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### **Tariffs, Layoffs, and Markets**

President Trump's tariffs are predicted to contribute to a U.S. economic downturn, which has already begun among U.S. auto manufacturers. Downturns can lead to layoffs and extended periods of unemployment, which generally lead to an increase in discrimination charges and litigation. An additional factor in whether an increase in charges or litigation occurs is the steep decline in the stock market. Employees who a few months ago might have considered early retirement offers or otherwise have felt capable of weathering even an involuntary job loss might today be far more likely to refuse voluntary separation programs and seriously consider litigation due to a decline in their retirement assets.

In prior economic contractions with increased job losses and extended periods of unemployment, all types of employment claims rise, but age claims often increase disproportionately. Should such a contraction occur now, [when EEOC Charges were already on the rise](#), we anticipate an additional uptick in so-called "reverse discrimination claims," likely to be expressly or at least implicitly encouraged by the EEOC.

To mitigate these risks, employers must carefully construct any layoff, early retirement, or reduction in force program in consultation with legal counsel, considering factors like the following:

1. If employees are covered by a labor agreement, review language that may apply.
2. Review existing policies and handbooks for any provisions governing layoffs, furloughs, severance agreements, reductions in force, and the like. (Remember that [even in Alabama, policies and handbooks can create contractual obligations if not carefully worded](#)).
3. Identify the decisional units, reduction goals, and how decisions are to be made and documented. The decisional unit(s) might be individual locations; department, divisions, or shifts; particular job titles; or the company as a whole. Each decisional unit should have a reduction goal (generally expressed in dollars or hours worked/FTEs). Each decisional unit should have clear metrics for how to decide who will stay and who will go. At the most basic level, this would include instructing decisionmakers if they should make decisions by seniority only, seniority as a factor, or merit only. It could also be a spreadsheet that ultimately ranks employees based on legally permissible factors (*i.e.*, does not consider race, sex, age, disability, etc.) which can include subjective factors.
  - a. Relatedly, what skills and expertise are needed going forward? In a sense, a layoff is also a hiring decision—what is needed from those who remain? The fact that someone may have been a solid performer does not mean the employee has what's needed in a reduced staffing situation.

4. For some employees, is there an option to reduce hours rather than just layoffs?
5. How long will the layoff last? Will there be an expectation of recall and if so, what should be communicated to affected employees?
6. Will an early retirement incentive program or voluntary separation program be offered to avoid involuntary layoffs? Keep in mind that these should be carefully constructed and promoted appropriately to avoid creating evidence of age bias.
7. Will severance agreements be offered? Keep in mind that to be valid under the Older Worker Benefit Protection Act, these agreements must disclose the decisional unit and ages and job titles of those being offered and not offered the program, among other requirements. Further, the OWBPA requires a 45-day consideration period for group reductions in force. Ensuring the validity of these agreements, particularly when an employer anticipates a multi-phased RIF, requires careful and advance coordination with legal counsel.
8. Will outplacement support be offered?
9. Does the federal WARN Act or any similar state or municipal law apply? Employers of remote or hybrid workers should review [this article on how such arrangements can affect the application of these laws](#).
10. Will the employer run an analysis to determine if any tracked protected class is being disproportionately affected prior to finalizing a reduction? Even if not performed, these sheer numbers would be discoverable and used in litigation. However, if the exercise is not performed and responded to carefully, the employer is sure to run afoul of anti-DEI guidance. In this damned-if-you-do, damned-if-you-don't scenario, we recommend retaining legal counsel to complete the analysis so the specifics of the analysis are privileged and confidential, and so the employer can work with counsel to consider the appropriate response to any unexpected results. Whitney Brown ([wbrown@lehrmiddlebrooks.com](mailto:wbrown@lehrmiddlebrooks.com)) leads our firm's statistical analysis programs and is happy to assist employers in these analyses.

Historically, discrimination charges and litigation increase as unemployment rises. Hopefully, tariffs will be modified and trade disagreements resolved such that workforce reductions can be avoided.

If you have any questions or would like additional information, please contact Richard Lehr at 205-323-9260 or [rlehr@lehrmiddlebrooks.com](mailto:rlehr@lehrmiddlebrooks.com) or Whitney Brown at 205-323-9274 or [wbrown@lehrmiddlebrooks.com](mailto:wbrown@lehrmiddlebrooks.com).