

Top Legal Considerations When Reducing Your Workforce

for the Bend Chamber of Commerce

by Kurt Barker

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1 - The Big Picture

Selection criteria: who will be impacted?

For any “adverse employment action,” consider:

1. Contracts: individual or union. (Handbooks?)
2. Protected classes*
3. Protected activities*

* See attached list of examples; and [BOLI](#).



2 - Reducing Hours and / or Pay

Make all changes on a “go-forward” basis;
document your notice to the employee.

Hourly or non-exempt workers: fairly simple.

Salaried exempt workers: far more pitfalls!

*Prospective reduction due to economic slowdown may work (don't set an end date);

*Adjusting up and down (or month-to-month) due to operations will not.

(See [DOL](#); [BOLI](#).)

Watch out:

*State minimum wage (\$11.25 Deschutes; \$11.00 Crook/Jefferson);

*Federal minimum salary basis for exempt workers (\$684 / week).

(See [BOLI](#); [DOL](#).)



3 - Furloughs / Temporary Layoffs

Document your notice to the employee: anticipated length; impact on benefits; etc.

Length: how long will it be?

Four weeks or less: easier to get unemployment benefits.

Don't "suspend payroll."

Layoff likely over 35 days? Follow "final check" rules (pay within next business day).

Keep in touch.

Allow access to paid leave? Continuing health insurance?



4 - Layoffs / Group Terminations

Document the termination date, and that you gave final checks on time (no later than next business day).

(See [BOLI](#).)

Disparate impact analysis?

WARN-ing for larger employers: the WARN Act can apply to “plant closings or mass layoffs.”

(See [DOL](#); [Oregon](#) resources.)

Group severance programs: if requiring a waiver, follow OWBPA timing and disclosure requirements.

(See [EEOC](#).)

THE PRIMARY PROTECTED CLASSES AND ACTIVITIES

FEDERAL LAW / TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 <i>Federal laws generally apply when an employer has 15 or more employees (some exceptions are noted)</i>	OREGON REVISED STATUTES CHAPTERS 659, 659A <i>State laws generally apply when an employer has 1 or more employees (some exceptions are noted)</i>
<ul style="list-style-type: none"> • Race • Color • National Origin • Sex (includes pregnancy-related conditions) • Religion • Retaliation (e.g. for opposing unlawful employment practices, filing a complaint, or testifying about violations or possible violations) • Association with Protected Class • Genetic Information 	<ul style="list-style-type: none"> • Race • Color • National Origin • Sex (includes pregnancy-related conditions) • Religion • Retaliation (e.g. for opposing unlawful employment practices, filing a complaint, or testifying about violations or possible violations) • Association with Protected Class • Sexual Orientation (gender identity, transgender status)
<ul style="list-style-type: none"> • Age (40 and older in companies with 20+ employees, under the Age Discrimination in Employment Act (ADEA)) 	<ul style="list-style-type: none"> • Age (18 and older, with 1 or more employee)
<ul style="list-style-type: none"> • Disability (physical or mental, under the ADA / ADAAA), 15 or more employees) 	<ul style="list-style-type: none"> • Disability (physical or mental, with 6+ employees)
<ul style="list-style-type: none"> • Medical leave: inquiring about or exercising rights under the Family and Medical Leave Act (FMLA) (in companies with 50+ employees) 	<ul style="list-style-type: none"> • Medical leave: inquiring about or exercising rights under the Oregon Family Leave Act (OFLA) (in companies with 25+ employees) • Use of Oregon Sick Leave (OSL), or inquiring about OSL rights, etc.

Many other protected classes and activities exist under that are not listed here.

For example, Oregon law prohibits retaliation against public and private sector employees who report legal violations or invoke the workers’ compensation system, and prevents discrimination based on marital status, family relationships, opposition to health or safety conditions, and more. Federal law prohibits retaliation against employees who “blow the whistle,” either within the company or without, regarding securities fraud (*see* the Sarbanes-Oxley Act of 2002). Also by way of example, “concerted activity” (acting for mutual aid or protection, to improve terms and conditions of employment) may be a protected activity under the federal NLRA, even in non-union workplaces.

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Thanks again for joining! An important reminder for all:

This training and the enclosed materials are for informational or educational purposes only, for the benefit of guests to the Bend Chamber of Commerce's event.

*These summaries and reminders are not legal advice or legal opinions about specific facts or circumstances.
Please consult with your attorney for that!*