# Labor and Employment Concerns During An Economic Downturn

*Legal Alert*

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Today's economic climate impacts a company's bottom line in many different ways. Labor and employment issues become magnified and must be managed carefully or the results can be devastating.

Not surprisingly, executives and managers generally focus on expenses during an economic downturn. Labor costs are significant for most employers and therefore layoffs are often contemplated, but any layoffs should be carefully planned because in addition to possible legally required advance notice obligations, poor implementation can lead to claims of discrimination and wrongful discharge claims.

Severance pay is often offered for those subject to the layoff and I recommend that any such payment require employees to sign a Severance Agreement and Release of All Claims. The Older Workers Benefit Protection Act imposes certain provisions for individual and group layoffs, including the opportunity to consider the release agreement for up to 45 days in a group setting as opposed to 21 days for an individual. Lastly, from a human resources perspective it is important to consider the logistics of the layoff and how and what to communicate to the remaining workforce.

Instead of layoffs, some employers choose to make compensation adjustments, and these too can lead to discrimination and/or wage and hour violations. Discrimination claims also arise when employees are suddenly disciplined and discharged for actions that previously had been ignored. Other legal and human resources issues such as the retention of good/important employees, loss of confidential/proprietary information, sabotage, increased workers compensation claims, etc. also come in to play during an economic downturn.

Union activity also increases when employers fail to communicate to their employees about how their company is doing or when perceived harsh decisions are made without explanation or consideration for their impact on employees. This causes fear and insecurity, emotions that unions feed off of by promoting unionization as protection for job security, etc.

Unions are likely to have a further advantage if, as anticipated, the Employee Free Choice Act (EFCA) passes. It is expected that the EFCA will be introduced before Congress this Fall and it is likely to become law. Under the EFCA, instead of National Labor Relations Board (NLRB) supervised secret ballot elections, employers would have to recognize a union when a majority of a company's employees in a representative bargaining unit sign union authorization cards. If a union was certified by the NLRB through an authorization card check then the employer and union would have to begin bargaining for a contract within 10 days. If a contract was not reached in 90 days, either party could request assistance from the Federal Mediation and Conciliation Service. Binding arbitration would be imposed if a contract was not reached within 30 days after the mediation and the result of the binding arbitration would be a 2 year collective bargaining agreement.

Legal and human resource planning remains paramount during these difficult times. Layoffs or other cost saving measures must be carefully planned and legal obligations followed, in order to avoid litigation claims. Moreover, communication is a key aspect of any human resources plan. Communication strategies help improve productivity and quality, minimize employee lawsuits and stay a union organizing drive.

*This alert contains just a brief summary of some of the labor and employment issues that employers face during an economic downturn. Flaster Greenberg has extensive experience helping employers with labor, employment and human resource issues and concerns. If you would like to better understand how we may be able to help you and your business or to discuss the possible legal implications raised in this legal alert, please contact one of our labor and employment law attorneys.*