This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Will Your Organization Have to Reduce Its Workforce?

Organizations often encounter fundraising challenges that can impact their operation sustainability. In some cases, nonprofits may be faced with the unfortunate need to reduce their workforce. When workforce reductions occur, nonprofits need to decide what actions are needed, plan carefully for each step they will take, and ensure they are complying with relevant legal requirements.

What are Furloughs, Layoffs, Reductions in Force or Reductions in Hours?

A **furlough** is a temporary termination of employment for economic reasons with a set return date for the employee.

A **layoff** occurs when employment is terminated for economic reasons with the expectation that the employee will be called back to work but with no set return date.

A **reduction in force** is a termination of employment for economic reasons that is permanent with no expectation that the employee will be recalled to work.

A **reduction in hours** occurs when an employee remains employed but his or her hours of work and pay are reduced.

Whether affecting one employee or many, all of these actions can have legal implications in the workplace and careful planning should occur prior to implementation. It is advisable to involve both the professional staff and the Board Chair or appropriate committee of the Board (such as the Executive Committee) in the planning process.

Steps to Consider Before Taking Action

1) Prepare a Written Plan: Prepare a written plan and carefully document furlough, layoff, hour reduction, or reduction in force decisions. Make sure that the *business reason* for the action is clear in the plan (i.e. loss of funds or grants or decreased budget) in addition to how you are going to carry out the reduction. The plan should also include the *selection criteria* for determining who is going to be affected.

2) Apply Objective Selection Criteria to Determine Who Will Be Affected: Be sure to determine what criteria you are going to use to identify affected individuals, and that your selection criteria are clearly defined and as objective as possible. You may need evidence later of how decisions were made and that they were made fairly and objectively. ***Always remember that you cannot make termination or***

any other employment-related decisions based on an employee's race, color, national origin, gender, religion, age, sexual orientation, gender identity, or any other personal characteristic protected by law. As you are developing the selection criteria, it is a good idea to consider whether (a) all employees in certain positions will be affected; or (b) only certain employees in each position will be affected. If only certain employees will be affected, what criteria other than the position they are in will be used to distinguish among them? For example, for termination decisions, will those with the lowest documented performance review rating in the prior year be affected or will employees who are on disciplinary action be affected or will employees with the least seniority be affected? These are only some possible criteria that could be used. Once you have put in place the criteria to be used in your decision-making, do not make exceptions to the selection criteria without a good business reason for doing so. Use the selection criteria to identify the list of affected employees.

3) Determine Pay or Other Separation Benefits and Consider a Release Agreement: Determine what, if any, pay or benefits will be provided to employees who are affected by the job action. If you are concerned that legal claims may be filed, or in any circumstance in which you are going to provide extra pay or benefits upon termination, it is advisable to obtain a written release of legal claims ("Release Agreement"). Please keep in mind that there may be specific legal requirements related to the contents of an enforceable Release Agreement. For example, under the Age Discrimination in Employment Act, among other requirements, you cannot obtain a valid release of claims without providing specific consideration and revocation periods to employees who are asked to sign the agreement. There may also be specific requirements if more than one employee is being terminated at the same time. Always seek legal counsel to assist you in drafting an appropriate Release Agreement and have that agreement ready before you carry out any termination decisions.

4) Verify Employment Terms and Policies: Before an employee is terminated, you should review your offer letters, any employment agreements you may have with employees, and your employment policies to ensure that you are being consistent with other employment terms. If you have a severance policy or if any offer or agreement includes a severance obligation, be sure that you are being consistent with what was previously agreed. It is important that you consult legal counsel to assist in interpreting any offer terms, employment agreement or employee policies that may affect your decision or the implementation of that decision.

5) Consider Unemployment Compensation Obligations: Be aware that when you terminate employment or reduce hours, the affected employee may be eligible for unemployment compensation. How eligibility for unemployment benefits is managed in Georgia currently depends on whether the layoff is temporary or permanent. Please see this link to the Georgia DOL website for information related to partial unemployment claims for hour reductions and temporary layoffs

or furloughs, which must be filed by the employer through the Georgia Department of Labor. If employees are terminated for lack of work without an expectation that they will be called back to work, the employees may be eligible to collect unemployment benefits through a claim filed by the individual.

6) Required Notices in Georgia: A Georgia Separation Notice must be issued to all employees who leave employment. You can find the Separation Notice by clicking this link. Additional notices may be required under the Worker Adjustment and Retraining Notification Act (WARN) if the termination is part of a group termination or plant closing, and the organization has 100 or more employees. Please seek legal assistance if your organization is subject to WARN requirements. No Separation Notice or WARN notices are required for a reduction in hours so long as the employee remains employed.

7) Understand Pay Implications: When you implement an employment termination, please be aware that non-exempt employees must be paid for all hours they have worked prior to the end of employment. For exempt employees, pay is required through the full workweek during which the employee last performed any work. If you need more information about exempt and non-exempt classifications, please see this link. Please also be sure to consider how accrued but unpaid vacation or other paid leave entitlements will be treated. This may require an examination of organization policies or past practices. If you are reducing hours or pay, this reduction can have implications for the exempt or non-exempt status of employees. Please be sure you have carefully considered the implications before implementing any decisions.

8) Understand Benefit Implications: If employees participate in any organization benefit plans, including health, retirement or other benefits, the organization needs to consider and be prepared to communicate what will happen to those benefits upon termination of employment. Some benefits, such as health benefits or retirement benefit accounts, can be converted to individual coverage or accounts. Work with your benefits provider to ensure that you understand when benefits will end and what documentation needs to be provided to employees regarding their benefits.

Implementing Decisions

Once the organization has decided what it is going to do and how, created its written plan, identified the affected employees, and prepared all necessary documents to be provided to the employees, it will need to carry out the decision.

For Furloughs, Layoffs and Reductions in Force

1) Transition Considerations: Before implementing the decision, think through the timing of the termination, the transition of any duties that will continue, and any

information, documents or equipment that may be sensitive or that may be required to transition any ongoing work to others. Does this employee have access to organization financial accounts, confidential information or other items that need to be preserved or protected? If so, consult with Information Technology experts, banks and other experts before implementing the decision so that access to such sensitive accounts or information can be restricted, and to ensure that another organization representative has this information or access.

2) Prepare for the Employee Meeting: Prior to meeting with employees to communicate the decision, think through the meeting dynamics. Consider where the meeting will occur to ensure privacy (i.e. conference room, someone's office, video conference if necessary, or phone as a last resort); when the meeting will take place (some employers prefer to have the meeting early in the day or late in the day to minimize the number of other employees present and some try to avoid the day before a holiday or vacation); and who will attend (at least two management representatives should be present, possibly including board members if the organization does not have a sufficient number of managers). These considerations apply for both in-person and remote workers. Prepare a **script**. Know what you are going to say and how you are going to say it. Think about how the employee may react to the news. If there are security concerns or the employee may become hostile, consider what processes you may need to have in place – should the meeting be in the organization's facility or elsewhere, or should there be access to security, if needed?

3) Conducting the Employee Meeting: Be professional and respectful and keep the meeting as brief as possible. Use the script you have developed. Honestly explain the decision that has been made to the employee (i.e. because of a loss of funding, we are terminating your employment). Be accurate – if there is someone else taking over the employee's duties, do not indicate that the position is being eliminated! Provide any documentation (separation agreement, separation notice, benefit documents), explain when final pay will be received, explain any additional pay eligibility and any benefit conversation rights, inform the employee that the decision is final, request the return of any organization property, and tell the employee how to return it. Allow the employee to ask questions. Stick to the script and do not elaborate even in responding to questions.

4) Follow Up from the Meeting: Ensure that any remaining pay is paid on time and that benefits are addressed properly. If the employee contacts the organization, endeavor to respond promptly and accurately to any questions. If the employee signs and returns a Release Agreement, ensure that any separation pay or benefits are provided properly and retain a copy of the signed Release Agreement in the employee's file.

For Reductions in Hours

Consider the implications of any hour reduction before implementing it. Please be aware that reductions in hours, which may also affect an employee's pay, can change the exempt or non-exempt status of the employee, as well as the employee's eligibility for benefits provided by the organization. As indicated above, reductions in hours or pay may also have implications for partial unemployment benefits. Be sure that when the decision is communicated to the employee, the employee understands these implications.