

Handling Furloughs of Exempt Employees

Some employers have decided to furlough employees rather than lay them off in order to save money and jobs, and most importantly, to save talent. Employers tend to favor furloughs because this method allows employees to share the pain of a bumpy economy or business downturn while retaining their jobs and often their health insurance and other benefits. Reduced hours for everyone are usually seen as a better alternative than having some employees lose their jobs. Those on furloughs are still employed and are likely to remain with the employer once business outlook improves, while laid off workers are unemployed and looking for new jobs and employers.

What's the difference between a furlough and a layoff? A furlough is a temporary leave of absence from employment in the form of voluntary time off or mandatory time off. The time off may be in full-day or full-week increments, but the absence is generally short and the employee maintains his or her employment. A layoff may be for an indefinite period or may be a permanent termination of employment. Employers that implement temporary furloughs rather than layoffs may save on severance costs (if applicable), as well as future rehiring and retraining expenses.

Nonexempt employees are paid for each hour worked, so furloughed nonexempt employees are simply paid for fewer hours. However, organizations wishing to furlough exempt employees must be careful to structure the leaves so that the furlough is not done in a way that results in the loss of their exempt status.

The Fair Labor Standards Act (FLSA) requires that exempt employees be paid their full salaries for any workweek in which any work is performed. Some of that pay can be paid time off, as long as exempt employees receive their full salary. For example, the salary may be made up of pay for four days of work and one day of vacation pay.

Full-Week Absences

From a compliance point of view, the safest way to furlough exempt employees is to require them to take unpaid time off in full-week increments. Employers must ensure the furloughed exempt employees do not perform any work during the week. This means exempt employees may not work at home, read/respond to e-mails, or be called upon to troubleshoot problems.

The downside of this approach is that full-week absences may result in workflow problems, coverage issues, or other problems created by the unavailability of exempt employees. From the employees' point of view, it is more difficult to adjust their personal budgets when there is no pay for a full week. However, full week absences make it more likely to receive unemployment benefits, if eligible.

Reduced Hours

Some employers prefer to have employees work fewer hours each week and pay them less. The FLSA generally does not permit employers to temporarily reduce the pay of exempt employees in exchange for working fewer hours. An employer who elects to have exempt employees temporarily work four days instead of five per week cannot simply pay them 80 percent of their salaries for these weeks. Short-term changes can endanger the employees' exempt status, and place the employer at risk of a wage and hour violation/claim. For example, reducing hours (and salaries) over the summer is not acceptable because the salary change is not permanent.

However, employers wishing to reduce the pay of exempt employees to 80 percent and reducing work to a four-day workweek, for example, may be allowed to do so on a quasi-permanent basis in response to a longer-term economic situation, such as the business impact of a pandemic. However, it must be worded carefully as an adjustment to their pay so as not to jeopardize their exemption status.

Reduced Pay

An employer may need to reduce the pay of an exempt employee but keep the hours the same. This can arise when an employer discovers, through an audit, that the individual is compensated too high in comparison to the job range maximum or from an internal equity standpoint. It may also come up in a business downturn, where a permanent reduction in salary becomes necessary. Employers will need to ensure the reduction of pay does not put the employee below the required salary threshold (\$35,568 per year or \$684 weekly) for exemption status.

Other considerations include how this reduction will be communicated to the employee, documenting it for the employee and personnel file, and providing enough notice of the change (recommended minimum of 30 days, if able) so the employee can make necessary adjustments. If not communicated appropriately, it could damage the morale of a highly valued employee.

Voluntary Time Off

The FLSA permits exempt employees to take voluntary time off without pay. Employers may reduce the salary of an exempt employee who takes voluntary time off. However, this unpaid time off must be truly voluntary and cannot be caused by employer business conditions or be the result of even subtle pressure to take time off.

While employee furloughs are in many ways more beneficial to employers and employees, employers must be very careful to structure the furlough of exempt employees so that they do not endanger the exempt status of those employees.