CAMICO: Workforce Reductions without Wrongful Termination Claims

While the economic landscape continues to be dynamic, many CPA firms have lost clientele who have been impacted by the recession. This in turn has caused firms to make changes needed to remain financially solvent. Such changes often include the need to reduce expenses as well as workforces.

There is always potential liability exposure in a workforce reduction, but the magnitude of this recession has led to an increase in the number of employees exploring litigation options. Attorneys at a national employment law firm have characterized the increase in the number of claims as "an avalanche of employment litigation."

Dangerous Rationale

This means employers should be especially diligent in the process of deciding which employees to include in a workforce reduction. We are hearing from many firms that they are looking to their decline in business as a reason to "clean house," but this rationale can be dangerous.

Government agencies scrutinize terminations and many times find that employers are citing the economic downturn as the reason for terminating employment. However, when there is a lack of integrity in the performance management process for employees whose positions have been closed, they have better grounds for claiming they were discriminated against. Accounting firms sometimes fail to engage employees in an interactive process that provides the feedback necessary for employees to recognize performance deficits, to improve performance, and to meet the expectations of the partners. Also, it would be a dangerous practice from a legal perspective to replace a position with another one having the same job title and responsibilities.

Due Diligence

Employees are afforded protection on the basis of age, race, color, sex, religion, disability and other attributes, under several laws, including but not limited to: Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act, as well as respective state laws. To avoid legal pitfalls, employers should demonstrate due diligence in complying with protections afforded to employees. Employers must also follow their own policies as well as any precedents set during previous terminations. If there is no policy in place, precedents then become the employer's policy by default. Precedents tend to be more important than policies, anyway, as "actions speak stronger than words."

Many factors should be considered in making the tough decisions regarding which employee(s) to include in a workforce reduction. The firm's business needs, the size of the firm, and the state laws under which the firm operates are a few examples. The onus is on the firm, though, to maintain integrity and to use valid criteria in the decisions. The firm must be able to clearly articulate a legitimate reason for selecting a particular employee for a workforce reduction. If an employee can demonstrate discrimination based on a federal and/or state protection, the employer may be subject to a lawsuit as well as severe fines and penalties.

Employers may consider providing employees with a financial severance package, which is contingent upon a signed release from the employee. The language used in these agreements is somewhat regulated by federal and state laws and must reflect certain verbiage. A poorly written agreement can increase exposure and ultimately work against the employer.

CAMICO
Tel: 1.800.652.1772 Fax: 1.800.496.9910 E-mail: inquiry@camico.com Web: www.camico.com