

Reductions-In-Force (RIFs): A Potential Tool for Employment Discrimination

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A reduction-in-force (“RIF”) or a mass layoff is the termination of a group of employees in connection with an employer’s decision to cut costs or reorganize. Although they generally serve a legitimate business purpose, RIFs are also sometimes used as an opportunity to unlawfully discriminate against employees. This blog post explores what types of evidence courts may consider in finding that an employee’s termination in a RIF or mass layoff was the result of unlawful discrimination.

Federal, state and local employment laws prohibit employers from terminating an employee based upon the employee’s race, color, religion, sex, national origin, age, disability, and other protected characteristics. In deciding whether to terminate an employee as part of a RIF or mass layoff, employers may consider objective criteria, such as length of employment, demonstrated skills, education, performance/metrics, production, and disciplinary history. However, managers may also use a RIF to terminate an employee for an unlawful, discriminatory or retaliatory reason.

One way an employee can prove that a termination was unlawful is by showing that he or she was subject to disparate treatment based on a protected characteristic or complaint. Disparate treatment exists when an employee is treated differently than other similarly situated employees because the employee fits into any of the protected categories listed above. In order to prove disparate treatment, an employee must establish discriminatory or retaliatory motive or intent.

Statistics Can Be Helpful in Proving an Employer’s Discriminatory Intent

To prove that his or her employer acted with discriminatory intent in connection with a RIF, an employee can rely on different types of evidence, including statistics. For example, statistics may show that an employer disproportionately terminated employees 40 years old or older compared to the number of younger employees terminated. If the statistical disparity or imbalance is big enough, a court may infer that the RIF or layoff was discriminatory.

It may be difficult for an employee to learn who else was terminated in a RIF or mass layoff and, prior to litigation, difficult to obtain the data necessary to generate statistics that could be helpful in proving that an employer acted with discriminatory intent. However, if an employer offers to provide severance compensation to employees 40 years old or older who were terminated as part of a RIF and the severance compensation is contingent upon the employees waiving their right to sue for age discrimination, then the [Older Workers Benefits Protection Act \(“OWBPA”\)](#) requires that the employer provide the affected employees with the following information:

- a list of the job titles and ages of all individuals selected for the RIF; and
- a list of the job titles and ages of all individuals in the same job classification or organizational unit

who were not selected for the RIF.

After being provided with this information, an employee can use statistics, combined with other evidence, to help prove that his or her employer acted with discriminatory intent if the data supports that conclusion.

In Addition to Statistics, Other Evidence is Likely Needed to Show an Employer's Discriminatory Intent

Although they can be helpful in proving an employer's discriminatory intent, statistics alone generally will not be enough to establish disparate treatment. In addition to statistics, an employee will likely also have to present other evidence to show that his or her employer acted with discriminatory intent or motive. Such evidence includes the following:

- discriminatory comments made at work;
- sudden and unexpected negative performance reviews;
- a recent transfer to a position that is being eliminated as part of a RIF;
- examples or a pattern of more favorable treatment of similarly situated employees not in the terminated employee's protected group;
- the retention of less-qualified employees who are not in the terminated employee's protected group; or
- replacing the terminated employee with an employee not in the terminated employee's protected group.

Were you Recently Terminated as Part of a Reduction in Force? Speak to an Employment Lawyer as Soon as Possible

The employment laws are designed to protect individuals who have been terminated for discriminatory reasons. If you were recently terminated as part of a RIF or mass layoff and believe that your employer's decision was discriminatory, it is very important that you speak with an employment attorney who can help you navigate these areas of law and decide the best course of action.

It is extremely important to note that all laws have what are called "statutes of limitation" that require you to file an action within a prescribed period of time. Therefore, if you have been terminated unlawfully, it is imperative to act promptly.

Call [\(212\) 257-6800](tel:(212)257-6800) or complete the form on this page to speak to an attorney who can advise you of your legal rights and answer any questions you may have.

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