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Avoiding Employment Problems In Outsourcing

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Outsourcing has become common across many industries as one method for companies to reduce costs and gain greater efficiencies. The effects on employees in an organization, however, often are overlooked or not timely addressed. There are a number of communications and employee protections that you should embrace to facilitate a successful transition and to avoid employee complaints and employment problems.

What Is Outsourcing?

Outsourcing occurs when you contract out aspects of your business operations (such as payroll or claims processing) or business functions (such as facilities management or call center support) to another party. Businesses engage in outsourcing for a variety of reasons, including obtaining greater budget flexibility and control. With outsourcing, you pay only for the business functions and services you need when you need them. Outsourcing also reduces the need for you to hire and train specialized staff. As the management consultant Peter Drucker once said, “Do what you do best and outsource the rest.”

Importance of Communication

Notwithstanding the acknowledged benefits of outsourcing, care must be taken by any business or organization in undertaking any outsourcing transaction. This starts before any formal announcement of an intended outsourcing transaction is conveyed to employees. In this regard, you should take a number of preliminary steps to avoid employment problems and

employee anxiety. For instance, if your workforce is unionized, you must engage in discussions with the union, as necessary, to ensure that the legal requirements of the National Labor Relations Act and any collective bargaining agreement are satisfied.

Additionally, you should identify and understand what alternative employment opportunities are available for your employees who will be affected by the outsourcing. Can those employees be re-deployed in your existing organization or can they transition to the service provider that will be performing the outsourced work? If neither of these options are feasible, will the company provide severance to those employees who are terminated, and, if so, what type and amount of severance will the company offer (usually in exchange for a release)?

With input from outside counsel, you also must determine when to announce the intended outsourcing transaction. Experience has shown that making the announcement “too early” can lead to the undesired departure of key employees and making it “too late” can lead to negative rumors based on incomplete or inaccurate information.

What Should You Communicate?

Once you decide to announce the intended transaction, there are a number of communications to your employees that are paramount. First, you should explain the rationale for the outsourcing. This likely will include a number of reasons, such as competitive pressures, advanced technology, customer needs, and financial performance. You should explain why outsourcing was chosen over other potential options such as mergers, acquisitions and organization restructuring. Further, you should describe in detail how the outsourcing will be utilized to benefit your organization, your customers, and your employees.

These communications should be open and honest, but measured as to the content and timing. The initial communication generally should be at a formal meeting with, at a minimum,

all affected employees present and delivered by both a respected leader in your organization and a human resources representative. Follow-up communications often are effective using techniques such as smaller, less formal meetings. Town-hall style meetings with employees and management also can be effective.

Effect on Employees

Your employees understandably will be concerned and worried about any outsourcing decision you make. Accordingly, you should discuss with those employees directly impacted by the outsourcing how the transaction will affect them. For instance, those employees being transferred to the service provider should be advised that they are being shifted into a revenue-producing function as opposed to a non-core function of your company or organization. Accordingly, there likely will be greater opportunities for recognition, career advancement, and reward programs for these individuals. Those individuals being re-deployed in your existing organization will continue to remain valued employees and will be given new opportunities and new challenges. Some employees, unfortunately, must be advised that they are being severed because there is not a position for them with the service provider or in your existing organization.

Regardless of the option for a given employee, you should be mindful that the new job, new position or loss of employment is being imposed on the employee and not selected by the individual. Therefore, even though the transition will have challenges and difficulties, you should accept the responsibility and stress to the employees that you will endeavor to make the outcome as positive as possible for each employee.

Employee Protections

Besides certain communications you should provide to your employees, there are a number of employee protections that you can utilize to minimize the likelihood of employee anxiety and any employment problems. For instance, the contract with the service provider can specify that any transferred employees will receive comparable salary and benefits.

Additionally, the contract could guarantee employment for a certain period of time absent any egregious conduct by the individual. There also should be a detailed implementation plan to help transition the affected employees, and human resources should stay involved.

For those employees being re-deployed within the existing organization, you should ensure that those individuals are properly trained and integrated into their new roles. Finally, for those individuals being severed, it certainly is advisable that they receive the benefit of outplacement services and a severance package that is appropriate given their present position.

Avoiding Joint Employer Liability

In addition to these specific employee protections, management, with the assistance of legal counsel, should ensure that the transition plan and contract to transfer services to the service provider has a governance process in place so the transferred employees are under the control of only the new company. This can alleviate any joint employer concerns. If you retain a measure of control over the employees of the service provider, you may find yourself responsible for any employment or labor law violations committed by the provider.

For example, Amazon recently was sued for the failure of a trucking company with which Amazon had contracted to pay overtime to truck drivers. The suit contends that Amazon is liable along with the trucking company because Amazon trained the drivers, gave them their days' deliveries and instructions, and had the power to supervise their performance. The truck drivers also drove trucks and wore uniforms branded with the Amazon logo.

To avoid a joint employer claim, like that facing Amazon, make sure that control of the individuals who perform the outsourced work rests entirely with the service provider, not your organization.

Positive Media Coverage

Finally, outsourcing often has negative connotations, especially in today's charged political climate. Therefore, with the assistance of all members of corporate management, you should proactively help shape the media coverage for the outsourcing transaction. You want to ensure, to the extent possible, that there is an accurate and positive perception of the transaction as being in the best interests of your organization and its employees.

Bottom Line: Change is inevitable in most organizations, and outsourcing often is used by many companies and organizations to address various business and financial challenges. By adopting the communications and employee protections discussed above, you not only are more likely to avoid employment problems, but also to fulfill your inherent responsibility to help your employees best deal with the change that needs to occur. As with any complex business transaction, it always is advisable to consult with legal counsel to assist you in ensuring that your outsourcing decision produces positive benefits for your organization and avoids the many potential pitfalls that can arise when an outsourcing transaction is not well thought through and appropriately implemented.

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