

How to Navigate a Reduction in Force

BY DANIELLE JUREMA LEDERMAN • JANUARY 23, 2023

Over the course of a brewery's growth in the industry, there may come a time when you are faced with the difficult but necessary decision to lay off some employees as part of a reduction in force or other restructuring initiative at one or more of your locations. There are a wide array of laws that may impact a brewery's reduction in force, and you will want to ensure that you understand and comply with all of your legal obligations prior to conducting the lay off.

DETERMINE IF THERE ARE ANY APPLICABLE NOTICE REQUIREMENTS

Larger brewers – those with 100 or more employees – should consider whether the planned layoff triggers notice obligations under the Worker Adjustment and Retraining Notification Act (the "WARN Act"), a federal law that requires certain businesses to provide employees with 60 days of advanced notice before conducting eligible mass layoffs and plant closings.

In addition to the federal WARN Act, a variety of states have adopted so-called mini-WARN Acts. These laws impose additional requirements above and beyond those set forth within the federal law. For instance, in some states the applicable thresholds to determine whether a mini-WARN law applies to a business are lower, and thus more breweries in those states will be required to comply with those state law requirements, even if the federal WARN Act is not triggered.

ASSESS ANY SEVERANCE OBLIGATIONS

After determining whether you have any notice obligations to the impacted employees, you should determine the terms of separation. Some businesses may have a severance plan in place that they are required to follow; others may not. Regardless, you should consult with your legal counsel to assess whether the layoff will offer the selected employees severance and the conditions for receiving same.

ENSURE THE PROCESS IS FAIR

When determining which employees will be selected for layoff and which will not, it is important for a brewery to

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ensure the decisions it makes are legitimate and serve the brewery's goals and interests. In addition, a brewery should be wary of making its selections based on any unlawful discriminatory or retaliatory motives.

Breweries should also assess and evaluate their choices to ensure that their selections do not have a *disparate impact* on any protected class. A disparate impact occurs where a seemingly neutral process nevertheless has a disproportionate impact on a particular group. For instance, if a brewery finds that in its predominantly male workforce, the only individuals selected for layoff were those who identified as female, it may raise red flags and warrant further scrutiny of the reasoning behind the brewery's choices to ensure the selection process was approached fairly and consistently.

As brewers navigate the complex terrain of employment issues that can arise, they should ensure they are legally compliant when conducting a reduction in force or layoff. Should you have any questions on complying with your layoff obligations or any other employment issue, please reach out to your Bowditch attorney.

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