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RIF/Warn in Today's Economic Climate

How to Decrease Headcount While Avoiding an Increase in Litigation Risk

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AGENDA

- The Basics and Planning Ahead
- Alternatives to Group Termination Programs
- The WARN Act
- Considerations for Remote Workers
- Considerations for Employees 40 Years or Older
- Additional Considerations

Reduction in Force (RIF) Basics





Planning Ahead: Protecting Against Legal Claims

1

Articulate legitimate business reasons for RIF

2

Identify reduction goals, numbers and timeline

3

Review and/or develop written guidelines

4

Develop and adopt job-related selection criteria and procedures

5

Review for red flags and ensure documentation supports decisions

Alternatives to Group Termination Programs

Management Driven Alternatives

Hiring Freezes

Wage/Bonus Reductions

**Reductions to Work
Hours/Temporary Furloughs**

Job Sharing

Voluntary Attrition Programs

A less risky means to an end.

Affords employees more control, minimizes risk of discrimination claims and obviates the need to provide WARN notices.

Early Retirement Incentive Programs (ERIP)

More effective for employers with a predominantly older workforce.

Voluntary Resignation Incentive Programs (VRIP)

Allows employers to offer age-neutral incentives for leaving the workforce.

The WARN Act

(Worker Adjustment and Retraining Notification)

29 USC § 2101

20 CFR § 639

What is the WARN Act?

- Requires covered employers to provide advanced written notice to various government officials, affected employees, and any union representatives.
- Generally requires 60 days advanced notice. Some states require more notice.
- Generally focused on specific sites of employment instead of company-wide.



IMPORTANT CONSIDERATIONS





Analogous State WARN Laws

Many states have enacted “mini-WARN” statutes that:

- Expand coverage to additional employers
- Lower the threshold for events to trigger the notice requirements
- Change notice requirements



What to do when planning
ahead is **impossible**...

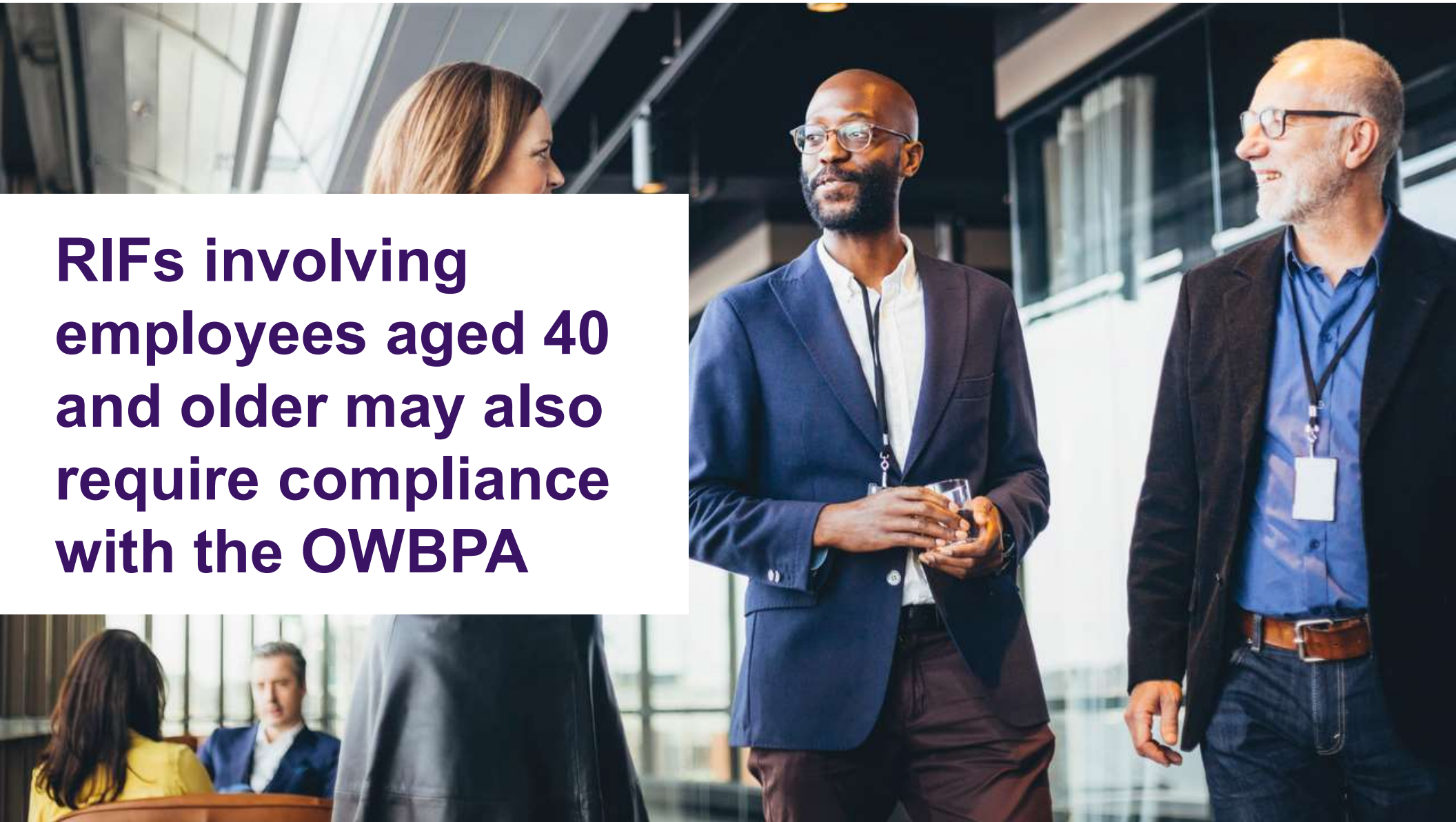
Considerations for Remote Employees

Remote workers require additional consideration.

The WARN Act became law before remote work was the norm.

WARN laws coverage may differ from other employment laws governing remote employees.

RIFs involving employees aged 40 and older may also require compliance with the OWBPA



OWBPA

- Older Workers Benefit Protection Act
- The OWBPA amends the ADEA and prohibits age discrimination in the employment of older workers.
- OWBPA establishes a two-step mandate:
 - Employers must comply with OWBPA's information disclosure requirements; and
 - Employers must refrain from including or excluding information from group separation agreements that has the effect of misleading, misinforming, or failing to inform participants and affected individuals
- The regulations apply the decisional unit concept to reflect the process by which an employer chose certain employees for a group termination and ruled out others

OWBPA Requirements

- 1 Written in a manner employee understands
- 2 Specifically refers to the employee's ADEA rights or claims
- 3 Only releases the employee's claims up until date the release is signed
- 4 Must be in exchange for consideration not already owed to the employee
- 5 Advises the employee in writing to consult with an attorney before signing
- 6 If not part of group layoff – 21 days to consider agreement and 7-day revocation period
- 7 If part of group layoff – 45 days to consider and 7-day revocation period AND includes specific information about group of employees eligible and those selected

Courts strictly construe the requirements of the OWBPA and failure to include any of the requirements may result in an unenforceable agreement.

Additional Considerations

**Unionized
Employees**

**Immigration
Issues**

**State-Specific
Consideration**

QUESTIONS?

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Thank **you.**