Coronavirus (COVID-19): Furloughs and Temporary Layoffs
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Introduction

Increasingly, employers must consider furloughs, layoffs and workplace closures during the novel coronavirus (COVID-19) pandemic. As the situation becomes more dire in a rising number of states, economic conditions and government mandates may require an employer to significantly decrease or even cease business operations altogether.

While some employers may not be able to avoid permanent layoffs as a result of the pandemic, others may wish to explore temporary layoffs or other stopgap measures in the interest of keeping as many employees on the payroll as possible.

The following measures may help an employer deal with furloughs and temporary layoffs during the pandemic.

Retaining Employees as a Goal

Employee retention should be a top priority for employers during challenging times. Often, employees show their true value to the organization during emergent circumstances.

An employer benefits from retaining trained, productive employees during a pandemic or other emergency. Once the crisis has passed, these experienced employees can help boost much-needed revenues more readily than new hires.

Even if a temporary layoff is unavoidable, an employer should communicate its desire to retain its workforce. Explain that the step must be taken only due to circumstances outside of the employer’s control, and that the decision is not based on performance or misconduct.

Alternatives to Layoffs

If possible, an employer should explore any available alternatives to temporary or permanent layoffs. In addition, the following options may be used in conjunction with laying off certain employees (for example, an employer chooses to lay off only those employees in non-essential positions).
Hiring Freezes

An employer may wish to institute a hiring freeze during a pandemic.

Hiring freezes should affect non-essential positions. This will allow an employer to restructure operations as needed with its current staff.

Hiring freezes may be done in conjunction with a number of other actions, including reductions in compensation and benefits and changes in flexible work arrangements.

Ensure that any managers with hiring authority understand the greater plan. Often, individual managers may seek to continue hiring even though a freeze is in effect: for example, by hiring temporary workers or interns instead.

Consult recruiting and hiring resources.
Learn how to withdraw an employment offer during a hiring freeze.

Compensation and Benefits

While a reduction in salary and benefits is not always the most popular workplace change, an employer should consider these steps in an effort to avoid a temporary or permanent layoff:

• Salary freezes;
• Bonus or pension freezes;
• Salary rollbacks; and
• Benefit decreases, such as elimination of fringe benefits or 401(k) matching.

Develop your benefits strategy during the COVID-19 pandemic.

Flexible Working Arrangements

Job Sharing

Job sharing involves changing full-time workers into part-time workers while the workers share one full-time position. Usually, a full-time position is divided equally between two job-sharers, although more than two employees may share one job.
The practice can be an efficient way to:

- Avoid a temporary or permanent layoff; and
- Comply with social-distancing recommendations by keeping employee contact to a minimum.

Job sharing also makes it possible for employees to earn some income while, for example, caring for a family member with a serious health condition, as an alternative to taking all leave unpaid. Family and Medical Leave Act (FMLA) leave can be combined with paid, part-time job sharing for temporary periods.

Job sharing works best when workers communicate well with one another regarding the status of any particular project. The practice remains a viable option for employers when providing services to clients, customers or contacts.

Train managers on the benefits of job sharing.

**Scheduling**

Reductions in hours or shifts for employees may be one way to avoid temporary layoffs.

In addition, an employer may consider scheduling employees on alternate shifts to reduce the number of employees in a workplace (while complying with social distancing recommendations or requirements).

Reduced-schedule leave is often used in conjunction with family and medical leave as an accommodation. Because of the pandemic, this need may arise more frequently for employers.

Comply with any applicable scheduling laws; and
Train supervisors on reduced-schedule leave.

**Workforce Reductions**

Employers should explore a variety of ways to reduce workforce spend while retaining the most desirable, productive employees. These options include:

- Selective, performance-based terminations that are carefully documented through performance reviews and performance improvement plans;
- Voluntary attrition programs (ask employees to voluntarily accept a layoff or early retirement, generally for a set dollar amount);
- Eliminating contract and temporary employees; and
- Identifying other employees in anticipation of a reduction in force.
Temporary Layoffs or Furloughs

Consider a temporary layoff or furlough if:

• An employee cannot work safely from home;
• It is an administrative challenge for a nonexempt, hourly employee to telecommute; or
• If business conditions otherwise warrant laying employees off temporarily.

An employee furlough generally means that employees take unpaid or partially paid time off for various periods of time. Generally, the employee will either have a scheduled furlough period or be subject to callback rights. Benefits usually continue during a furlough period, while pay is decreased or eliminated. Consider all applicable paid leave laws, however, that may apply.

A furlough is assumed to be temporary - expected to end. Sometimes, the law treats a furlough as a termination, even if it is meant to be temporary. Indefinite furloughs or furloughs that last more than 10 days may be treated as a permanent layoff for unemployment benefit or termination notice and pay purposes.

Ensure that the EEO disparate impact analysis has been conducted. When deciding whom to furlough and whom to allow to work remotely, for example, ensure that these decisions are based on legitimate business reasons. When the crisis passes, an employer may need to justify that its decisions were not based on discriminatory, retaliatory or otherwise unlawful reasons.

Beware of having a clear rule as to who will be allowed to work from home (e.g., only exempt employees may work from home) or who will be furloughed, and then making exceptions to the rule.

Keep in mind that reducing an employee’s hours could result in relief through unemployment insurance benefits for employees who cannot afford to continue to pay full-time salaries.

Notice and Pay Considerations

Employers should comply with any and all applicable notice requirements under the federal Worker Adjustment and Retraining Notification (WARN) or any state and local counterparts, which may be activated if a temporary layoff is really a permanent one.

• Even if temporarily laying off employees, an employer may need to provide termination notices under unemployment insurance laws (such as California's form).

• In addition, final pay requirements may apply.

• Because the pandemic requirements change often, ensure that the organization is following the latest guidance.

Possible Permanent Layoffs

Even if certain alternatives to layoffs are feasible for a time, an employer may need to begin laying off employees as conditions worsen. For example, increasing shelter-in-place orders and state actions banning nonessential businesses from continuing to operate may hinder an employer’s business plans.
In addition, organizations must plan for a continued business downturn, in which a permanent downsizing of the workforce could be the best alternative.

In the event of permanent layoffs or workplace closures, communicate as much as possible with the workforce during challenging times of change in order to increase retention. Observe wage and hour requirements. And, of course, follow any notice and pay considerations, which may or may not have been triggered through a furlough of a longer duration.

Fortunately, some states have provided some relief from certain statutory requirements.

Relief Available From Government Agencies

A number of government agencies at the federal, state and local level have provided additional relief for employers and employees during the COVID-19 pandemic.

The federal Department of Labor’s Employment and Training Administration announced guidance outlining state flexibilities in administering their unemployment insurance programs to assist Americans affected by the COVID-19 outbreak. Federal law allows states to pay benefits if:

- An employer temporarily ceases operations due to COVID-19, preventing employees from coming to work;
- An individual is quarantined with the expectation of returning to work after the quarantine is over; and
- An individual leaves employment due to a risk of exposure or infection or to care for a family member.

In addition, federal law does not require an employee to quit in order to receive benefits due to the impact of COVID-19.

Potential relief and tax assistance is available from federal, state and local governments and agencies. For example:

- Connecticut’s “SharedWork” program allows employers to reduce full-time employees’ hours by up to 60 percent, while the employees collect partial unemployment benefits.
- California offers a “Rapid Response” team to help avert potential mass layoffs, and the state has provided some relief from its mini-WARN requirements.
- A number of federal and state agencies have relaxed deadlines for tax payments.

For additional information on benefits available from states, consult our Coronavirus (COVID-19): Temporary Disability Insurance and Unemployment Insurance.
It is our commitment, here at XpertHR, to be here for you, your businesses and your employees, and to do everything we can to assist and serve you through these unprecedented times.

That's why our team is working constantly to bring you the latest resources and guidance as developments continue to rapidly evolve so that your business stays ahead of this pandemic.

Visit our Coronavirus Resource Center to get access to the latest resources from How Tos and FAQs to compliance guidance and more. Updates are being made almost daily.

VISIT THE CORONAVIRUS RESOURCE CENTER