



Examining Furloughs and Layoffs

As COVID-19 impacts companies worldwide, employers may begin to explore the possibility of furloughs and layoffs. Below is a deeper look at those options and the impact they may have on your employees and your company. As this situation changes, we will continue to update this document.

CARES Act Implications (March 27, 2020 Update)

Congress recently passed a \$2 trillion stimulus package in response to COVID-19, including clarification on unemployment insurance benefits for employees who have been furloughed or had their hours reduced. According to Congress, these employees will be eligible for unemployment insurance. This means that they could stay on their employer's benefits plan and keep their health insurance while still being eligible for unemployment insurance weekly benefits, which are paid through the states.

In addition to regular state unemployment insurance, individuals will receive an additional \$600 per week for up to four months and the normal 7-day waiting period to receive benefits is likely to be waived by the state.

What is a furlough?

Furlough is a type of leave from work, usually mandatory, with no pay. It may be due to the economic conditions or special needs of a company, or in some states and the federal government, a furlough is used to cut costs. With a furlough, employees are allowed to come back to work once regular business resumes.

Some companies implement a cyclical furlough schedule, such as mandating a one-day furlough for the first Monday of every month. Other companies may offer optional furlough which can be negotiated in an employee's employment contract or through a mutual agreement between the employer and the employee.

Benefit implications of a furlough?

Generally, with a furlough, health & welfare benefits are kept in place since the employment relationship is still intact with employees continuing to pay their portion of the premium, in some cases through the use of Paid Time Off benefits. Furloughed employees could have access to unemployment insurance benefits based on the reduction in wages, if it meets the required threshold, which varies by state. Employees should be encouraged to apply for unemployment insurance if there is a reduction in hours or furlough. States have varying requirements and seem to be evaluating claims on a case-by-case basis.

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.



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What is a temporary layoff?

A temporary layoff is a separation from payroll. An employee is temporarily laid off because there is not enough work for the employee to perform. The employer, however, believes that this condition will change and intends to recall the person when work again becomes available. However, in some instances, employees are not recalled and therefore the layoff will become a permanent separation from employment.

Benefit implications of a temporary layoff?

Employees are typically able to collect unemployment benefits while on an unpaid layoff, and frequently an employer will allow employees to maintain benefit coverage for a limited period as an incentive to remain available for recall. In most cases, though, an offer of COBRA is more appropriate.

What is a permanent layoff?

A permanent layoff is similar to a temporary layoff except the termination is permanent and is communicated as such. When a layoff is permanent, benefits are terminated and COBRA coverage is offered as appropriate and required by law.

How Scott can help?

As you consider these options, we have resources that can assist you, including announcement templates, checklists when considering layoffs, and strategies to protect you from litigation.

As experts in dealing with your health insurance and ancillary carriers, we will work with you to examine contract language surrounding employee eligibility and to understand the benefit implications for your employees. We will petition the carriers on your behalf to best protect your employees and your company during the transition.