

## FAQ's

### **Furloughs, Lay-offs, and Reductions-in-Force**

Among the many issues employers are facing in the wake of the spread of the novel coronavirus (COVID-19) is the possibility of furloughs, layoffs, position eliminations and temporary office and location closings.

In this changing workforce climate, companies are now making the tough decision on whether one, or more of these is a necessity.

Although these terms are used interchangeably, they should not be as they all have very different meanings.

### **Question: What is a furlough?**

**Answer:** The company either reduces the days or weeks that an employee works – or - requires them to work fewer hours or to take a certain amount of unpaid time off (for example, an employer may furlough its nonexempt employees three days a week for the remainder of the year and pay them for only 16 hours instead of their normal 40 hours each week). Another method of furlough is to require all employees to take a week or two of unpaid leave sometime during the year.

### **Question: Can we furlough exempt employees?**

**Answer:** Yes, but employers must be careful when furloughing exempt employees so that they continue to pay them on a salary basis and do not jeopardize their exempt status under the Fair Labor Standards Act (FLSA). A furlough that encompasses a full workweek is one way to accomplish this, since the FLSA states that exempt employees do not have to be paid for any week in which they perform no work.

### **Question: In what situation is it best to furlough?**

**Answer:** An employer may require all employees to go on furlough, or it may exclude some employees who provide essential services. The idea is to have the majority of employees share some hardship as opposed to a few employees losing their jobs completely.

**Question: What is a layoff?**

**Answer:** A layoff is a temporary separation from payroll. An employee is laid off because there is not enough work for him or her to perform at the current time.

**Question: Are layoffs a permanent separation from employment?**

**Answer:** No. The employer believes that this condition will change and intends to recall the person when work again becomes available. An employer may allow employees to maintain benefit coverage for a defined period of time as an incentive to remain available for recall.

**Question: What is a Reduction in Force?**

**Answer:** A reduction in force (RIF) occurs when a position is eliminated without the intention of replacing it and involves a permanent cut in headcount.

**Question: Are these terms interchangeable?**

**Answer:** No. We caution employers to use the correct terms when conducting any kind of business financial challenges. A 'layoff' should not be used as a synonym for what is actually a permanent separation (RIF).

**Question: Are any of the staff who are laid off, reduced, or furloughed eligible for unemployment compensation benefits?**

**Answer:** Employees are typically able to collect unemployment compensation benefits while on an unpaid layoff, furlough, or reduction in force. Both federal and state Departments of Labor are preparing for an influx of claims as a result of the current situation. Employers should provide information to employees about how to apply for benefits.

**Question: How do I handle employee morale during this time, and especially after the company has downsized or laid off employees?**

**Answer:** It's crucial that leaders don't get sucked into the panic. Employees look to management and model their behavior especially in times of crisis. Therefore, it's important they remain calm and manage their emotions. Keep staff updated on the situation and invite them to engage in the discussion. Perhaps employers can relax policies and adjust guidelines in light of employee's changing schedules. It's a good idea to be empathetic, understanding and flexible as workers try to navigate the unexpected changes to their lives.

**Question: What other alternatives should I consider when facing significant financial challenges to my business?**

**Answer:**

- Consider telecommuting. If you can offer it, allow staff to work from home.
- Consider eliminating contract staff.

- Consider **wage and/or benefit cuts**. Such moves go over better when they start at the top. Some experts say it can help pad the blow if senior management takes a bigger cut than the rest of the company. You can also offer buyouts for employees with longer tenure, as long as this is done in a non-discriminatory manner.
- Consider **shortening the work week**; just one day can cut costs by a significant amount.
- Consider slight **salary cuts** across the board. Make it a flat number, such as 5 percent across the board.
- Consider **cutting production**. Instead of cutting employees, cut product or process production. If you're experiencing a drop in demand, you don't need excess inventory to weigh down the business.
- Consider **shifting full-timers to part-timers**. Instead of cutting wages, you can also cut hours so that full-timers become part-timers. It's better to have half a job than no job at all. Unemployment benefits and other part-time work can assist employees.
- Consider **job sharing**. Job sharing allows two employees to work a reduced schedule in a job that normally would be filled by one full-time employee.
- Consider offering **split-shifts** shares to staff whose jobs can support it. A split shift is a special schedule which divides the workday into separate parts.

**Note: All of the above considerations require thoughtful planning and analysis. Many employers will require multiple options indicated herein to achieve the financial impact required for their business during this time.**

*\* Because the COVID-19 situation is dynamic, with limited governmental advice, employers should consult with counsel for the latest developments and updated guidance on this topic.\**