

Layoffs and Other Drastic Measures: How to Minimize Risk During An Economic Downturn

Presented by
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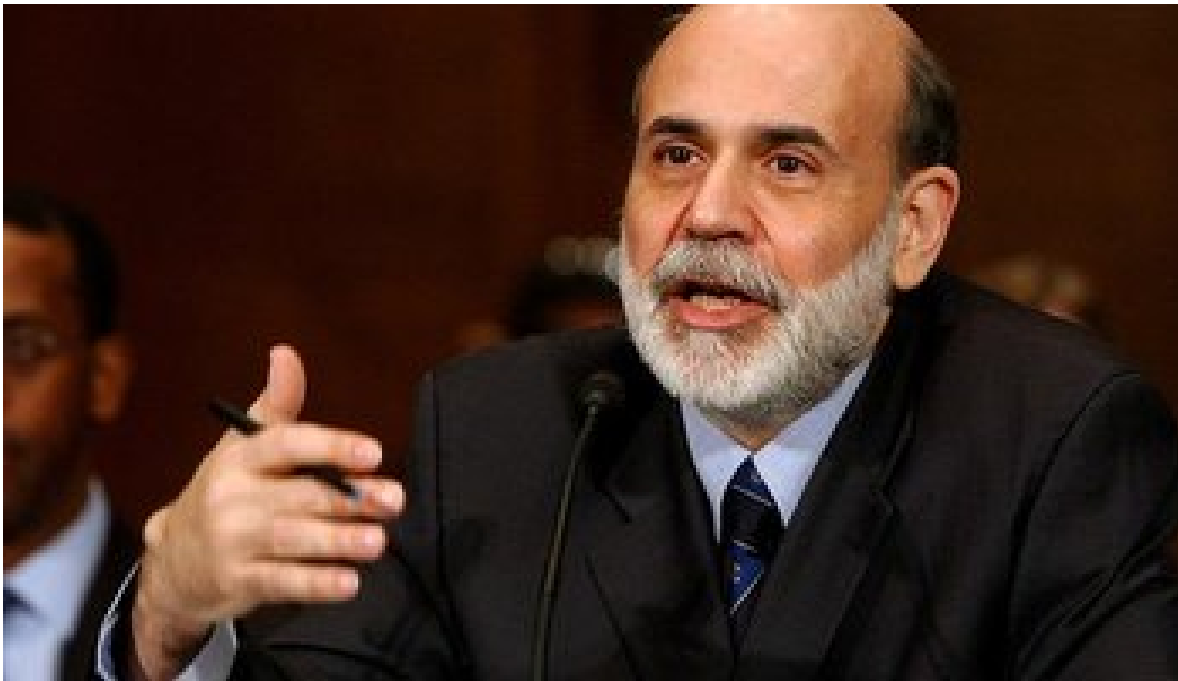


- Six Months Ago: We faced uncertainty.
- Now: Our future seems certain, just not very bright.



Six months ago

- Some predicted banks would fail.



Now:

- Banks have failed.



Six months ago:

- The cost of oil went up to the unthinkable \$100 per barrel.



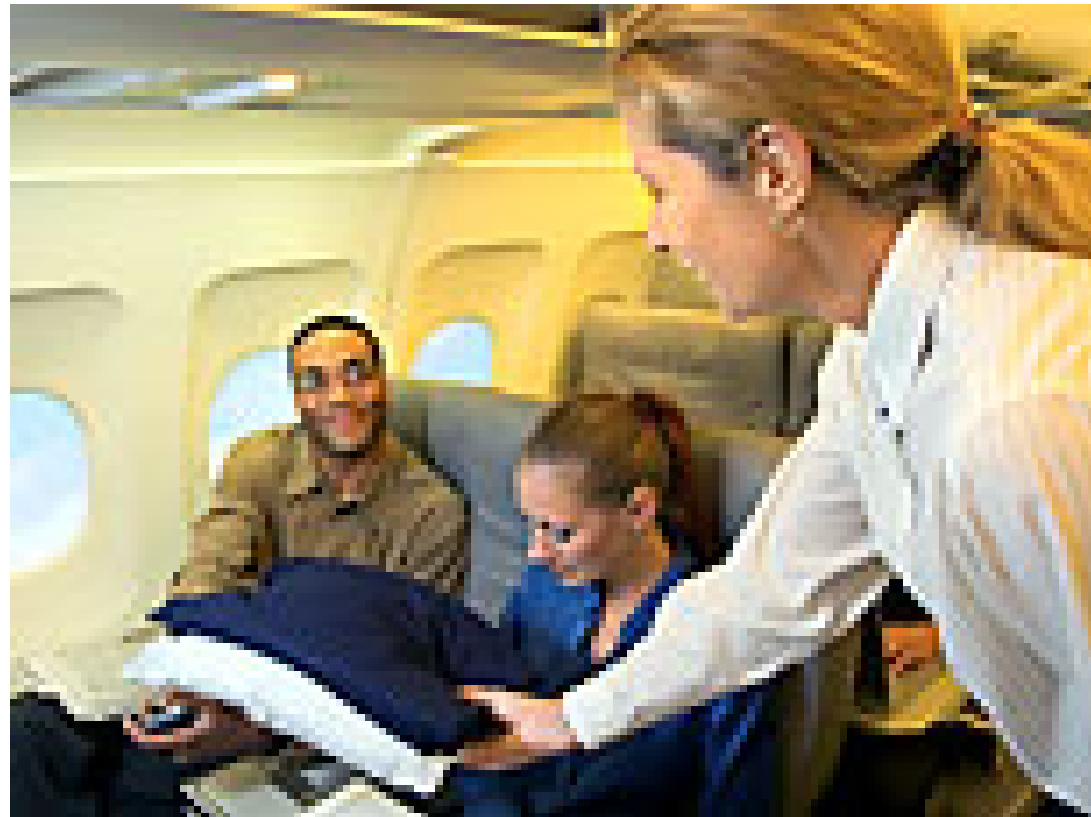
Now:

- After oil rose to nearly \$150 per barrel, we are relieved that it is back down to \$125 per barrel.



Companies have responded by passing along increased costs.

- Jetblue announced that it will now charge for blankets.



McDonalds is re-examining its dollar menu.

- What's next?



Cutting labor costs.



First Explore Alternatives

- Hiring freeze
- Job Sharing
- Reduced workweeks with reduced pay
- Educational leave agreements
- Voluntary separation incentive programs

OWBPRA

- Waivers requested in connection with exit incentive programs will only be effective against age discrimination claims under ADEA if they satisfy several specific criteria including disclosure of who is eligible for the program including their job title and age.

Consider the Costs of Downsizing

- Possible severance pay
- Continued health care for some
- Increased unemployment
- Low morale and reduced productivity of remaining employees
- Departure of talent

If “Rightsizing” is unavoidable:

- Who will be laid off?
- Consider:
 - The projected needs of the company
 - The skill sets of the employees
 - The weight that will be given to seniority

Communicating the Message

- How much notice will you give the departing employees?
- How will the message be communicated?



“Well, let’s just agree to disagree, and have you thrown out of the building.”

Before you implement a layoff . . .

- Remember that you must provide the union with adequate notice and a reasonable opportunity to bargain over the layoff decision and its effects if the layoff is motivated at least in part by economics.

Plant Closing Laws

State Law HRS 394B

- Covered Establishments: Business entities that have employed at least 50 persons in the State of Hawaii at any time during the 12 months preceding the triggering event.
- Triggering Event: Closing (permanent shutting down of all operations within a covered establishment due to sale, transfer, merger, and other business takeover or transaction of business), partial closing, relocation, divestiture
- What is required:
 - Notice: 60 days written notice
 - Payments: Dislocated worker allowance for four weeks if laid off due to transaction and eligible for unemployment benefits.

HRS 394B

- New language added last year:
 - Definition for “divestiture”
 - Employer that is actively seeking a buyer is not required to provide notice until the employer has entered into a binding agreement for the sale, transfer, or merger of the covered establishment that results in the divestiture

Federal Worker Adjustment and Retraining Notification Act (WARN), 29 U.S.C. 2101-09

- Covered Establishment: Employers of 100 or more full time employees excluding certain part time or seasonal workers.
- Triggering Event: A shut down of a single site of employment which results in an employment loss that affects 50 or more full time employees during any 30 day period.
- What is Required: 60 days' notice (with certain exceptions).

Minimize Risk of Litigation

- “You didn’t really fire me because business was slow; you really fired me because
 - I’m white!
 - I took maternity leave!
 - I complained that my supervisor was doing something illegal!
 - I’m old!
 - I’m young!

- Have a legitimate business explanation for your actions.
- Consider offering departing employees a monetary payment in exchange for execution of a release.
- Be aware of the Older Workers Benefit Protection Act (OWBPA) which contains specific requirements for the effective release of ADEA claims.

Frequently Asked Question #1

- Can we eliminate an employee's position while that employee is out on maternity leave?

Frequently Asked Question #2

- Three months ago we implemented a hiring freeze and eliminated several positions including Johnny's. Johnny just returned from serving one year in Iraq with his National Guard unit and has timely given notice of his intent to return to work. Do we have to give him a job?

Frequently Asked Question #3

- We have decided to restructure in a way that eliminates one entire tier of mid-level managers whom we have decided are over paid. They also happen to all be over 40 years of age. Is this going to be a problem?

Frequently Asked Question #4

- In past years, we have paid severance to employees when they were discharged even though we have no formal severance plan. This year so many terminations are contemplated, we do not want to pay any severance. Is this okay since we don't have a formal severance plan?