

Layoffs and Furloughs Frequently Asked Questions

1. What is the difference between a layoff and a furlough?

A furlough is a temporary, leave of absence, which is generally shorter in duration in full day or week increments. During the furlough, the employees are not paid, but they are still technically employed. When the business reopens to full strength, furloughed employees will become active again. A furlough could be seen as favorable to retain talent and reduce the cost of separation (e.g., payout of vacation balance payout) or future hiring and training.

A layoff is a separation of employment for an indefinite or permanent period of time.

2. What are the pay requirements during a temporary furlough?

Employers must be cautious of pay-related matters during a furlough. Non-exempt employees are only paid for their hours worked. Therefore, when furloughed or not working, they do not receive pay.

Per the Fair Labor Standards Act (FLSA), exempt employees must be paid their full salaries for any workweek in which any work is performed. Therefore, an employer seeking to furlough an exempt employee should be careful to require exempt employees to take unpaid time off in full-week increments and to not perform any work during the week, including working from home, reading/responding to emails, or calls. If any work is performed during a workweek, the exempt employee must receive their full salary (days not worked can be supplemented with any available paid time off such as vacation time).

3. May an employer choose to pay employees on furlough even if not required?

Again, employers must be cautious of pay-related matters during a furlough. While atypical, an employer may choose to pay all or a portion of the furlough essentially placing the employees on a “paid leave of absence”.

4. What about just reducing employee hours?

Employers may seek to have employees work fewer hours each week and pay them less. Reduced work hours and schedules can be applied for non-exempt employees; however, the FLSA does not allow employers to reduce exempt employees’ pay for working fewer hours. Any adjustment in exempt employees’ salaries must be permanent in nature as short-term changes can jeopardize the employees’ FLSA exempt status.

5. How about asking for voluntary time off?

Per the FLSA, exempt employees may take voluntary time off without pay. However, this unpaid time off must be completely voluntary and cannot be caused by employer business conditions or be the result of pressure or request by the employer to take time off.

6. Can only some positions be placed on furlough?

An employer may choose what positions are placed on furlough based on a set of consistent criteria. For example, essential versus nonessential positions, certain departments versus other departments, or even exempt versus nonexempt FLSA status positions. Employers should be cautious when “picking and choosing” positions for furlough and rely instead on preset criteria.

7. What happens to benefits?

During a layoff, employees are separated from employment and would be eligible to continue their benefits through COBRA. Employers could choose to subsidize COBRA benefit payments for impacted employees.

During a furlough, employers may treat furloughed employees as if they are on a “leave of absence” status and maintain benefits coverage while continuing to make employer contributions and employee premium payments.

Additionally, large employers (over 50 full-time employees) may be subject to requirements under the Affordable Care Act (ACA) to maintain eligibility for health benefits for a time for furloughed employees or employees with reduced hours.

If applicable, the employer could also utilize COBRA for the furloughed time period.

It is recommended that employers consult with their brokers and/or carriers to determine the most appropriate benefits continuation option for their business.

8. Can furloughed employees qualify for unemployment insurance?

Many states’ unemployment insurance also applies to significantly reduced work hours, temporary furloughs, and layoffs. Eligibility for unemployment insurance is determined by each state. For more information, employees should contact their local unemployment office.

9. What kind of notice should I provide to furloughed employees?

In general, employers with more than 100 employees must provide a 60-day notice of a closing or mass layoff (layoff or more employees during any 30-day period) per the Worker Adjustment and Retraining Notification Act (WARN). However, closings and layoffs that are caused by business circumstances that were not reasonably foreseeable are exempt to the 60-day notice requirement. A notice of layoff or temporary furlough to applicable employees is still advisable at the time of the event. It is recommended employers consult with their legal counsel to determine if a WARN notice may be required.

For more information about WARN, visit the [DOL WARN Fact Sheet](#).

For more information about Furloughs, visit the [DOL’s Frequently Asked Questions Regarding Furloughs](#).