

***Hiring to Firing* Podcast — From Prime Time to WARN Time: Reality TV Rules for Real-World Employee Separations**

Hosts: Tracey Diamond and Emily Schifter

Guest: Lauren Tilashalski

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[INTRO]

Clip — The Apprentice (opening):

You are fired. You're fired.

Tracey Diamond: Emily, you are not fired. You might recognize that scary voice.

Emily Schifter: Exactly.

Tracey Diamond: Careers are long and people do lots of different things—but we're not here to talk about that. Today we're tackling a heavier topic: how to conduct a reduction in force when a group of people are being let go, and best practices for conveying the message while staying legally compliant. So listen in.

Tracey Diamond: Welcome to *Hiring to Firing*, the podcast. I'm Tracey Diamond, a labor and employment partner with Troutman Pepper Locke, and I'm here with my co-host and partner, Emily Schifter. Together, we tackle employment issues from hiring to firing.

Emily Schifter: Today we're thrilled to welcome our guest, Lauren Tilashalski. Lauren started her career as an attorney here at Troutman. Today she is Senior Associate General Counsel at Global Payments, focusing on labor and employment. In her spare time, she shares her thoughts—always spot on—on books, fashion, travel, home decor, music, and more. I highly recommend her weekly Lauren Letter. Welcome, Lauren! Tell us a little about yourself and your current role at Global Payments.

Lauren Tilashalski: Thank you so much for having me. It's great to be back. As you mentioned, I started my career at Troutman. These days I'm Senior Associate General Counsel at Global Payments, a worldwide fintech company headquartered in Atlanta. I support domestic and international HR teams and business stakeholders across the employee lifecycle—which, as we'll talk about today, can sometimes feel like reality TV. I love reality TV, so it's a perfect fit. And yes, I also create content on Instagram and Substack called the Lauren Letter, if you ever want a break from employment law content.

Tracey Diamond: That sounds so fun. I'm definitely going to check out the Lauren Letter.

Tracey Diamond: Today we're going to focus on a heavier topic: reductions in force—layoffs and terminations. To make that topic a little more fun, we're going to pull examples

from reality TV. What do RIFs and reality TV have in common? Many of these shows thrive on structured eliminations. If you think about it, many reality shows are basically mini reductions in force. That brings us to our first clip, from one of the longest-running reality shows, *The Bachelor*. As much as I'm not a big reality fan, I've been sucked in by *The Bachelor* more than once.

Emily Schifter: It's hard.

Tracey Diamond: Every episode ends with an elimination—the famous rose ceremony. Those selected to stay are given a rose; anyone left empty-handed says their goodbyes. Have you seen *Bachelor in Paradise*? That was my last obsession.

Emily Schifter: Yes.

Tracey Diamond: Let's listen to an example from Season 27 with Zach Shallcross.

Clip — *The Bachelor* (Season 27):

Zach: "Hi, ladies. Wow, this was a whirlwind of a week... Davia, will you accept this rose?"

Davia: "Yes."

Zach: "Mercedes, will you accept this rose?"

Mercedes: "Of course."

Zach: "Bailey, will you accept this rose?"

Bailey: "Of course."

Jesse Palmer: "Ladies, Zach, this is the final rose tonight."

Tracey Diamond: On *The Bachelor*, everyone knows the rose ceremony is coming. In real workplaces, employees often feel blindsided when a layoff happens. What's an employer's legal obligation to give advance notice of a separation or layoff?

Lauren Tilshalski: Let's start with WARN. The WARN Act exists at both the federal and state level, and the idea is advance notice. Under federal law, employers with 100 or more employees generally must give 60 days' notice before a plant closing or mass layoff. That can mean closing a facility entirely or laying off at least 50 employees at a single site when that's a third or more of the workforce, or 500 or more employees regardless of percentage. The tricky part is WARN's lookback periods—30 days, 90 days—so layoffs in waves can be aggregated and still trigger WARN. That's where employers can get caught off guard.

Emily Schifter: I see a lot of people make the mistake of thinking, "We'll just do a bunch of 40-person layoffs," or they don't consider that they've done several in the last six months and that—

Lauren Tilashalski: Exactly. You have to be thoughtful about those lookback periods. It's also important to know when WARN does and doesn't apply. For example, part-time employees—those working under 20 hours per week or employed less than six months in the past year—generally don't count toward WARN thresholds. On the flip side, a reduction in pay or temporary furlough can still trigger WARN if it's long enough in duration or significant financially. There are exceptions—like “unforeseen business circumstances”—but employers should proceed with caution. It's hard to prove a situation truly reaches that threshold, and the burden is on the employer.

Of course, individual terminations generally don't require notice under WARN in the United States, but executive employment agreements can create similar obligations—like requiring advance notice or providing severance or garden leave in lieu of notice.

Beyond federal law, there are mini-WARNs. New Jersey recently expanded coverage and requires severance payments in addition to notice. Other states like New York, Illinois, and California have their own rules. Speaking of California, important updates are coming in 2025: California WARN is expanding coverage to remote employees and clarifying counting rules so hybrid or home-based workers tied to a facility count towards the 50-employee threshold. It's expected to tighten notice and timing obligations and add new civil penalties for noncompliance. If you have employees in California—even remote—pay close attention. And even if your state doesn't have a mini-WARN, there may be other notice requirements. For example, in Georgia, you must notify the Unemployment Office of larger reductions so the state can proactively deploy benefits.

Tracey Diamond: You hit on a lot of important topics. New Jersey's WARN Act surprises many clients—mandatory severance is costly, and the threshold is fairly low. The remote workforce issue—how to count workers for WARN—has clients scratching their heads. WARN wasn't written with COVID and widespread remote work in mind, and applying older laws to the modern workplace can be complex.

Emily Schifter: Exactly. The counting rules are complicated anyway, and when you add hybrid and remote—another layer of uncertainty.

Tracey Diamond: Complex indeed.

Emily Schifter: Moving on to another beloved classic—The Great British Bake Off. This baking competition eliminates one contestant each round until a winner is selected. Here's a clip from Series 12, where Jürgen Krauss was eliminated in the semifinals despite winning three “Star Baker” accolades. Let's hear the judges deliberate.

Clip — The Great British Bake Off (Series 12):

Matt Lucas: “There are four really impressive bakers...”

Paul Hollywood: “We're picking the worst of the best.”

Prue Leith: “It really is difficult... You could argue for any one of these.”

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Emily Schifter: In Bake Off, someone can go home even when they're really good because there are a lot of strong competitors—or because the judges feel someone else needs to stay.

Tracey Diamond: Or because it makes for good television.

Emily Schifter: Exactly. This was a particularly hard decision, and there were over 150 complaints submitted to the network about his elimination. Lauren, why can gut feel be dangerous legally in a RIF?

Lauren Tilashalski: I'm a huge Bake Off fan—it's my favorite fall comfort content—and I was very upset about Jürgen's elimination. In RIFs, just like in Bake Off, someone can be eliminated even when they've performed well, all because of gut feel. We want to avoid subjectivity. I actively counsel focusing on objective, documented criteria—consistently applied across the decisional unit—like performance ratings, skill set, tenure, and business function. Relying on intuition or manager preference, even without bad intent, risks disparate impact—where a neutral process disproportionately affects a protected group, creating liability. Set clear, consistent criteria upfront before any decisions are made, and have HR and Legal review selection data and criteria before making decisions.

Tracey Diamond: Under the current administration, the EEOC has publicized that they're no longer going to look at disparate impact discrimination. As you noted, there's still state law to consider.

Lauren Tilashalski: Absolutely.

Tracey Diamond: And an employee can still sue, even if the EEOC isn't looking at it from an audit perspective.

Lauren Tilashalski: Absolutely.

Tracey Diamond: Most listeners are familiar with special considerations for individuals protected by the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act, particularly when offering severance to employees age 40 and older. How do you ensure those releases are enforceable?

Lauren Tilashalski: The ADEA and its amendment, OWBPA, aim to ensure older workers give up rights knowingly and voluntarily. That means specific technical requirements for releases.

For individual terminations:

- The release must be in writing and clear—no legal jargon.
- It must specifically reference the ADEA.
- Employees must get at least 21 days to consider the agreement.
- After signing, they receive a 7-day revocation period.

For group layoffs/RIFs:

- Employers must provide detailed disclosures: job titles and organizational units included, ages of those selected and not selected.
- Employees must get 45 days to consider (instead of 21).

If an agreement fails to meet every requirement, it's invalid as to age claims—even if signed and severance is cashed. HR and Legal should coordinate early to ensure templates comply, especially in RIFs. Bottom line: releases can extinguish liability, but they must be handled carefully, transparently, and with precision.

Emily Schifter: It catches people by surprise—starting at age 40, a “group” can be more than one, and the additional time required. Involving Legal and HR early helps avoid surprises.

Lauren Tilashalski: From a practical standpoint, these requirements take time to organize and verify. Build time into your process so HR and shared services can prepare compliant disclosures.

Tracey Diamond: Another relatively new area in certain states: for confidentiality provisions in separation agreements to be enforceable, employees—even under age 40—must be given at least 21 days to sign, and that 21 days isn't always waivable. New York is one example, which surprises clients. Know your state law.

Tracey Diamond: Speaking of severance on TV, those who are cut usually end up empty-handed—like Bachelor contestants without a rose, Top Chef candidates told to “pack your knives and go,” or Project Runway contestants who are “in” one day and “out” the next. In the employment context, as you mentioned, if we're seeking a release of claims, we offer severance as consideration—usually monetary payments, lump sum or salary continuation. Employers sometimes add COBRA coverage, outplacement, accelerated vesting, or bonus payouts. How can employers design and communicate severance packages to avoid the perception of “hush money”?

Lauren Tilashalski: Severance isn't one-size-fits-all. Some employers have formal ERISA-covered plans; others handle it informally. Even with discretionary severance, use a consistent formula—e.g., two weeks' pay per year of service, with a minimum and maximum—so it's fair and defensible.

Communication matters. Make clear it's about supporting people through transition. That message can come through the package—COBRA, outplacement, neutral references, or limiting non-compete terms. Also consider state law limitations on confidentiality clauses; you can't always require secrecy. Include state addendums to clarify which terms apply in each jurisdiction.

Tracey Diamond: What practical advice do you have for HR teams preparing separation agreements, WARN notices, and other documentation for a layoff to minimize confusion and mitigate risk?

Lauren Tilashalski: Start early if you can. More lead time means a more thoughtful, organized process. Strong HR–Legal–business relationships help spot issues and advise proactively. Legal can help analyze cost savings vs. personnel reductions vs. risk if severance releases aren't secured.

WARN notices can look like form letters, but content requirements are exacting—have counsel review. Maintain ready-to-go templates: separation agreements, benefit summaries, PTO payout letters (where applicable), manager scripts, FAQs. Update them as laws change so you can scale quickly, consistently, and compliantly.

Tracey Diamond: Aside from documentation, what logistics should HR consider when preparing to communicate a RIF?

Lauren Tilashalski: How you deliver the message matters as much as what it says. Be clear, concise, and empathetic. Schedule conversations at consistent times to avoid rumor mills. Prepare for heightened emotions among both impacted and remaining employees. Coordinate with IT on access cutoffs and time carefully to reduce confusion. And don't forget the survivors—communicate with empathy and clarity to those impacted, and be intentional with those who remain.

Tracey Diamond: That brings us to our last clip. Reality shows often have dramatic goodbyes or anguished decisions. In this clip from *The Voice*, coach Ariana Grande struggles with a difficult elimination decision.

Clip — The Voice:

Carson Daly: “Ari, you are so vested in your team...”

Ariana Grande: “I don't know how this happened... You all are brilliant... This is hell... The person I'm taking to the next round is Riley.”

Carson Daly: “Riley!”

Tracey Diamond: While some of that seems made for TV, real emotions are involved in separating employees in the real world. It's devastating to hear bad news, and it's hard to deliver it. How should employers communicate separation decisions respectfully and without legal risk?

Lauren Tilashalski: Be prepared for difficult conversations. Schedule consistently to avoid rumors. Expect heightened emotions from both impacted and remaining employees. Coordinate IT access. Communicate with empathy without implying liability—avoid phrases like “I know this isn't fair.” For survivors, leadership should consistently reinforce direction

and stability going forward without editorializing on subjective criteria. Keep it clear, concise, and future-focused.

Emily Schifter: Preparation helps with emotions and delivery—thinking about IT, logistics, people on vacation or sick leave—so you can stick to the script.

Lauren Tilashalski: Lean on HR business partners to proactively identify if impacted employees are on leave, using PTO, remote, or in-office. With that information, you can make intentional decisions that make the experience as positive as possible for both employer and impacted team members.

Tracey Diamond: This has been a helpful, informative conversation. We appreciate your time today, Lauren. It was so nice to have you.

Lauren Tilashalski: Thanks so much for having me. I love being a Troutman alum, and it's always fun to keep in touch with the firm and talk about my favorite topic—employment law.

Tracey Diamond: And reality TV.

Tracey Diamond: Thank you to all our listeners for tuning in. Email us with topic suggestions and your favorite shows and movies. We hope to bring you great new content soon. Thanks for listening.

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