Managing Risk in Challenging Times

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In the past weeks, the financial markets have taken us on a wild ride. At the Center we've counseled several organizations coming to grips with the impact of this changing financial reality. As each of us braces our organizations for the anticipated, yet still unknown effects of the future economic environment, we are all engaging in risk management. To stay in the saddle nonprofits are being forced to consider the "unthinkable": dissolution, merger, and reductions in force. Evaluating these options requires a rethinking of projected revenue and operating costs, including compensation and benefits. As these options are weighed, nonprofit employers should take into account the collateral effects of major restructuring, especially if reductions in force are a part of the organization's strategy.

If your organization is considering restructuring as a cost-cutting measure, you may need a sounding board. The Center is available to help with affordable consulting services. We can help you think through the risks of restructuring, point out helpful resources, such as specialized services that may be available to you through your insurance carrier, and help you scrutinize your restructuring plan prior to review by the finance committee or board of directors.

Risks in RIFS: Whether you regard it as "down-sizing" or "right-sizing," laying-off staff to reduce costs is the ultimate squeeze. On the one hand there will be a reduction in the costs of compensation and benefits, but reducing the headcount will ultimately increase the cost of retaining good staff. Having fewer hands on deck will create an unavoidable strain on the morale and productivity of remaining staff. How will that strain be addressed? Organizations going through a downsizing should ask:

- How will we accomplish all the work previously handled by those leaving?
- Are all existing programs/activities essential? What can we give up?
- What programs/activities reflect our core competencies?
- Are there other organizations we can partner with to fill in the gaps or replace programs/activities that we may have to reduce or drop completely?

Critical employment law issues also come into play with reductions in force:

- **Be prepared for litigation.** Employers should ensure that decisions of who to terminate are made in accordance with a defensible plan that counters any argument that there was discrimination in the determination of who would stay and who would go. It is advisable to have the plan's criteria and all communications to employees reviewed by legal counsel. Offering severance pay and requiring employees to sign a "release" (where the employee waives the right to sue) may be a smart strategy. Releases should always be reviewed by legal counsel before use.
- **Federal and State WARN requirements.** While the federal law only applies to employers with 100+ employees implementing reductions in force affecting 50+ employees, at least nine states[1] have statutes requiring employers to give advance notice (60-90 days) of reductions in force that, in some cases, impact as few as 25 employees. Several states have laws requiring the affected employer to pay for health insurance or severance pay post termination.
- **COBRA.** Employers must provide the required COBRA notice to departing employees or run the risk that the employer will be responsible for 100% of the employee's health care costs post-termination.

The Nonprofit Risk Management Center welcomes questions and comments at 703.777.3504 or info@nonprofitrisk.org.