



# HUMAN RESOURCES UPDATE

VOL 8, ISSUE 4

## WORKFORCE MANAGEMENT FOR TODAY'S ECONOMIC HORRORS

If the economy is affecting your business, as it is many others, you may be looking at trimming your payroll to keep your business afloat. Before doing so, keep in mind that making such changes to your workforce may be fraught with potential litigation, so review this quick list before acting.

1. Before laying off workers, determine if the WARN Act apply to your company. The Worker Adjustment and Retraining Notification Act requires employers to give 60 days notice when at least 50 full-time employees and 1/3 of the workforce at a single location or 500 employees at a single location, regardless of percentage, lose their job due to a lay-off; or 50 or more employees lose their jobs to a plant closure. Some states have more restrictive requirements.
2. Have other options besides a layoff been considered? Hiring freezes, elimination of vacant positions, canceling contractor's contracts, bonus or other compensation adjustments, early retirement packages, and travel restrictions may all add up to significant company-wide savings and preserve all or some of your workforce.
3. Don't forget union contracts or employment contracts and any requirements you need to follow.
4. If the layoff has to happen, be aware of potential discrimination claims. Choose an objective, defensible methodology for determining which employees will be cut and stick to that plan. Choosing tenure, performance (from performance reviews), or productivity figures as the criteria are easier to defend than attitude or work ethic. Examine your list to ensure there is not even the appearance of age, race, or some other discriminatory factor.
5. Lastly, if you are offering severance or some other form of consideration, then get a release and if any of the affected employees are over 40 years old, then the language of the release must satisfy the Older Workers' Benefit Protection Act in order to protect yourself (or your company) from an age related discrimination claim.

## NEW WHISTLEBLOWER ACT CREEPS INTO BUSINESSES

Congress very quietly passed the Consumer Product Safety Improvement Act of 2008 (Safety Improvement Act), which provides broad protections to employees of manufacturers, private labelers, distributors, and retailers, who make complaints relating to consumer product safety.

Although the law is vague and its scope will have to be fleshed out by regulations and court decisions, it appears that potentially any company that is involved in making, handling, storing, transporting, or selling consumer products is subject to its requirements. In other words, this law covers the entire retail sales chain. (There are some provisions that planes, trains, automobiles, and boats are excluded, along with alcohol, tobacco, firearms, food, drugs, and pesticides. However, the law does include many businesses in spite of the exclusions.)

Although many aspects of this law are of concern, perhaps the most disturbing is that the law allows government investigators – not judges or juries – acting on *unsworn* evidence, to make the decision to reinstate a terminated employee. The company then essentially has to sue to undo that decision, and continue to pay the employee throughout the process.

Our best advice at this point is to treat any employee who complains or protests about anything touching on "safety" with the same degree of circumspection and care that one gives employees who complain about sex or race discrimination. Investigate such safety complaints. Don't retaliate. And be aware that an employee who refuses to complete a task because of "safety" concerns may be protected from adverse employment decisions, such as discipline or loss of pay.

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**ELECTION DAY IS APPROACHING: YOU MUST ALLOW YOUR EMPLOYEES TIME OFF TO VOTE, ALTHOUGH IT DOESN'T HAVE TO BE PAID TIME.**

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**HUMAN RESOURCES  
BUSINESS SOLUTIONS**

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## **FRIGHTFULLY FORBIDDEN INTERVIEW QUESTIONS**

### **Forbidden Questions—Age**

1. “How old are you?”
2. “What is your date of birth?”  
(You may ask, “Do you meet the state minimum age requirement for work?” and “Are you over 18 and under age 65?”)

### **Forbidden Questions—Availability for Work and Travel**

3. “Can you work Saturdays and Sundays?”
4. “Do you have children?”
5. “What are your child care arrangements?”  
(You may ask, “These are the hours of work—can you attend work during these hours?” and “Work sometimes requires overtime. Can you work such a schedule?” and “Do you have any obligations that would keep you from work-related travel?”)

### **Forbidden Questions—Birthplace and Citizenship**

6. “Where were you born?”
7. “What is your native language?”  
(You may ask, “Are you legally authorized to work in the United States?” or “This position requires someone who speaks both English and Spanish fluently. Do you speak both languages?”)

### **Forbidden Questions—Clubs and Affiliations**

8. “To what organizations do you belong?”
9. “Do you want to tell me about any of your memberships relating to the performance of this job?”

### **Forbidden Questions—Disabilities**

10. “Do you have a disability?”
11. “Have you ever filed for workers' compensation?”
12. “Have you ever been treated for any of the following conditions or diseases (followed by a checklist of various illnesses)?”
13. “How many days were you absent from work because of illness last year?”
14. “What prescription medications are you taking?”
15. “Is there any health-related reason you may not be able to perform the job for which you are applying?”  
(You may ask, “Can you perform the essential functions of the job for which you are applying?” and “Can you demonstrate to me how you would perform those functions?”)

### **Forbidden Questions—Economic status**

16. “Have you ever had your wages garnished?”
17. “Do you own your own home?”
18. “How long do you plan to work on this job?”
19. “Have you ever filed for bankruptcy?”

### **Forbidden Questions—Name**

20. “Have you ever had your name changed?”
21. “What is your maiden name?”

### **Forbidden Questions—Relatives**

22. “Who is the relative to be notified in case of emergency?”
23. “Are you married?”
24. “Do you have children?”
25. “Do you plan to get pregnant?”

Using an interview questionnaire is the best and easiest way to interview applicants because they're completely impersonal and they force you to ask all the necessary questions, one by one. They also assure consistency in how each candidate is interviewed, which protects your hiring managers and the company if someone feels they were discriminated against.

*Interview question list courtesy of BLR.*