

Rollback Employee Benefits

Staff may represent the most significant asset of a nonprofit corporation and its most significant expense. As a Board of Directors considers expense reductions it may be forced to consider a reduction in force. There are, however, alternatives to reductions in force that may enable Boards to reduce expenses while preserving staff.

Employees who experience a change in compensation, benefits, or job responsibilities may be able to 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, 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" 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.¹ Avoid the temptation to use an employee as an unpaid volunteer for all or part of the workweek because this could 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 layoffs. Be sure to **document** that your organization has considered any or all of these alternatives. This will be important in the unfortunate event that layoffs are necessary.

This alert is meant to provide general information only, not legal advice. Please contact Judith Moldover at Lawyers Alliance for New York at (212) 219-1800 ext. 250 or visit our website www.lawyersalliance.org for further information. Representatives of nonprofit organizations who would like information on becoming a client should contact Client Relations Associate Gina Pujols-Johnson for assistance at gpujols-johnson@lawyersalliance.org or (212) 219-1800 ext. 278. Information about becoming a client is also available at <https://lawyersalliance.org/becoming-a-client>.

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