

**LOSING WORK
DUE TO THE
COVID-19
PANDEMIC**

**TERMINATIONS, FURLOUGHS, AND
REDUCTION OF PAY**



WHAT IS THE DIFFERENCE BETWEEN:

A FURLOUGH AND A LAYOFF
OR REDUCTION IN FORCE?

- Furlough is a temporary, short-term, unpaid leave of absence.
 - Employer plans to bring back employees after a period of time.
- **Not** a termination, but will be eligible for unemployment.
 - Employer may allow employee to use accrued PTO before going into layoff status.

FURLOUGHS

EMPLOYER NOTICE REQUIREMENTS FOR A FURLOUGH:

- What the furlough is;
- Why the furlough is needed;
- Approximate length of furlough;
- Information on health insurance benefits and whether they will be continued or COBRA coverage is offered;
- Filing information for unemployment.

PAY REQUIREMENTS IN A FURLOUGH:

EXEMPT EMPLOYEES

- Must be paid in full through the week they performed any work, regardless of how much they worked.
- Deductions cannot be made from salary for absences caused by the employer or business closure.
- Employer can require exempt employee to use accrued PTO to offset a partial workweek, if they have any left.

NON-EXEMPT EMPLOYEES

- Must be paid at least the minimum wage of all hours worked, as well as overtime worked, in that week.
- Does not have to be paid if they did not perform any work.
- Allowed to use their accrued PTO during the furlough.

- **Layoff** is a long-term, full separation from the company.
 - The employer is facing unforeseen business and economic changes and employer believes that conditions may change and employee could be recalled in the future.
- Layoff may turn into a **reduction in force**
 - When positions are eliminated without the intention of replacing employees in the future. A permanent cut in headcount.

LAYOFFS AND REDUCTION IN FORCE (RIF)

EMPLOYER OBLIGATIONS IN A LAYOFF OR RIF:

- WARN Act notice requirements:
 - For some companies with 100 or more employees laying off many employees, must usually provide at least 60 days' notice.
 - COVID-19 is likely considered an unforeseeable business circumstance, and notice requirement is more flexible. Notice as soon as practicable.
- Terminated employees cannot remain on company health plans. Employers with 20 or more employees must offer COBRA.
- Terminated employees may seek unemployment benefits, even if terminated while on leave.

EMPLOYER OBLIGATIONS IN A LAYOFF OR RIF CONTINUED:

- Employer **must** pay out all unused vacation time.
- Employer **must** pay exempt employees for the week in which they worked.
- Employer is not obligated to pay leave for laid off or RIF employees.
 - Employee not permitted to use any accrued sick time, emergency paid leave, or FMLA leave after date of layoff.
 - If on leave before worksite closes, must be paid leave time up to date of closure.
- Employer cannot choose employees for layoff or RIF based on certain segments of the workplace for protected reason.
 - Cannot focus layoff on employees that utilized leave time
 - Cannot focus layoff on protected classes: age, gender, disability, pregnancy, etc.



PAY ISSUES RELATED TO COVID-19

**REDUCTIONS IN PAY AND VOLUNTEER
WORK**

- Generally, reductions in pay and hours permitted due to economic downturn or lack of business
- Employers may ask employees to perform work outside of job description, so long as not limited by a union contract
- Must not be targeted toward protected groups for discriminatory reasons
- Wages must always be paid on time.

**CAN MY
EMPLOYER
REDUCE MY PAY
OR HOURS OR
CHANGE MY
JOB DUTIES
DURING THE
PANDEMIC?**

CONSIDERATIONS IN REDUCING SALARY OR HOURS:

EXEMPT EMPLOYEES

- Employer is permitted to reduce salary or hours during economic slowdown, provided the change is based on a real need and **not related to a quantity or quality of an individual's work performed.**
- Reductions cannot fluctuate day to day or week to week.
- Reduction cannot go below \$684/week, the minimum salary to maintain exempt status.
- Reductions can be prospective only.

NON-EXEMPT EMPLOYEES

- Employer must pay employees for actual hours worked.
- Permitted to lower rate of pay or reduce hours based on business needs, but not below the minimum wage.
- Any earned wages prior to change, such as commissions, must still be paid when due.
- Reductions can be prospective only.

VOLUNTEERING DURING SHORTAGE OF WORK

PRIVATE, NON-PROFIT EMPLOYERS

- Generally workers must be paid **at least the minimum wage**;
- Exception: volunteers do not have to be compensated if performing services for **civic, charitable, or humanitarian reasons**, if not promised or expecting compensation.
- Employees cannot volunteer to perform the same services they are employed to perform without pay.

PUBLIC AGENCIES

- Volunteers do not have to be paid for performing services for **civic, charitable, or humanitarian reasons**, if not promised or expecting compensation.
- Offer of service must be truly voluntary.
- Individual must not be otherwise employed by the agency to perform same services that they are volunteering.

<https://www.dol.gov/agencies/whd/flsa/pandemic>

**ADDITIONAL
RESOURCES**