

Best Practices for Layoffs and Downsizing

In 2008, over 2.5 million U.S. jobs were lost. This total is the most in over 60 years. Call them reductions, layoffs, or downsizing, but the bottom line is that the situation doesn't seem to be getting any better as time goes on. During times of downsizing, there are many challenges that face an employer, such as potential liability and losses. Additionally, with job loss comes a great deal of stress on employees. Employers must consider the liability and loss potential, as well as workplace violence when making these important decisions.

This article will focus on some best practices when layoffs or downsizing are on the horizon. Specific focus will be on claim considerations, workplace violence, physical security, theft and destruction of company property. No company can completely prevent or eliminate workplace violence, but with proper planning and effective programs, the chances of such violent occurrences can be dramatically reduced.

First, take precautions to prevent incidents of workplace violence during these transitions. Enhance security around key management personnel. Be on the look out for suspicious behavior such as increased irritability, a worn out/exhausted look, increased use of inappropriate language, lack of attention to physical appearance/personal hygiene, substance abuse, aggression, etc. As part of the training, encourage employees to report unusual or suspicious behavior of colleagues to management. Management should consult with Human Resources for guidance in balancing the privacy rights of employees with the need to prevent a potential workplace violence situation.

To minimize stress and to reduce the impact on employees during re-organizations, consider the following strategies during the decision-making process:

- Visible participation and communication from senior leadership.
- Open-door access to Human Resources for employees with concerns.
- Attention paid to those remaining, as well as those being terminated.
- Employee assistance program (EAP) available. Ensure the program is clearly communicated to all employees.

- Communication with employees, giving out straight facts in a timely manner, defeating the rumor mill.
- Involvement of employees in the design and implementation of the reductions.
- Explanation of the situation as just one aspect of a planned strategy to achieve the company's goals.
- Work with Human Resources to provide resources for terminated employees such as workshops for resume/interview skills and state funded assistance programs.
- Communicate with your local state unemployment office, suppliers and competitors to see if they are hiring.

Additional practices that should be considered to assist companies to reduce potential loss exposures during major organizational changes may include:

Physical Security

Take the time to consider the security of your premises and make certain comprehensive practices are well established. Regardless of the fact that the majority of workplace violence is internal, it still a good practice to include security systems and physical security measures as part of the complete, integrated approach to combating workplace violence and other potential exposures to loss on your premises.

Proper loss prevention requires the incorporation of electronic and physical security elements, as well as prevention programs. If your company has not already done so, the first step is to conduct a risk assessment of potential threats, gaps and needs. Many times, security programs will fail due to a lack of planning, failure to define your system's capabilities and limitations, and the goals for security personnel.

Property Damage and Theft

Daily practices that should be considered to minimize the potential for theft or damage to company property should consist of:

- No unauthorized entry to the premises outside of regular work hours.

- Limit authorized building access to a central location outside of regular work hours.
- Have a clearly stated written policy noting zero tolerance against unlawful activity on company property. Ensure this policy is communicated to all employees.
- Have a company property removal process and limit authorization to only those who require it for business purposes.
- Depending on the size of your facility, consider having security staff roam the premises to act as a deterrent and watch for activity.

Crisis Preparedness

Even if you've done all the planning and implemented the best intended policies and practices, an incident could happen. That is why pre-incident planning is so critical.

A formal Crisis Management Plan that details what to do in the event of an incident, and is rehearsed, is necessary to carry out an effective plan. A comprehensive Crisis Management Plan can be effective for a workplace violence incident, as well as other potential crises, such as natural and man-made disasters that could impact your business.

Form a team with representatives from all areas within the company that could be affected. This team will design the plan, implement it and, most importantly, test it. On too many occasions, time and resources are utilized upfront to develop and implement a plan, only to be put on a shelf and become stagnant and ineffective when you need it the most. This plan should be a living, breathing document that is tested regularly, reviewed and enhanced as needed.

No company can entirely prevent or eliminate workplace violence, but with appropriate planning and actionable programs, the chances of such violent incidents can be significantly minimized.

Claim/Carrier Action List upon Notification of Account Operation Downsizing and Layoffs

Companies should anticipate a potential rise in workers' compensation claim filings and the potential for increased litigation during downsizing. Many of these claims could occur shortly after termination. Though many claims may be legitimate work-related claims, companies should anticipate that some may not be. Companies should exercise best practices to help minimize potential losses. Some of these practices should include:

- Alert impacted claims supervisor or associated CSC if a terminated employee files a claim.
- Review with claims supervisor relevant Workers' Compensation statutes in the jurisdiction of the

closing with special attention to cumulative trauma/stress regulations. Schedule conference call with the insured and broker/agent.

- Run @venture open loss run to determine if any current claimants are impacted.
- Identify all employees who are working in a medically restricted work status and determine how separation from the company will affect their claims status.
- Schedule ongoing conference calls. This could be monthly/weekly/bi-weekly. Included should be insured, broker/agent, claims supervisor and CSC if applicable.
- Schedule @venture monthly loss run (whether it be open losses or comparative) to determine claim volume/increase at impacted site. This report should go to the insured, broker/agent and claims supervisor or CSC and be used as part of the ongoing conference calls.
- Discuss with impacted claims supervisor team leader the possibility of one adjuster handling the claims for laid off employees.
- Utilize Claim Team Nurse Case Manager to assist the team with medical treatment plan, release to RTW and medical guidance.
- If possible, secure one firm or attorney to handle all the claims pending at each location/jurisdiction to ensure continuity with the Employer, Carrier and the WC ruling entity.
- Create a familiarity for complete defense coverage. This will also encourage open dialogue and negotiations with claimant counsel if one firm or attorney is handling all the claims.
- Organize and update detailed job descriptions and locate them for easy access for review for the claim investigation for all new claims. Secure videos of jobs, job descriptions for the job bank, all employment, and HR records.
 - Identify key people who can testify and assist defense counsel in understanding and describing job requirements/functions.
 - Create a list of key personnel by name and title. Obtain home addresses and telephone numbers in the event they are needed for testimony in litigated matters. Keep in contact and update these lists as necessary.
 - Create a list of Supervisors similar to above bullet.
 - Contact Defense Counsel to secure statements/depositions from Employer management staff, Supervisors, plant and Human Resource Managers - prior to closing of plant based on claims.
- Verify severance packages, offsets, credits to be taken if affected employee is eligible or receives additional compensation, based on state statute.

PRE INJURY MANAGEMENT

ACTION	TO BE DONE BY	DATE
1. Notify broker, claims supervisor, and CSC (if applicable) of impending layoff/closing as soon as possible after decision is made.		
2. Review with broker, claims supervisor, and CSC (if applicable) relevant Workers' Compensation statutes in the jurisdiction of the closing with special attention to cumulative trauma/stress regulations.		
3. Be aware of the rate and term of unemployment benefits and their impact, if any, on Workers' Compensation benefit entitlement.		
4. Explore the potential of other benefit programs available to employees; secondary benefit programs, such as Second Injury Fund, may assist the company to offset claims expenses.		
5. Have insurance carrier provide a loss run for the past three years to identify, among other things: <ul style="list-style-type: none"> • trends in types of claims and causes • trends by month • accident repeaters 		
6. Identify all employees who are working in a medically restricted work status and determine how separation from the company will affect their claim status. You may want to develop individual RTW case plans, including identifying possible issues and best responses to each issue. Responses could include IMEs, FCEs, second medical opinions, lump sum settlements.		
7. Meet with the claim administrator to explain the upcoming event and gain their support and input for claim management.		
8. Identify outplacement counseling services that may be available for vocational skills assessments and to help employees in job searches.		
9. Schedule representatives from state unemployment compensation agencies to be on-site to help employees register.		
10. Make up-to-date wage summary information available to employees and unemployment representatives to expedite qualification and benefit payments.		
11. Contact local Chamber of Commerce and Job Training Agencies to identify job training and other employment opportunities in the community. Some states include union representatives on their response teams. If you have a union shop, assess the benefits, if any, of involving your unions with Job Training representatives.		
12. Be available to your employee's to answer the many questions that they will have (or they will find someone else to provide answers).		

EMPLOYEE RECORDS

ACTION	TO BE DONE BY	DATE
1. Make sure you know where employee records are kept and, if they are being moved off site, obtain photocopies as backup.		
2. Arrange for immediate access to these records by your companies' current carrier. Secure signed HIPAA release by employees.		
3. Review personnel records for completeness to include: <ul style="list-style-type: none"> • job progression in the company • dates for position changes • start and finish dates • supervisor's name for each position • prior claims and illnesses • Secure Short-Term and Long-term Disability claim updates, verify status of these claims. 		
4. Identify an individual in management who can provide, explain and testify regarding these records.		
5. Determine whether termination physicals, including audiometric testing and chest x-rays, should be given; explore the potential merits versus risk with your broker/consultant.		
6. Update all open claims with local management so that all available information is in file.		
7. Determine if it is appropriate in the jurisdiction to include a "not currently injured" status field on employee termination paperwork.		

KEY FOLLOW UP TO A PLANT CLOSING

ACTION	TO BE DONE BY	DATE
1. Organize and update detailed job descriptions and locate them for easy access by the carrier and defense counsel.		
2. Identify key people who can testify and assist defense counsel in understanding and describing job requirements/functions		
3. Create a list of key personnel by name and title. Obtain home addresses and telephone numbers in the event they are needed for testimony in litigated matters. Keep in contact and update these lists as necessary.		
4. Create a list of foreman/supervisors for the same function as in 3 above.		

SAFETY AND LOSS PREVENTION

ACTION	TO BE DONE BY	DATE
1. Update loss prevention reports as needed and review these reports.		
2. Locate all OSHA accident recordkeeping logs (OSHA form 200) and First Reports of Injury or Supplementary Record of Occupational Injuries and Illnesses (OSHA form 101) for the last five years and transfer them to a central office for the five year retention period.		
3. Identify and save in a central file industrial hygiene sampling reports and other exposure monitoring data. This data may be important in the defense of future occupational disease and illness claims.		
4. Preserve all current Material Safety Data Sheets (MSDS) and chemical inventory listings of chemicals currently in use and identify specific jobs where those chemicals were used. Discontinued chemical MSDS should be saved along with notation of when the chemical was discontinued.		
5. Confirm procedures in place to thoroughly investigate all reported accidents, including first aid cases and near misses. Document accident investigation findings.		

DEFENSE PREPARATION

ACTION	TO BE DONE BY	DATE
Discuss with broker the merits of centralizing claim investigations and adjusting to one claim handler for affected state.		
Discuss with your insurance carrier their staff's availability to handle the initial caseload so that cases are neither accepted nor denied without adequate investigation because of jurisdictional time standard pressures.		
Discuss with your insurance carrier possibility of one claim supervisor being assigned so that information flow and quality of service can be maintained.		
Work with your carrier to select one defense attorney/firm to handle all claims arising out of the layoff/closing. Arrange for defense counsel to visit the plant prior to a shutdown, if possible, to familiarize themselves with the plant operation.		
Arrange for your broker/consultant to assign a senior claims person to work with your insurance carrier and defense counsel to coordinate and monitor the progress of the cases.		
Have your WC carrier identify physician(s) within specialties as experts and familiarize them with the plant conditions prior to shutdown.		
Makes videos of certain job functions, particularly those jobs with past cumulate trauma and repetitive strain injury claim history, available for physicians and as defense exhibits. Consider use of outside physical therapist when taking videos.		
Prepare to schedule exit/termination interviews with all displaced employees. Interviews should be documented and conducted by HR and medical professionals as needed. Work with defense counsel to make sure questions asked are legal within jurisdiction.		

POST INJURY MANAGEMENT

ACTION	TO BE DONE BY	DATE
1. Examine current accident investigation and injury management policies and procedures to ensure they are followed consistently. Train all management and supervisory personnel in these procedures.		
2. If not already appointed, designate a responsible person as an Injury Coordinator to aggressively facilitate post-injury response and bring people back to regular duty before the closure or layoff.		
3. Require, if possible, all injured employees to be evaluated by the preferred medical provider for initial treatment as well as follow up care.		
4. Communicate to physicians the plant closure/layoff status and explain strategy you're taking to combat potential abuse of workers' compensation system.		
5. Treating physicians should be notified to provide you with restrictions specific to the injury.		
6. Communicate to employees that injuries will be well taken care of, and follow this communication process for all reported claims. Reassure the claimant that medical care will continue as long as the treating physician relates the treatment to the work injury.		
7. Make arrangements to have preferred medical provider come on-site at least one half or one full day per week, depending on the extent of increase in reported claims. The physician should monitor employees injured that day, those on modified duty, and those who are out of work recuperating. Increased physician presence should only mirror increased claim activity.		
8. Proactively investigate all accident and injury claims reported, specifically those reported after plant closure. Have the claimant report to the job site to report the claim and to conduct the accident investigation. Document.		
9. If an employee verbally reports an injury "record only" but does not wish to file an actual claim "at this time," aggressively investigate "record only" claims following your normal accident investigation procedures and make sure to document.		
10. If an injury occurs and there is a reasonable suspicion of drug use, enforce same day drug testing (per HR and state regulations) and make sure results are documented and maintained.		
11. Pursue case management aggressively with WC carrier and the Transition Team following plant closure.		
12. Post near other employment notices, a notice about your state's law on Workers' Compensation Fraud. Make it clear that injuries will be handled promptly and fairly but that fraud is against the law and can be prosecuted as a criminal offense.		

Conclusion

The steps provided in this document should give you a starting point of what is involved when anticipating a major organization change that may minimize the potential for costly losses for your company.

For more information, contact your local Hartford agent, your Hartford Claims Service Consultant or Loss Control Consultant.

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