

## DOs & DON'Ts of Hotel Layoffs

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Even with many experts saying the recession is waning, layoffs continue. Many in the leisure and hospitality industry in particular expect to see layoffs continue, if not pick up, in the coming months. With jobs being scarce, employers in the leisure and hospitality industry need to recognize that desperate former employees may resort to the adage "with desperate times come desperate measures."

Many people are living paycheck to paycheck and, with the limited availability of jobs, there may not be a more desperate time than when a person is laid off. Far too often the desperate measure is the filing of an employment related lawsuit.

The good news is employers can take steps to lower the chances of being sued and limit their exposure if a lawsuit is filed when a layoff is necessary. Hotel owners/operators need to not only plan the layoff to (a) avoid treating certain groups in a discriminatory manner and (b) avoid a disparate impact on a protected classification of employees, but they must also keep a constant eye on the business necessity for the action they are taking. Keeping in mind the impact the decision will have on not only the employees being let go, but also the ones that remain, will go a long way in keeping the hotel owner/operator out of court and limit their exposure if they end up there.

### Make a Plan

Establishing a plan and reviewing the impact of the workforce reduction should be the starting point of any layoff process. The plan should enumerate clear business reasons for the action. Those business reasons should be further analyzed to ensure they do not have a tendency to bias any particular group of people who share a protected characteristic like race, gender, age (40 and over), etc., directly or by effect. An action that either directly discriminates against a particular group or has the effect of discriminating can expose the hotel owner/operator to liability.

In addition to not being discriminatory in design or effect, the reason for action needs to be directly related to business needs that can be articulated. For instance, a layoff as a measure to reduce hotel operating costs can be based on the decision to cut back on certain services. Alternatively, a decision to rearrange work schedules that reduces the number of hotel employees needed in a particular area so the hotel can realize a cost savings may also be an appropriate business reason. No matter what the reason is, however, it must be based on the hotel business and must be done with a real intent to achieve the stated business goal.

### Review the Other Issues

Once the reason for the reduction is established and the individuals subject to the layoff are identified, the hotel owner/operator needs to ensure no other impediments such as collective bargaining agreements or employment contracts prevent the employer from proceeding. The employer should further review the effect of the layoff to determine if either the federal or state form of the Worker Adjustment Retraining Notification (WARN) Act applies. Each individual subject to layoff should also be looked at individually to determine if any candidates come within the protections of anti-retaliation laws (i.e., did they make or participate in a complaint or workplace investigation).

Hotel owners/operators that have employees outside of Texas that are being impacted by the layoff should be particularly careful to ensure they are complying with the employment laws in those other states. It is easy to forget the relatively employer friendly laws of Texas don't apply everywhere, even if the hotel company has its headquarters in Texas. ... [more](#)



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