Risk management in time of downsizings and closings

National headlines

- Car manufacturer to cut up to 12,000 jobs in Europe
- National bank cutting 4500 jobs
- Oil refiner to cut up to 2800 jobs
- Electronics manufacturer to cut 2000 jobs
- Imaging company to cut up to 15,000 jobs
- Appliance manufacturer to close U.S. factory
- Large retailer cutting up to 35,000
- Chemical products manufacturer cuts 4000 jobs

Rightsizing, downsizing, mergers, facility closures, staff adjustments, reductions and layoffs: what seemed an anomaly of the 1990s now has become a way of organizational life. Many employees, their families and communities continue to be affected by these organizational change decisions. In the face of an impending layoff notice, affected employees can become anxious, scared, depressed, stressed, even angry. Those who remain can suffer “survivor’s anxiety,” depression, stress and fatigue.

While many companies initiate change to align employee contributions with company objectives and to build a culture of excellence, the organizational change activity is not without consequence. Many companies report an increase in workers compensation claim filings during these times, as some dislocated employees look to garner some form of wage continuation. In some cases, theft, sabotage and workplace violence are also fallouts, posing additional loss consequences to business. For those who remain, the “work with less,” 24/7 production demands also can pose safety and health issues related to fatigue, stress, depression and an out-of-balance work/life relationship. According to one survey of Fortune 500 companies, many of the “survivors” expressed dismay and anxiety that “coworkers had suddenly disappeared and there was no explanation why and they didn’t get a chance to say good-bye.” Added to this, the federal Worker Adjustment and Retraining Notification Act (WARN), which requires a 60-day advance notice of a facility closing or mass layoff for employers of 100 or more employees, and federal and state employment and workers compensation laws must be considered as companies try to do the right thing when making organizational change decisions.

For the risk manager, safety director and human resources manager all this spells challenge and the potential for liability and loss. How can companies help reduce their loss exposures, then, during these changes? The article below addresses a few of the “soft” people/human resources and workers compensation-related issues and considerations and a few of the “hard” property and premises security issues and considerations.

Human resources considerations

Our sense of personal self-worth and often our perceptions of success or failure are closely linked to our work. Organizational change, such as downsizings, facility closings and layoffs often create a great amount of stress and, in some cases, anger or hostility. This may be compounded if employees also are experiencing other sources of stress, such as from illness or family/personal problems. To the extent possible, the process should be kind and sensitive.

- Keep employees fully in the communication loop as you make decisions and begin to execute the plan. Some experts say actively involving employees in facing their future is key to reducing risks. A "surprise" announcement about a facility closing has the potential to create stress, anger, and adversity, increasing the potential for at-risk/risky behavior.
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- Frame the decision in the context of business. Some experts recommend that the company executive, not a subordinate, hold an employee meeting and explain the decision. The explanation should be framed as a business decision, in the context of a total business picture, to help minimize employees feeling singled out or that the closing is because they are poor performers. This also can help to minimize potential at-risk/risky behavior.

- Provide an “open door” for employees to discuss their concerns with human resources staff or management.

- Have an employee assistance program (EAP) available to help deal with the emotions.

- In a selective downsizing, be supportive of those remaining. “Survivors” of organizational change can struggle with some of the same emotional issues as laid-off co-employees.

- If a selective downsizing is planned, ensure that a consistent process is used in determining which employees will be affected, in compliance with employment laws.

- Require supervisors to maintain documentation of employee performance, to defend against possible lawsuits based on discrimination and wrongful discharge. Employment lawsuits sometimes are filed in selective downsizings or partial facility closings.

- To the extent possible, hold and document exit/termination interviews. This documentation may be useful later on, especially if a workers’ compensation claim is made. (See below under Workers’ Compensation Claim Considerations)

- Offer suggestions or direction to employees regarding new employment searches. Set up transition teams to help. Give employees the tools to help them prepare for job searches and job changes. Some companies hold employee sessions on resume writing, networking, job interviewing and marketing one’s skills (especially for hourly employees who don’t know whether their skills are marketable).

- In partial closings or downsizings, facilitate ways for employees to be apprised of job opportunities at other locations or within other departments.

- In partial closings or downsizings, some companies offer dislocated employees the use of outside placement agencies. Employees work directly with the agency in the search for new jobs or careers.

- Involve state and city agencies in the process. Contact the federal, state and local authorities to find out what assistance is available for dislocated employees. Some states have job training divisions and offer educational information or “survival kits” for affected employees.

- Offer transition services on company time to help employees remain motivated and loyal while they are still in the facility.

- Request and ensure that all assigned company property is returned.

Workplace violence considerations

Be alert to the potential of an incidence of workplace violence. Times of dramatic organizational change, such as downsizings and mass layoffs, have resulted in reported incidences of violence. In several rare, well-publicized cases, an angry, stressed or desperate employee may hold a supervisor or management responsible for the decision and retaliate with an act of violence. Considerations for mitigating these incidences include:

- Ensure use of good premises security practices. Premises security measures play an important role in mitigating unauthorized entry by terminated employees. An angry, dislocated employee may try to gain entry to act out violence in retaliation for being terminated. See separate section below for further discussion of premises security.

- Educate supervisors and employees on “warning signs” of hostile or potentially violent behavior or situations. procedure. You can offer employees assistance, but you cannot force them to utilize it.
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- Have an HR/EAP program to offer assistance to troubled employees. HR and/or EAP can help set the groundwork and referral procedure. You can offer employees assistance, but you cannot force them to utilize it.

- Have a procedure for reporting potentially violent or suspicious behavior or situations. Include Human Resources, Safety and Security as part of the procedure. Employees should know how to use the reporting system and how to protect themselves in the event of confrontation or an actual incident. Staff also should know when to call the local police and an emergency care facility, in the event an actual incident of workplace violence occurs.

- Some organizations have crisis management teams, which, in addition to HR, Safety and Security, could include in-house Legal and your communications/PR person. If you don’t have a communications person, identify one. Legal and communications personnel will work together to make an appropriate response to the media in the event of an actual violent incident.

Workers’ compensation claim considerations

Losing a job or even the threat of a layoff can lead a person to make rapid, unwanted changes in his or her way of life. While many employees find re-employment, many others do not. Those who do find jobs may take jobs paying less. One study found that 60 percent of dislocated employees who found new jobs spent at least one year unemployed. In a tight job market, when it takes unemployed individuals longer to find a position, the risk of workers’ compensation (WC) claim filing and litigation potentially increases. It is a documented fact that workers compensation claims rise during impending layoffs. Some experts say that 40 to 50 percent of these claims are likely to be filed within six months of termination. Some, but not all, claims will have merit.

Some states have introduced reform to disallow the filing of workers compensation claims within a stated time frame of a scheduled shutdown. Under West Virginia law, for instance, shutdowns are one of four factors that may be considered in the compensability of a workers comp claim. That is, the law allows for consideration of whether there had been a scheduled shutdown beginning within one week of the date of filing; or whether the claimant had received shutdown notice within 60 days of the filing.

Companies can exercise best practices designed to help minimize potential workers compensation (WC) loss costs. Some of these best practices include:

Pre-claim

- Include a WC fraud prevention element in your exit interview and document the information. As part of the defense strategy to minimize WC benefit claims that are without merit, some companies ask dislocated/terminated employees who have not reported any injuries to sign a form attesting that they have not been injured in the workplace.

- Consider testing and documenting various exposures having industrial hygiene implications, such as, but not limited to, indoor air quality, chemical and dust exposures, noise levels and other exposures specific to your operations.

- Claims for hearing loss are not uncommon during mass layoffs. Hearing loss is generally a specific benefit in the WC statute. Where known noise exposure exists and the OSHA Hearing Conservation standard applies, retain OSHA “Hearing Conservation Program” documentation. These records document hearing base lines, the progression of hearing loss and hearing loss prevention measures.

- Consider other exposure claims that may be available to former employees under your specific state employees’ compensation law.

- Talk with your Travelers Risk Control and Claim representatives for additional help in identifying potential exposures.

- Know the state WC statute regarding filing a claim for benefits around the time of a scheduled shutdown.

- Know the state WC statute regarding coordinating WC and lump-sum retirement benefits after facility closings.

- Notify your Travelers Claim representative immediately, if WC claim fraud is suspected. Take care not to make any accusations to the claimant about your suspicions. A Special Investigations Unit may be asked to further investigate the claim. In the case of layoffs or facility closings, specially trained investigators can detect “fraud characteristics” from employee interviews. The result of these interviews can help improve the determination of claim compensability or fraud in a timely and thorough manner.
Safety and accident investigation

Safety programs, including award incentive programs, and aggressive accident investigation should continue throughout this time. Accident investigations, especially, will become a critical management tool for workers compensation claim adjudication until the facility is closed, and even after.

- All claims that occur following the announcement of the facility closing or layoff should be investigated as soon as possible by internal safety and your Travelers claim adjuster. Pay close attention, especially, to injuries reported in the last months of operation.

- Carefully document all alleged injuries, including date, time, location, witnesses, nature, circumstances. Also document any follow-up treatment.

- If possible, increase supervision in areas which give rise to more than one un-witnessed, alleged incident and/or injury.

- Some companies contract or use video surveillance of employee physical activity as part of a fact-finding investigation, usually in cases of suspected fraud, including in civil or criminal actions. Surveillance evidence is generally used to mitigate or negotiate claims, support return to work or bring case to closure. There are three cautions: (1) video surveillance can result in a “no finding;” (2) it is costly; and (3) if it is not conducted properly, it can result in possible plaintiff litigation, alleging invasion of privacy, defamation, libel, slander, and/or emotional distress.

- Maintain the OSHA file and any Material Safety Data Sheets covering hazardous exposures after the facility closure to document that they were on file and to indicate what substances were and were not in the facility.

The hard issues

Premises security and property protection considerations

In anticipating facility closings or mass layoffs, companies also should be mindful of a number of premises security and property issues as part of risk management planning during such times. The following provides some guidance around managing some of your “hard” risk factors during facility closings and downsizings.

Protect your premises

Ensure building access is protected and subject to authorization. During off-hours, access should be minimized.

- Security personnel should patrol the grounds and buildings routinely.

- Place guard stations at entry ways with unobstructed views of worker and vehicular traffic.

- Monitor and control your parking facilities and garages.

- Ensure adequate lighting in the facility, including hallways and in parking areas.

- Reception areas should be located so that access and egress is easily controlled.

- Use closed circuit, recorded TV, if affordable, both for property and workers comp reasons, to document activity and behavior.

- Secure doors and windows with adequate locking mechanisms. Have security or a responsible person check these every night.

- Vacant floors should not be accessible. As departments vacate areas, limit access.

  > Program elevators to prevent them stopping at unoccupied locations.
Secure doors and limit stairwell access, where possible, unless doors and stairwells are used for fire exiting or for fire department access.

- Keep tight management controls on key or card access.
  - Immediately de-program key or card access for non-authorized or terminated employees, where electronic systems exist.
  - Workers should turn in parking and building passes immediately upon termination.
- Notify local law enforcement, as appropriate.

Guard against sabotage and theft
Workers irate about facility closings or layoffs may try to destroy or steal equipment or property
- Security personnel should patrol the grounds and buildings, on the look-out for suspicious activity.
- During normal work shifts, ensure that a team of people is assigned to watch for suspicious activity and are instructed to report it immediately to security personnel.
- Do not permit unauthorized entry outside of normal work shifts.
- Authorized access to buildings after hours should be centralized at one location per building.
- Require workers to sign in and out after hours.
- If your company has a policy/procedure regarding employee removal of company property, post this. You will want to ensure that workers have proper pre-approved written authorization for the removal of any boxes or packages. Most companies that have such a policy also give security the right to inspect suspicious packages or boxes, to ensure against the theft of company property. If you do not have such a policy, you may wish to consider one.
- Guard against theft or sabotage of intellectual property. Invalidate computer passwords of terminated employees and otherwise restrict access to company computers and systems.
- Promptly inventory (collect and secure, where appropriate) valuable and/or non-essential equipment.
- Post a written company statement or policy against any unauthorized activity that may be construed as sabotage or theft.
- Secure and regularly inspect and test fire alarm and fire protection equipment, including, but not limited to sprinkler system valves, panels and fire pumps.

Non-occupancy considerations
Where the company owns or is otherwise responsible for the property and premises, a number of decisions may need to be made, even after the closing or shut-down of a facility, to mitigate the potential for property loss or third party liability. These include decisions around:
- Maintenance of heating systems, especially in cold weather climates, to help protect against loss particularly from freezing pipes.
- Regular inspection of roofs to assure that drains are clear and removal of snow loads on roofs.
- Maintenance of burglar alarms, fire alarms, and sprinkler systems. Secure sprinkler system valves to guard against unauthorized shutdown.
- Shut-down of process equipment, including turning off circuit breakers, to limit access to, or use of unattended equipment, elevators, conveyor belts, etc., thereby limiting the accident and loss potential.
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- Removal of contents from vacated buildings, as soon as appropriate. This includes equipment and materials stored outside vacated buildings.

- Good housekeeping inside and outdoors, including removal of trash and accumulated combustibles, to minimize spontaneous combustion and explosions from chemicals.

- Maintenance of outside property, to deter the likelihood of vandalism, breaking and entering, theft, and fire. As part of building and grounds upkeep, bushes and grass should be kept groomed/mowed, broken windows and fences should be repaired, and walks and driveways should be kept clear of snow. The property should be maintained to give the appearance of occupancy.

- Closing of fire doors between areas of the building, to limit potential fire and smoke spread.

- Establishment of periodic “rounds” through vacated areas to assure that interior conditions, building openings and equipment are maintained and/or repaired as intended.

- Providing rapid response of a “keyholder” to assist fire or police should they be called to the facility.

Closing comments

Many “soft” people issues and “hard” property/premises security issues confront companies during times of downsizings and layoffs. Additionally, the federal Worker Adjustment and Retraining Notification Act (WARN) and federal and state employment and workers’ compensation laws must be considered as companies try to do the right thing when making organizational change decisions. This article raises a number of issues and provides a number of considerations for minimizing the potential risk of loss during these times.

Looking for additional information on this topic? Visit our Website at www.travelers.com/riskcontrol to access:


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