

# Avoiding employment problems when you decide to outsource

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*Outsourcing has become common across many industries as a method for companies to reduce costs and gain efficiency. However, the effects on the organization's employees often are overlooked or not timely addressed. There are a number of ways to communicate with and protect employees that you should embrace to facilitate a successful transition and avoid 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 a desire for more 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 necessity of hiring and training specialized staff. As management consultant Peter Drucker once said, "Do what you do best and outsource the rest."

## ***Importance of communication***

Despite the acknowledged benefits of outsourcing, businesses and organizations must take care in undertaking any outsourcing transaction. That should start before any formal announcement of an outsourcing plan is conveyed to employees. In that regard, you should take a number of preliminary steps to prevent employment problems and anxiety. For instance, if your workforce is unionized, you

should engage in discussions with the union, as necessary, to ensure that you comply with the National Labor Relations Act (NLRA) and any applicable collective bargaining agreement.

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

With input from outside counsel, you also must determine when to announce the outsourcing plan. Experience has shown that making the announcement too early can lead to the undesired departure of key employees, but 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 plan, there are a number of communications to your employees that are paramount. First, you should explain the rationale for the outsourcing. You likely will have a number of reasons, such as competitive pressures, advanced technology, customer needs, and financial performance. You should explain why you decided on outsourcing over other options such as mergers, acquisitions, and organizational restructuring. Further, you should describe in detail how the outsourcing will benefit your organization, your customers, and your employees.

Your communications with employees should be open and honest but measured in content and timing. The initial communication generally should occur at a formal meeting that includes, at a minimum, all affected employees and is delivered by both a respected leader in your organization and an HR representative. Follow-up communications in smaller, less formal meetings and town-hall-style meetings between employees and management can also be effective.

### ***Effect on employees***

Your employees understandably will be concerned and worried about any outsourcing decision you make. Accordingly, you should discuss with employees how outsourcing will affect them. For instance, employees who are being transferred to the service provider should be informed that they are being shifted into a revenue-producing function rather than a noncore function of your organization, and they likely will have more opportunities for recognition, career advancement, and reward programs. Employees being redeployed within your organization should be assured that they will continue to be valued employees and will be given new opportunities and new challenges. Unfortunately, some employees must be informed that they are being let go because there is no position for them with the service provider or within your organization.

Regardless of the option for each employee, you should be mindful that the new employer, new position, or loss of employment is being imposed on the employee, not selected by him. Even though the transition will bring challenges and difficulties, you should accept responsibility and stress to employees that you will endeavor to make the outcome as positive as possible for each of them.

### ***Employee protections***

In addition to clearly communicating your plan to your employees, you can enact a number of employee protections to minimize the likelihood of anxiety and employment problems. For instance, your contract with the service provider may specify that any transferred employees will receive salary and benefits comparable to what they earned with your company. Additionally, the contract could guarantee employment for a certain period of time

absent any egregious conduct by the employee. There should be a detailed implementation plan to help the affected employees transition, and HR should stay involved.

You should ensure that employees being redeployed within your organization are properly trained and integrated into their new roles. Finally, it's advisable to offer terminated employees outplacement services and severance packages appropriate to their current positions.

### ***Avoiding joint-employer liability***

With the assistance of legal counsel, management should ensure that the transition plan and contract-transferring services to the service provider makes clear that the transferred employees are under the control of the new company only. That can alleviate any joint-employer concerns. If you retain a measure of control over the service provider's employees, you may find yourself responsible for any employment or labor law violations they commit.

For example, Amazon was recently sued for a contract trucking company's failure to pay overtime to truck drivers. The lawsuit contends that Amazon is jointly liable with the trucking company because it trained the drivers, gave them their daily 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 the one facing Amazon, make sure that control of the employees 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 corporate management, you should proactively help shape the media coverage of your outsourcing plan. You want to ensure, as much as possible, that there's an accurate and positive perception that the plan is in the best interests of your organization and its employees.

## ***Bottom line***

Change is inevitable in most organizations, and outsourcing is often used to address various business and financial challenges. By communicating honestly with your employees and ensuring you've put protections in place for them, you are more likely to not only avoid employment problems but also fulfill your inherent responsibility to help your employees deal with the necessary changes.

As with any complex business transaction, it's always advisable to consult with legal counsel to ensure that your outsourcing decision produces positive benefits for your organization and allows you to avoid the many pitfalls that can arise when an outsourcing plan isn't well thought out and appropriately implemented.

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