

# Conducting Your Next Reduction in Force

*How to Select the Right Employees  
and Cover Your Legal Bases*

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**HORTON**  
Management Law



# Overview

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» Selection Procedures

» Notice Requirements

» Severance Programs

# Avoid Discrimination

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- 1 Don't Focus on Individuals
- 2 Start with Big Picture
- 3 Work Down to Positions/People
- 4 Involve Different Perspectives

# Process

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Business Reason



Why downsize/reorganize?

Desired Workforce



Identify skills & positions, not people

Selection Method



How, not who

Apply and Analyze



Discriminatory impact?



# DOCUMENT!

# Selection Methods

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## » Objective

- Seniority
- Performance metrics (e.g., production rate, sales)

## » Subjective

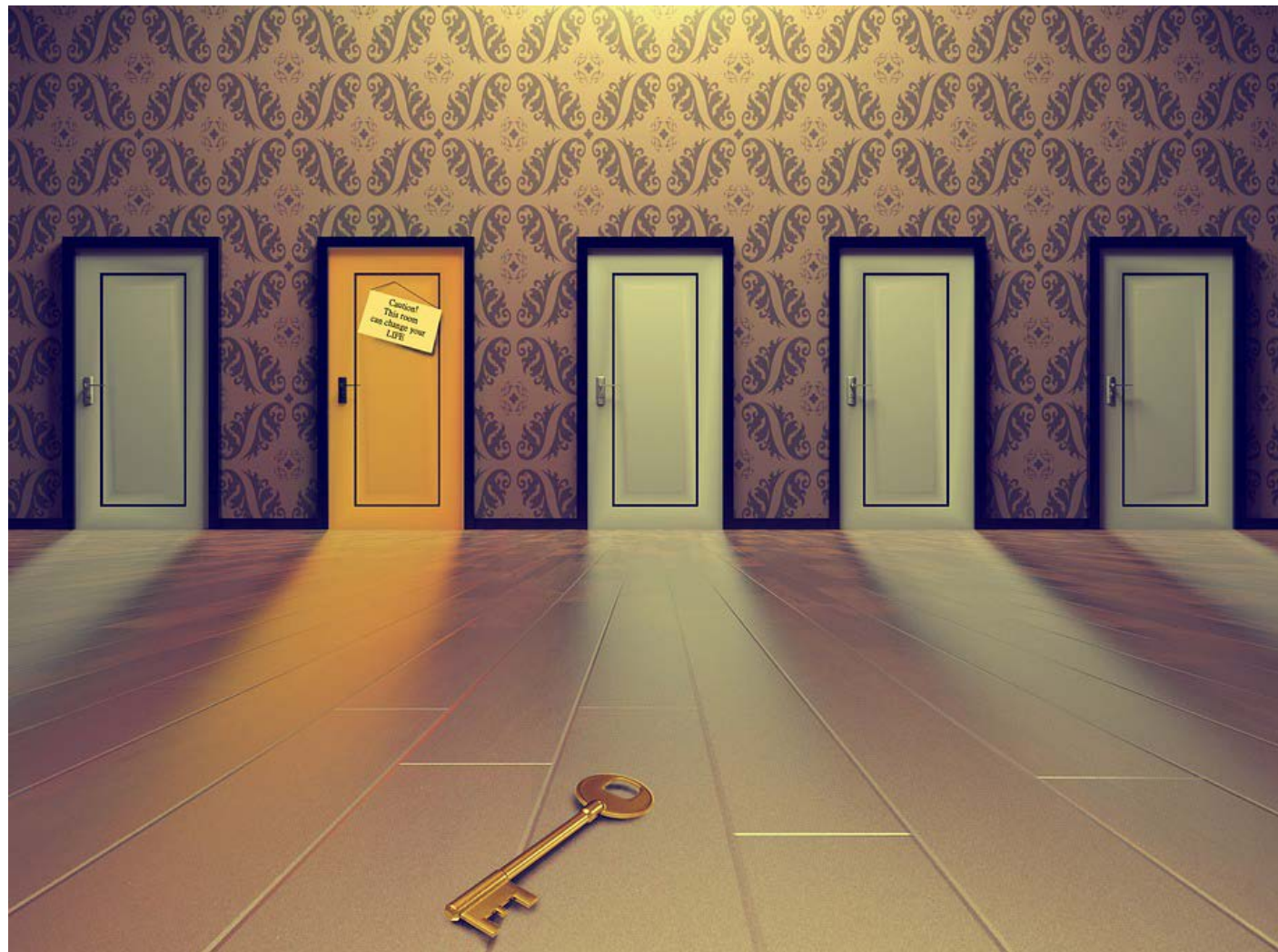
- Supervisor evaluations
- Selection team ratings

## » Combination

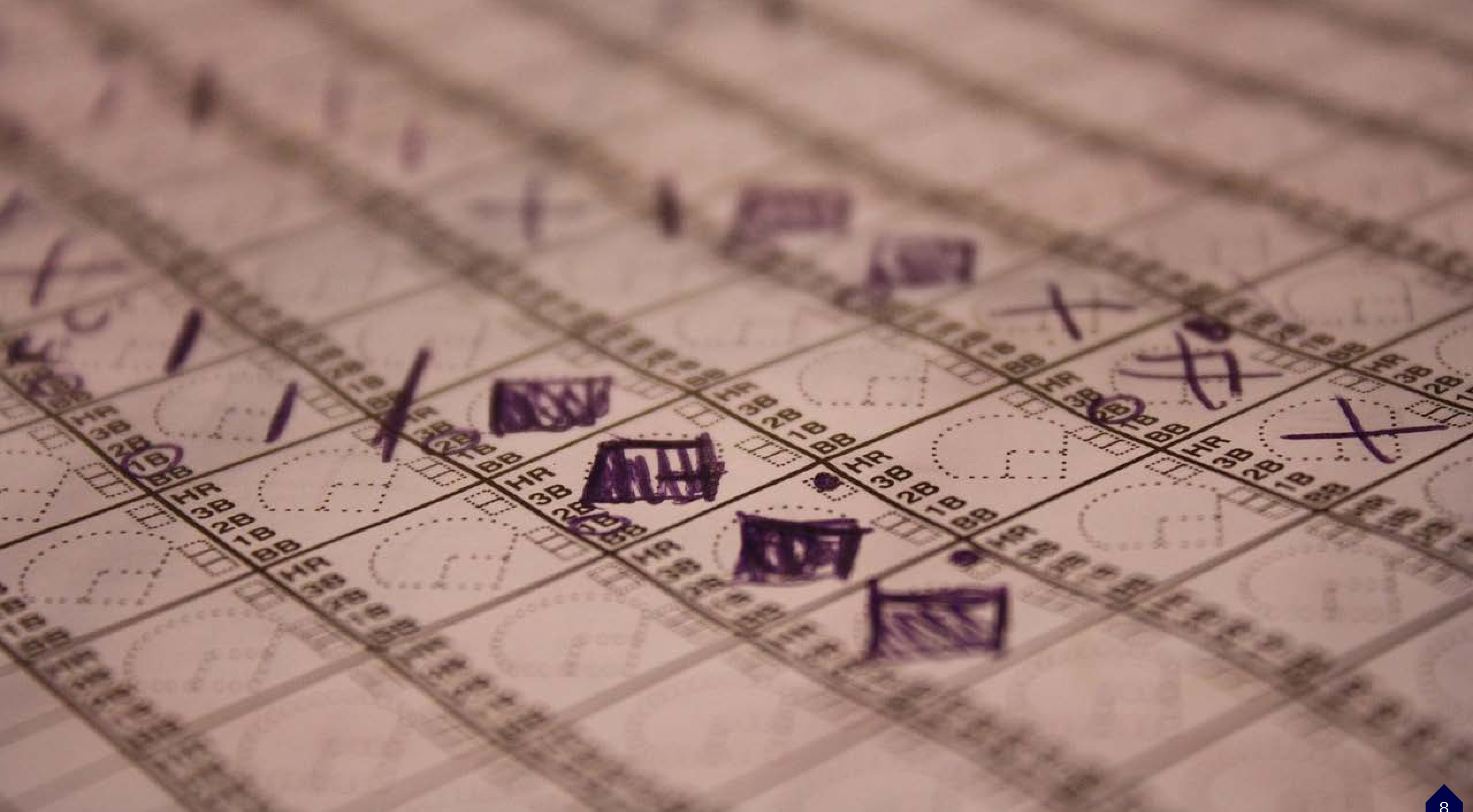
- Evaluations/ratings and seniority/performance metrics in weighted formula
- Evaluations/ratings among employees meeting minimum seniority or performance metrics

# Keys to Selection

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- 1 Establish Job-Related Selection Criteria
- 2 Involve Multiple Evaluators
- 3 Apply Uniformly
- 4 Analyze Impact





# Disparate Impact

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- Despite intentions, disproportionate selection of employees with shared protected characteristics might support discrimination claim
- After selection criteria applied, review based on sex, race, age, etc.
- Visual inspection may suffice for small groups
- Larger groups may warrant statistical analysis

# Notice?

# WARN Act

Worker Adjustment and Retraining Notification



## » Plant Closing

Shutdown of facility, operating unit, or employment site resulting in employment loss of 50 or more employees during 30-day (sometimes 90-day) period

## » Mass Layoff



Reduction not resulting from “plant closing” that results in employment loss of (a) 500+ employees or (b) 50-499 employees constituting at least 33% of active workforce

# NEW YORK **WARN** ACT

(Worker Adjustment & Retraining Notification)

## COVERED EMPLOYERS

50+

Number of Employees  
in New York State

"Business  
Enterprise"

Might include separate,  
but related entities



Doesn't include government  
entities, but can include  
private non-profits

## NOTICE REQUIREMENT



Affected Employees  
and their Unions



Written notice 90 days  
before first  
employment loss



Government Officials

## PLANT CLOSING



Shutdown of  
employment site,  
facility, or operating unit



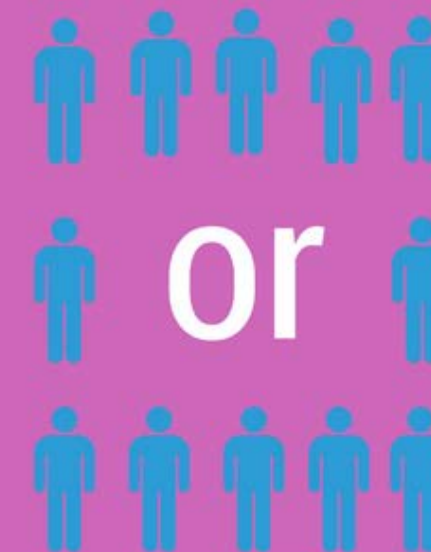
25+

Employees with  
employment loss

## MASS LAYOFF

25+

Employees with  
employment loss if at  
least 33% of active  
workforce at site



or

250+

Employees with  
employment loss at site  
even if less than 33% of  
workforce

# Severance Pay

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- Existing Requirements?
- How Much?
- Payment Schedule
- Other Benefits?



# Waiver and Release

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- 1 Use explanatory cover letter
- 2 Address any outstanding issues
- 3 Allow time (days) to review
- 4 Expect them to meet with attorney
- 5 Older Workers Benefit Protection Act

# Older Workers Benefit Protection Act

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*Requirements to waive federal Age Discrimination claims*

- Written agreement “calculated to be understood by” the employee
- Reference rights under the ADEA
- No prospective waiver
- Employee must receive something additional of value
- Employer must advise employee in writing to consult with an attorney
- Allow at least ~~21~~ 45 days to consider the agreement
- Allow at least 7 days after employee signs to revoke
- Lists of ages of employees by positions
- Program Description

# Age Lists

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## » Employees Selected

Position	Age
Assembler	50
Assembler II	34
Mechanic	28
Mechanic	59
Quality Asst.	24
Quality Asst.	32

## » Employees Not Selected

Position	Age
Assembler	53
Assembler II	49
Mechanic	54
Mechanic	55
Mechanic	57
Quality Asst.	45



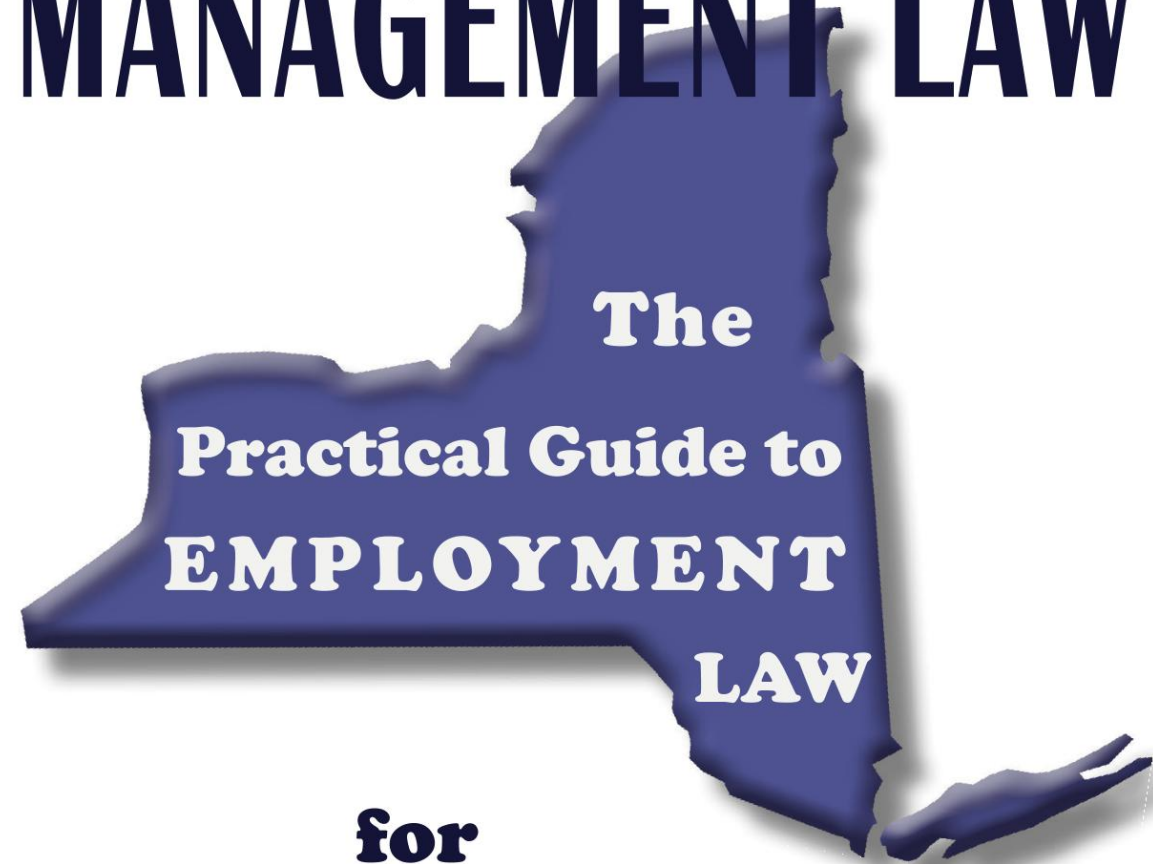
# Union Issues

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- 1 In/Outsourcing Restrictions
- 2 Layoff Procedures
- 3 Severance Pay
- 4 Effects Bargaining

# NEW YORK MANAGEMENT LAW



**for  
Business Owners  
and Managers**

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## Learn more about:

- ✓ Avoiding common management missteps
- ✓ Dealing with unions
- ✓ Paying workers properly
- ✓ Reducing workplace harassment
- ✓ MUCH MORE!



**Thanks for your time!**

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**Questions?**

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