

# COVID-19 Workforce Management

## Managing Through Business Disruptions

### **Alternatives to Temporary Layoffs, Furloughs, or Terminations**

- Prior to a temporary layoff, furlough, or termination, consider some alternatives that may allow you to take other actions instead of cutting jobs:
  - Voluntary leave, early retirement, or exit packages;
  - Consider whether a reduction in fringe benefits and/or compensation might help you meet your objective;.
  - Maintain compliance with state and federal wage and hour laws while doing the following:
    - Reducing exempt employees' future weekly salaries. (Employees must meet federal and state salary thresholds to maintain exempt status and you may not deduct from weekly salaries for partial work week or variations in production quantity or quality).
    - Reducing non-exempt employees' future hourly rates while ensuring they continue to accurately record and report hours worked even if working remotely.

### **Temporary Layoff or Furlough:**

- Reduces the days, hours, or weeks an employee works.
- Employees remain on payroll.
- No assurance employee will return to work or at same position.
- Consider allowing employees to use accrued paid time off before the furlough or temporary layoff begins.
- Consult your benefits plans to determine your obligations.
- Impacted employees are generally entitled to unemployment insurance benefits, and you may have an obligation to provide them with claim filing information upon notification of the furlough or temporary layoff.
- Review if state final pay rules, including pay out of accrued but unused vacation time, may apply.
- Understand whether your business is subject to federal or state WARN Act notice requirements or any other state law obligations before acting.

## **Permanent Termination of Employment**

- Permanent termination of employment due to permanent business closure:
  - All employees are terminated from payroll.
  - No expectation of re-hire.
- Key Additional Considerations
  - Review final pay rules, severance and other obligations under state law, such as pay out of accrued but unused vacation time.
  - Determine whether you wish to offer severance packages.
  - Employees may be entitled to continuing benefits under COBRA.
  - Employees may be entitled to unemployment insurance benefits and you may have an obligation to provide them with claim filing information upon notification of the termination.

## **When only a portion of your employee population will be affected by temporary layoff, furlough, or termination:**

- Establish objective criteria consistent with business needs when determining which employees to furlough, temporarily layoff, or terminate.
- Apply objective criteria consistently.
- Document your employee selection decisions.
- Review applicable company policies such as paid time off.
- Check any employment-related agreements to ensure you're fulfilling your obligations under those agreements.
- Review applicable wage and hour laws:
  - Hourly, non-exempt employees must be paid for all time worked, including overtime. Check state requirements regarding "call in" pay for employees who report to work but do not work their full shifts.
  - Exempt employees performing **any** work during a workweek must be paid their full weekly salary.
- Employees may be entitled to continuing benefits under COBRA.
- Consider additional laws that may apply including, but not limited to, the Older Workers Benefit Protection Act ("OWBPA"), Title VII, Americans with Disabilities Act ("ADA"), and the Age Discrimination in Employment Act ("ADEA").
- Understand whether your business is subject to federal or state WARN Act notice requirements or any other state law obligations.

## Remote Work Arrangements:

Given the current recommendations from federal, state, and local authorities, many businesses are now considering what adjustments they need to make during these uncertain times and remote working is an important option for employers.

### Key Considerations:

- Set consistent, fair eligibility requirements.
- Establish which personnel must be on-location versus workers who may work remotely.
- Create company-wide contact list to keep employees connected.
- Develop consistent communication on remote work policy, expectations, and the temporary nature of the policy as a response to the current pandemic.

### Policies may include:

- Consistent working hours.
- Continue requiring accurate work time recording for all non-exempt employees.
- Ensuring availability and responsiveness to customer inquiries or other questions.
- Determining what, if anything, will be reimbursed to employee, such as internet expenses, technology, etc. (Check applicable state laws).
- Set check-in points to re-evaluate.

## General

- Ensure you keep employee medical information confidential – particularly if they or a family member tests positive for or are suspected of having COVID-19.
- Consider any employment agreements that may impact your decisions.
- Review your company policies or examine past practices to guide you.
- Review business and personal travel policies and practices for your employees.
- Set up established check-in periods to update affected employees on status (even if there's nothing to say, you may still want to check-in to deliver the message that nothing has changed).

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