



BACKGROUND

In the January prior to the claimant's date of loss (DOL), the town issued a notice to all departments that there would be budget modifications and there could potentially be a reduction in work force (RIF). During the month of February, again preceding the DOL, the claimant's department head allegedly decided to eliminate the claimant's position, however, never made any official notification to the claimant or the town's leadership. There was no written evidence that this occurred.

The Claimant, was 62-years old at the time of the incident, alleged that she was terminated as a result of her age and in retaliation for filing a Workers' Compensation claim. Specifically, Claimant stated that she fell in her office during the course of her normal job duties and followed her employer's procedures to report the incident to her immediate supervisor. Later that day, she was notified that her position would be eliminated due to budgetary constraints. Therefore, Claimant states that she was forced to take an early retirement. Six months later, the position was refilled with a new employee who was 42-years old.

INVESTIGATION AND DAMAGES/INJURY

- Claimant is a 62-year old female Administrative Assistant for a CIRMA-Member Corporation's Counsel and has been employed by the municipality for 22 years.
- In January of that year, the Chief Elected Official of the municipality sent a memo to department heads indicating that a multitude of factors had significantly impacted the municipality's operating budget and, thus, its ability to conduct business. The CEO's memo instructed the department heads to "plan for the worst-case scenario" and to provide a budget proposal showing no increase over the next fiscal year's budget allocation.
- Claimant's department head contends that the possibility of eliminating the Claimant's position was immediately analyzed and proper protocol for position elimination was discussed with the Personnel Department in January.
- The municipality states that the final decision to eliminate the Claimant's position was made in February of that year. However, this decision was not documented in writing until April 10th of the same year.
- On the morning of April 10th, the Claimant was getting up from her office chair and got her foot stuck on a cord beneath her desk.
 - The cord was later identified as an extension cord used as a permanent power source and was plugged into an additional surge protector, which was used to power the small space heater under the claimant's desk.
- When the Claimant began to walk, the cord tripped the Claimant, causing her to fall.
- Complaining of soreness from the fall, the Claimant requested a First Report of Injury form, per the department's Workers' Compensation reporting procedures.
- A few hours later on the same day, the Claimant was provided the requested First Report of Injury paperwork. While the Claimant's supervisor was delivering the paperwork, the supervisor asked to speak with the Claimant in private.
- While in the private meeting, municipal leadership informed the Claimant that her position was eliminated due to budgetary constraints and that today was her last day. The Claimant alleges that she was told that she must be out of the building in 10 minutes.
- During the meeting, the Claimant was given two (2) options:
 - Claimant can choose to be laid off, which would cause the Claimant to not be eligible to receive her vested pension payments until she reached age 65; or
 - Claimant can choose to take an early retirement and receive 92.5% of her pension with insurance coverage.
- Claimant decided to take Option 2: Early retirement. However, she claims that she noted that she was accepting a "forced retirement" and that she "could not survive on the early retirement."
 - Confirmed during the claimant's and personnel director's depositions, the claimant was told by the personnel director that they did not understand why she could not survive on the early retirement, because she was eligible for early social security benefits.
- In October of that year, the municipality refilled the Administrative Assistant position for the Corporation Counsel. It was noted that the position was staffed with a 42-year old new employee.

CIRMA LIABILITY ASSESSMENT

The 62-year old Claimant filed a complaint of discrimination with the Commission on Human Rights and Opportunities (CHRO).

Claimant alleged that she was terminated as a result of her age, and that the Workers' Compensation injury contributed to the employer's decision. She further alleged that the termination exacerbated her depression and anxiety, and thus was unable to find new employment.

Ultimately, as the result of the advice by the municipality's legal counsel, the municipality decided to settle this claim out of court for \$105,000.

CONCLUSION

For a number of reasons, alternative methods to achieve an employer's economic and organizational objectives should be considered as part of the decision whether to undertake a reduction in force (RIF). While short-term payroll and benefits savings may make an RIF an attractive solution, employers actually may incur substantial hidden costs, especially with large layoffs, over the long term.

In addition, large scale terminations may eliminate disproportionate numbers of older, female, and minority employees. This creates the potential for class action and individual wrongful discharge lawsuits. In the absence of—and perhaps even with—proper documentation, an employer may find it difficult to convince a jury, court, arbitrator, or administrative agency of the true reasons for its actions.

KEY RECOMMENDATIONS/ACTION ITEMS

- **Consider providing training to the town's executive and department leadership on the proper course of actions to complete a Reduction in Workforce** - When a person's employment can be terminated only for specified reasons (such as "cause"), his or her expectation of continued employment is sufficient to invoke due process protections. Because of the complexity of these employment practices it is as best practice to ensure that all those who are tasked with making these decisions understand the liabilities of not properly documenting and communicating their efforts.
- **Consider utilizing legal counsel to assist in Reductions in Workforce** – Employment Practice attorneys can assist managing the process and assist in navigating the legal liabilities that could arise from not properly executing a reduction in force. CIRMA has partnered with Rose Kallor, LLP, a leading Connecticut law firm with a focus on employment and labor law. Under CIRMA's Employment Practices Liability Helpline (EPL) program, their experienced attorneys will provide Liability-Auto-Property (LAP) members expert legal advice on all aspects of employment practices law. The EPL Helpline provides access to one hour of expert legal advice per month for no charge on issues relating to employment practices.
- **Consider training the town's executive and department leadership on understanding the Older Worker Benefit Protection Act (OWBPA)**- In the event a release is afforded to an employee or a group of employees who are affected by a reduction in force either as part of an early retirement

incentive or just as a release of claims, ensure compliance with the OWBPA in order to get a valid federal Age Discrimination in Employment Act (ADEA) release. In the event this statute is not adhered to, the employee will still be able to file an ADEA claim and the release will not be binding as to these claims.

- **Consider disallowing the use of extension cords as permanent power sources** - Disconnect / unplug and properly store extension cords when not being used in accordance with OSHA Standard 1910.305(g)(1)(iii), flexible cords may not be used in permanent installations; A) As a substitute for the fixed wiring of a structure; (B) Where run through holes in walls, ceilings, or floors. Power strips cannot be linked together to create a permanent power source.

For more information on this topic, please contact your CIRMA Risk Management Consultant. Visit our training schedule at [CIRMA.org/Training & Education Programs](http://CIRMA.org/Training&EducationPrograms) page for a list of current training programs.