideas at the outset. Keep soliciting more ideas even after the initial brainstorming meeting. Continue to meet periodically to see if the ideas that were implemented are working out and if those cost-savings can be further enhanced. Everybody should feel a part of the process.

Four Personnel-Related Alternatives to a RIF

Cutting staff is often the first strategy an employer considers when faced with economic results that are below expectations. Before implementing layoffs, explore other alternatives, and at the same time, avoid the potential for litigation over a RIF. Some alternatives to examine include:

Furlough All Employees

A furlough is mandatory time off for an employee. For non-exempt employees, the employer simply doesn't pay the employee when the employee is not at work. For exempt employees, mandatory furloughs are a bit more complicated because exempt employees are paid on a salary basis for each week that they work and their salary can't be reduced because of variations in the quality or quantity of work.

Thus, to preserve the exempt employee's salaried, exempt status, the employer should require a salaried exempt employee to take a mandatory full workweek off without pay when instituting furloughs. Salary deductions resulting from mandatory unpaid time off that last less than a workweek violate the salary basis requirement and may cause employees to lose their exempt status.

The ins and outs of furloughs can be complicated and will be more thoroughly explored in a later article.

Reduce Staff Through Attrition

With a larger staff, this is a more real possibility, as employees are more likely to come and go. Allowing staff to be reduced through attrition simply means when the employee leaves employment, he or she is not replaced. This can work for a little while, with the organization dividing up the departing employee's work. However, after a few employees depart and are not replaced, the remaining employees can become disgruntled and less productive if more and more work is piled on them. At that point, the organization must contemplate cutting back on program services, as well. No one can work 70 hours a week indefinitely.

Reduce Employee Overtime

If your organization has regular overtime costs, let all of your employees know that overtime is simply not available any longer. While an employer must pay an employee for all time worked (including unauthorized overtime), employees can be disciplined through day-long suspensions and other means if they continue to accrue overtime hours against the wishes of their employer.

Reduce Employee Wages and Benefits

An employer has the option of reducing all or some of its employees' wages. If this is utilized in achieving cost cutting, employees should be given adequate time to prepare for reduced wages. They may need to refinance a mortgage, talk to the finance office at their child's college, or renegotiate the terms of a personal loan. Wage cuts are not popular, but if the alternative is losing your job, or watching colleagues lose theirs, then wage cuts can be more palatable than the alternative.

Benefit reductions are yet another way to cut back on expenses. An employer may have to discontinue some insurance plans, reduce or eliminate retirement plan matches or contributions, or require employees to pay higher co-pays and deductibles on health and/or dental insurance. Many organizations and companies have started at this point in cutting costs.

Reductions in Force (Layoffs)

There are times when the employer has taken every step possible and still finds that the only way to meet payroll and other operating expenses is to institute a layoff. When determining whom to layoff, the employer must take care to document the process and include the business case for the layoff. Such documentation should include why particular individuals or workgroups were selected to be laid off based on objective criteria such as performance, suitability to complete the tasks needed, and the importance of the job in relation to the mission.

Employers should pay particular attention to recent performance reviews to ensure consistency with the stated rationale and identify any red flags, such as recent discrimination claims, benefit or pay issues, or complaints about discriminatory behavior by supervisors. The organization should review the files of individuals in the same category who were not selected to verify the rationale for retaining them. Involve direct supervisors in the decision-making process for layoffs, as they will know the employee's daily work better than anyone else.

Note that objective criteria (*e.g.,* whose program has been most successful in terms of the number of clients served or the amount of grant-funding it has attracted) are more legally defensible than subjective criteria (*e.g.,* gets along well with coworkers). However, you can lay off a poor performer if other legal criteria are satisfied.

You should also keep in mind the skill levels and type of skills needed for the organization, and the timetable for the layoffs (least disruptive to the workflow) when determining whom to lay off. You will need to identify who will conduct the layoffs and how to train that person to do so in the best manner possible; what type of severance packages you will offer; and, how to deliver the announcement.

If possible, have legal counsel assist in conducting an adverse impact analysis and any due diligence before making a final decision about who will be laid off. Doing so will eliminate the sudden realization that you've laid off a disproportionate number of minorities or persons in a protected age group. Your due diligence analysis should identify anyone who has recently complained about discrimination or blown the whistle on an alleged illegal activity at the organization.

Many experts in this area argue that you should give employees plenty of advance notice of a downsizing. Thus, it will not come as a surprise or shock when layoffs are announced. In addition, employees will have time to mentally prepare themselves for such an eventuality. Others argue that advance notice will cause the most talented employees to start leaving, making it more difficult to keep the organization intact after layoffs. Employers will have to weigh these competing criteria when deciding how to inform employees of a downsizing.

Severance, a layoff letter and references, and COBRA, are three of the most important items to address when conducting layoffs. Severance can range from one week to six depending on the level of the employee and the number of years he or she was employed. There is no set formula. Most organizations seem to offer what they can afford and believe is fair. If your organization has a severance policy, be sure to follow it when determining severance pay.

A layoff letter simply states that the employee was laid off through no fault of his or her own, and typically offers to provide references for the future. This type of letter indicates to the outside world that the employee's dismissal was due to budgetary concerns, as opposed to work performance.

COBRA (the continuation of health insurance coverage payable by the former employee) must be offered to all employees who were insured by an employer with over 20 employees. Continuation coverage must be offered by most employers for employees who were insured in organizations of fewer than 20 employees. Up until December 31st, 2009, employers must inform employees who are laid off (terminated) that they are entitled to a 65% COBRA subsidy should they choose to retain COBRA coverage. Details about the COBRA subsidy and how employers must implement it are available in our Guide to Complying with the New COBRA Subsidy for Terminated Employees.

For further assistance, contact a member of the Maryland Nonprofits staff for technical assistance at 800.273.6367 or techassist@mdnonprofit.org or attend the Maryland Nonprofits' training, From Furloughs to RIFs: Making Tough Personnel Choice Legally and Sensitively.

For more on setting priorities during tough times, see WWW.MARYLANDNONPROFITS.ORG