

Updated February 27, 2024

**Program Preservation, Evolution, and Financial Change: Employee Management  
Rollback Employee Benefits**

Staff may represent the most significant asset of a nonprofit corporation and the staff may represent the corporation's most significant expense. As a Board considers expense reductions it may be forced to consider a reduction in force. There are, however, alternatives to reductions in force, such as reducing employees' compensation, benefits, or job duties, that may enable Boards to reduce expenses while preserving staff.

Employees who experience a change in compensation, benefits, or job responsibilities can make a claim that they were selected for this treatment for a discriminatory reason. Therefore, the organization should be able to substantiate the reasons for the decision based on programmatic reasons (e.g., this position can be done by a part-time person) or performance reasons (the employee is unable to fulfill the job requirements).

Below are some questions that Boards might ask as they consider reducing staff related expenses:

1. Can we reassign employees to new positions even if it means a change in job title and compensation?
2. Is it permissible for the organization to move employees from full to part-time or reduce hours?
3. Has the organization considered the New York State Department of Labor shared work program?
4. Is it possible for the organization to decrease healthcare or pension costs?

**Answers:**

**1. Can we reassign employees to new positions even if it means a change in job title and compensation?**

It may be possible to preserve jobs by reassigning employees to open positions within the organization. New York State is an "employment at will" state which means that employees do not have a guarantee of continued employment or a guarantee that job description stays same. This general rule, however, will not apply when an employee has a contract with a specified employment term, is covered by a bargaining agreement, or the organization's handbook states otherwise. Depending upon the terms of the job reassignment, an employee who does not accept the new position may be eligible for unemployment benefits. Also, disability law may require a reasonable accommodation to enable a disabled individual to perform essential functions of new position to which he or she is transferred.

**2. Is it permissible for the organization to move employees from full to part-time or reduce hours?**

Because New York is an "employment at will" state it is possible to reduce an employee from full to part-time unless the employee has a contract, is covered by a bargaining agreement or the organization's handbook states otherwise. An organization may be able to achieve even greater savings

if it reduces employees' hours below the threshold for provision of health benefits.<sup>1</sup> Avoid the temptation to use an employee as an unpaid volunteer for all or part of the workweek because this will lead to violations of the wage and hour laws.

**3. Has the organization considered the New York State Department of Labor shared work program?**

The New York State Department of Labor shared work program is designed to supplement employee wages whose hours are cut and to encourage employers to reduce hours rather than to conduct across the board layoffs. See <https://www.labor.ny.gov/ui/employerinfo/shared-work-program.shtm>.

**4. Is it possible for the organization to decrease healthcare or pension costs?**

Organizations can consider HMOs, increasing employee co-payments for doctor services, raising level of deductibles, instituting or increasing amount of payroll deductions for individuals, spouses and children, and “consumer directed plans,” which give employees a fixed amount of money to spend on health care. Explore the possibility of eliminating “extras” such as dental coverage.

To extent that the organization contributes to employees’ retirement plans, review the organization’s ability to reduce these contributions with its pension provider. Depending upon the terms of the plan it may or may not be possible to change contribution levels.

These changes will be unpopular, but may avoid lay-offs. Be sure to **document** that your organization has considered any or all of these alternatives. This will be important in the unfortunate event that lay-offs are necessary.

***This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact [info@lawyersalliance.org](mailto:info@lawyersalliance.org) or visit our website at [www.lawyersalliance.org](http://www.lawyersalliance.org) for further information. To become a client, visit [www.lawyersalliance.org/becoming-a-client](http://www.lawyersalliance.org/becoming-a-client).***

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations and social enterprises that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, employment, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits, and communities, Lawyers Alliance for New York helps nonprofits to provide housing, stimulate economic opportunity, improve urban health and education, promote community arts, and operate and advocate for vital programs that benefit low-income New Yorkers of all ages.

---

<sup>1</sup> Person may be entitled to continuation of benefits under COBRA or state law equivalent for significant reduction of hours.