

THE Reciprocal

Mergers & Amalgamations Planning for Success

Despite the booming economy, “displacing” workers remains a significant problem for many organizations. Companies are reorganizing, re-engineering and restructuring to take better advantage of technology, production and administrative efficiencies, as well as outsourcing solutions.

Depending on the company’s situation with mergers or amalgamations, there may be a threat of layoffs, reorganization or downsizing of company personnel through staff cutbacks or plant closings.

Therefore, it is important that the organization have a sound plan for the transition process to alleviate any side effects. The plan would include best practices for re-employment and benefits loss control.

Reducing the workforce requires careful consideration and planning. An effective program calls for significant collaboration with management and human resources disciplines.

Although it’s a very challenging situation, if handled properly, both the needs of the departing employees and those of the organization itself can be met. To this end, there are generally four planning objectives that arise out of an imminent layoff (*also see chart on page 2*).

1. Build effective rules to govern the decision-making process.

If the primary reason to downsize is to cut overall labour costs, how do you determine who goes and who stays? While there may be no specific

functions or departments in mind, at the outset, one needs to look across the whole organization, by:

- Profiling people and positions to narrow potential options;
- Evaluating positions to determine the importance of specific job functions;
- Grading positions with predetermined critical factor indices;
- Cross-referencing for position profiles;
- Building human resource inventories to determine longevity or seniority, and establishing pension eligibility.

Planning & documentation needs to be in place before action is taken.

Often, bad decisions don’t surface until after employees are separated and pursue legal remedies for wrongful discharge, discrimination or other prohibited employment practices.

In all cases, objective criteria for de-selection should be the ultimate goal in determining which positions and people are retained.

There is probably no workplace morale buster larger than an impending layoff, but a well-communicated

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MEARIE Provides On-Line Request Option for Certificates of Insurance

MEARIE is pleased to announce that Certificates of Insurance can now be requested on-line.

Visit our web site at www.mea.on.ca and click on the MEARIE link to find out more about this new on-line service.

MEARIE’s link on the MEA web site provides a wealth of information on all aspects of MEARIE operations, including products and services, publications, forms and much more!

Your feedback is important to us, so should you have any questions about, or suggestions for our web site, please contact Andrea Greto or Magdalena Nagy at the MEARIE offices.

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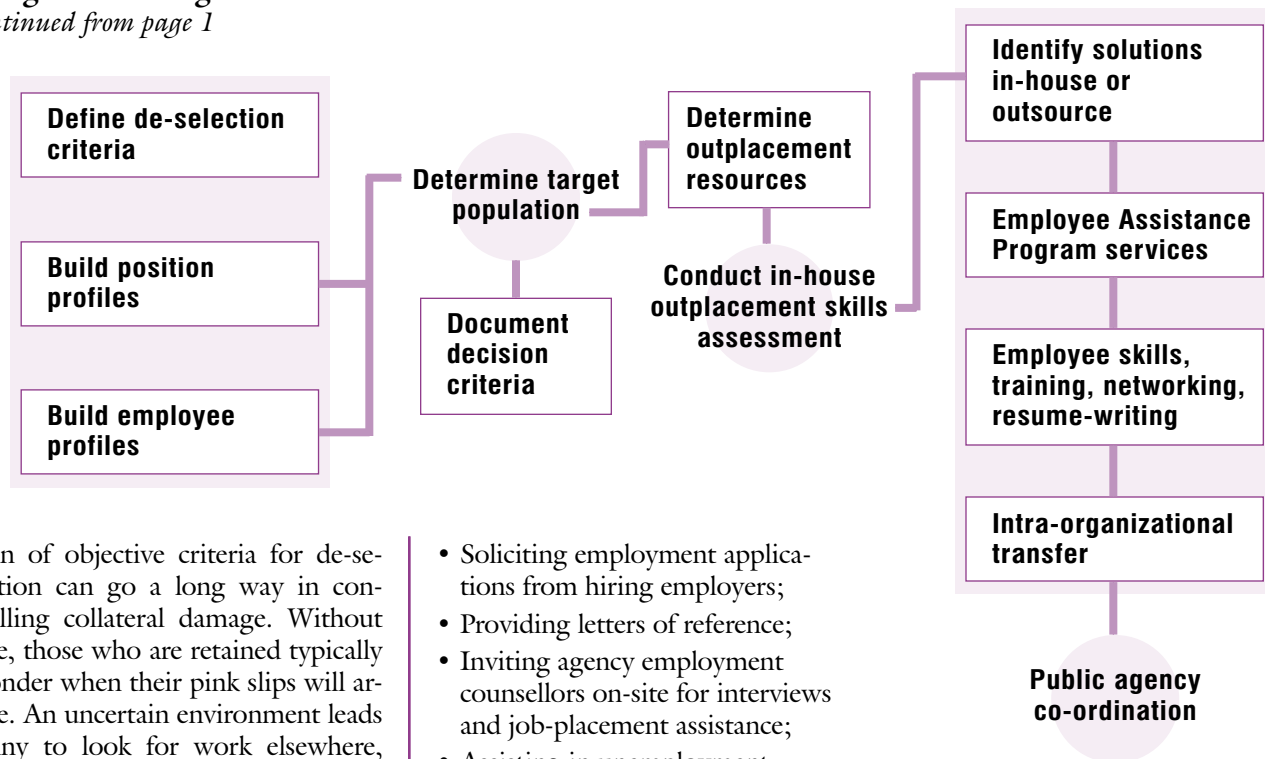
New Corporations and the MEARIE Subscribers’ Agreement & Policy

How to Use This Publication

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Mergers & Amalgamations

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plan of objective criteria for de-selection can go a long way in controlling collateral damage. Without one, those who are retained typically wonder when their pink slips will arrive. An uncertain environment leads many to look for work elsewhere, causing an organization to lose those employees it had hoped to keep.

De-selection criteria should be well documented and cleared by legal counsel to ensure non-discriminatory intent.

The superiors in charge should review employee practices liability policies and exclusions, and identify outstanding exposure to tort action and employment law liability.

Avoidance and mitigation measures should be incorporated into the plan, and proper training provided to those responsible for communicating the separation message to employees.

2. Minimize the impact on displaced employees.

The first step is to take an inventory of human resource management capabilities specific to workforce reduction. If such expertise is lacking, a well-reputed consulting firm should be considered.

The Human Resources department can partner with a vendor to assist in a variety of functions, including:

- Training sessions for resume writing and interview skill development;
- Researching local job markets for opportunities;

- Soliciting employment applications from hiring employers;
- Providing letters of reference;
- Inviting agency employment counsellors on-site for interviews and job-placement assistance;
- Assisting in unemployment compensation applications.

All efforts to assist employees will alleviate most – if not all – unemployment stress.

If the organization has an existing Employee Assistance Program (EAP), Human Resources should solicit front-end, on-site counselling services. Most EAPs are designed to assist with personal or work-related problems, including financial issues, which may all be very relevant to employees facing a potential job-loss situation.

3. Mitigate losses associated with employee benefit programs:

- Ensure immediate reporting of workers' compensation claims;
- Review claims a few months before actual separation occurs;
- Implement a strong medical management program for short- and long-term disability and workers' compensation indemnity claims, including appropriate assessment and retraining.

Some employers are reluctant to take that step, not wanting to give the affected population any ideas. The other side of the coin reveals, however, that employers are in a better position to contest late-filed claims if a strict company policy of requir-

ing immediate notification of any incident is stressed as a part of normal practices and procedures.

4. Ensure regulatory and collective bargaining compliance.

Review all associated rules and regulations prior to proceeding with any layoffs to determine appropriate notification periods, benefit continuation requirements and portability obligations.

The goal of management and Human Resource professionals should be to minimize the detrimental effects a layoff could have on both departing individuals and those remaining with the organization.

Helping displaced workers to get re-established for the job market is critical and should be seen as an important responsibility for any organization.

By taking the necessary steps to meet this responsibility, an organization is not only addressing the well being of its employees, but it is also enhancing its public image and reducing the likelihood of claims filed against the organization. If a general layoff is handled correctly, significant costs can be avoided and individual productivity restored, to the benefit of the company as a whole.

Watch Those Contract Terms!

When contracting out aspects of your business to other firms, scrutiny of the contract provisions with respect to liability, as well as insurance for liability, is needed. This will ensure that the contract will meet your expectations.

While supplier contracts may provide confirmation of liability insurance, including coverage amounts, certain coverage terms contained within the contract may attempt to limit not only the contractor's liability to the purchaser, but also the contractor's liability to indemnify the purchaser for its liability to others.

A hypothetical situation, loosely based on a current claim in litigation, can easily be portrayed as follows:

An electrical utility is responsible for servicing a substation transformer located in an electrical vault in a major mall complex.

The utility contracted out the maintenance requirements to a major electrical maintenance firm. A fire occurred in the electrical vault, causing extensive damage to department stores within the mall.

Engineering investigations conducted on behalf of the affected merchants and the utility agreed that the cause of the damage was as a consequence of improper maintenance by the electrical maintenance firm.

The maintenance firm refused to accept liability for the fire, and refused to indemnify or defend the utility when the mall merchants sued the utility for their losses. The merchants did not sue the maintenance firm, but chose to sue only the utility, on the basis that the utility was responsible for the maintenance firm's liability.

Since the maintenance firm would not defend the utility and refused responsibility for the fire, the utility was forced to initiate legal action by way of a third-party proceeding for indemnity by the maintenance firm.

The maintenance firm, in defending the third-party claim by the utility, maintained that they were protected from any financial responsibility to indemnify the utility for any damages

that the utility may have had to pay to the victims – no matter how responsible the maintenance firm was in causing the fire, and regardless of how much liability insurance the maintenance firm had. The maintenance firm's decision to refuse to defend or indemnify the utility is based upon a clause in their contract, which reads as follows:

Limitation of Liability

Notwithstanding any other provisions in this contract, or any applicable statutory provisions, neither the Company nor the Purchaser shall be liable to the other for special or consequential damages or damages for loss of use arising directly or indirectly from any breach of this contract, fundamental or otherwise, or from any tortious acts or omissions of their respective employees or agents and in no event shall the liability of the Company exceed the unit price of the defective work or the work subject to late completion.

In the claim, now under litigation, the maintenance firm has taken the position that the Limitation of Liability clause absolves the maintenance firm of any liability, including any obligation to indemnify the utility for any liability which the maintenance firm may have to the victims of the maintenance firm's negligence.

MEARIE's View

Although the Court has yet to hear the matter, MEARIE believes that this Limitation of Liability Clause, properly interpreted, relates only to damages sustained by either the Purchaser (the utility) itself, or the Company (the maintenance firm), which in this situation would be damage to the electrical equipment in the vault.

However, all litigation raises the risk of an adverse interpretation by a court, and perhaps more importantly, the resulting litigation over the applicability of the Limitation of Liability clause will be expensive and protracted for all parties, whatever the ultimate result.

The Bottom Line

The bottom line – you should always pay careful attention to the terms of supply of services or goods, and refuse to accept clauses which purport to limit your recovery for your damaged property and/or purport to limit the supplier's responsibility to third parties, or to indemnify you for your responsibility to third parties in respect of the supplier's negligence.

You should be wary of any quotation, tender, or other document which purports to contain a reference to the supplier's usual or standard terms and conditions (often referred to as "the fine print"), and ensure that you understand and are content with any such terms before agreeing to them or accepting them by going ahead with the purchase.

MEARIE Risk Assessment

In the near future, MEARIE will be conducting Risk Assessment Audits for Oakville HE Distribution Inc. and ENWIN Utilities Ltd.

MEARIE representatives will visit each company to discuss potential liability risks, in order to make appropriate recommendations for the operations. Once the Risk Assessments are completed, MEARIE will produce a liability loss control report for each company, to aid them in identifying and alleviating primary exposures to risk. The report provides an objective analysis detailing how and where there are exposures to public liability claims.

Over the years, MEARIE has acquired an abundance of information on the relationship between utility operations and liability risk exposures, which has assisted in developing the MEARIE Risk Management Program services. For more information on Risk Management Audits, please contact Magdalena Nagy at the MEARIE office.

Important Information About the MEARIE Subscribers' Agreement & Policy

On November 7, 2000, all municipalities should have transferred the electricity assets and operations of their local utilities to corporations incorporated under the Ontario Business Corporations Act.

Most of our member utilities transferred their utility's rights and obligations under the MEARIE Subscribers' Agreement and MEARIE Policy to the new OBCA corporation by completing the "MEARIE Subscriber Agreement and Policy Transfer Form", which is a requirement to ensure uninterrupted coverage of the MEARIE policies.

It is crucial to note that those **members who have not completed this step will not have coverage** effective the date they start operating under the new OBCA.

Members who choose not to transfer the Subscribers' Agreement and Policy will have to meet certain obligations, in accordance with the MEARIE Subscribers' Agreement. MEARIE has contacted members who are in the process of being sold to a non-MEARIE entity. Please contact Umit Ulusoy at (416) 484-5316 or Marilyn Fraser at (416) 484-5352 to advise us of your plans with respect to the above.

MEARIE is pleased to announce the addition of **Michael Marino** to its team. Michael joined MEARIE in October 2000, as Market Planning and Business Development Officer. He will have overall responsibility for cultivating customer relations and developing new products and services for MEARIE's clients. You can reach Michael Marino at (416) 484-5364 or toll-free at 1-800-668-9979. Michael can also be reached via e-mail at mmarino@mea.on.ca.

In the Know: MEARIE Answers Your Questions

This question-and-answer column is intended to provide subscribers with responses to commonly asked questions regarding risk management or coverage issues. The responses provided in this article are for information purposes only, and are not intended to represent MEARIE's insurance coverage position. MEARIE assumes no responsibility for claims incurred by any member utilities that arise out of their decisions to either apply or reject, in any form, the responses provided herein.

Q What are the required documents and information for a request of a Certificate of Insurance? What limits can I ask for? What is the turn-around time?

A A Certificate of Insurance is a valuable asset used to preserve and protect an organization from the financial consequences of an accidental loss. In many agreements and contracts, one party is required to name the other party as an additional insured and to provide a Certificate of Insurance as evidence of their compliance with the agreement.

In cases where the Certificate is not provided as required, there is usually a clause that permits the other party to the contract to purchase coverage and/or cancel the agreement.

To obtain a Certificate of Insurance under your MEARIE policy, the following information is required:

- A description of the nature of the services provided;
- Dates of the event or construction, whatever the case may be;

- Location of the event or construction;
- Name and address of the individual to whom the Certificate should be mailed or faxed;
- Limit of Liability to be listed on the Certificate. This is normally a stated amount within the agreement or contract. Please note that this limit should be kept to the minimum required in the agreement. In the event of a claim brought on for damages as a result of the services performed, the MEARIE Liability policy would only respond to the amount listed on the Certificate of Insurance on a per-claim occurrence for the related services.

As an aside – for agreements and contracts, it is a best practice to require a Certificate of Insurance as evidence of insurance, so that all parties involved are aware of the available limits of insurance.

All Certificates of Insurance are completed within 24 hours of receipt of the request. They can also be requested via MEARIE's new on-line facility (*see article in this issue*).

Visit our web site at www.mea.on.ca and click on the MEARIE link to find out more about requesting Certificates of Insurance on-line!



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The Reciprocal is published by the Municipal Electric Association Reciprocal Insurance Exchange for its members – some 176 municipal electric utilities. MEARIE is a reciprocal insurance exchange for members of the Municipal Electric Association. The MEA is the utilities' voice to government, Ontario Hydro and others in the industry.

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