

COVID-19 and Workforce Considerations

The following is a simplification of complex legal concepts and does not contain all applicable legal considerations or requirements. Consult legal counsel for specifics.

What is the difference between a furlough, layoff and termination?

A **furlough** involves a reduction in scheduled work and corresponding pay. Furloughs can be imposed by employers for some or all employees as an alternative to layoffs by “burden sharing” among employees and their employer.

A **layoff** is a separation of the employment with some potential of return. Employees may receive unemployment insurance (UI) benefits while laid-off. Employer can opt, but are not required, to subsidize or maintain certain benefits (e.g. health insurance or seniority).

A **termination** is a complete end to the employment relationship. Employees lose all benefits (other than continuation coverage under COBRA) but may receive UI benefits.

What are some factors employers should consider?

- Workforce needs in short term (6-12 weeks)
- Financial outlook and ability to meet payroll obligations now and for next 6-18 weeks
- Need for retention and future ability to re-hire or “staff back up”
- Federal and state assistance for businesses (e.g. FFCRA tax credits)
- Federal and state assistance for employees (e.g. UI benefits)

Option	Description	What it means for employers	What it means for employees	Considerations in execution
Remote work	Allowing or requiring employees to work remotely without substantial change in hours or employment relationship	<ul style="list-style-type: none"> • No reduction in payroll burden • Retention of workforce and manpower 	<ul style="list-style-type: none"> • Increased flexibility • Continuation of same compensation and benefits 	<ul style="list-style-type: none"> • Written policies • Adherence to overtime and mandatory break rules for hourly employees
Furlough (or reduction in work/pay)	Reduction in expected amount of work and corresponding pay without separation of employment	<ul style="list-style-type: none"> • Partial reduction in payroll burden • Retention of workforce and manpower 	<ul style="list-style-type: none"> • Still employed • Reduction in pay • Maintenance of benefits (likely) • Can be combined with partial UI benefits in some cases 	Impact on exempt status, FT vs. PT status, eligibility for benefits, and accrual of benefits
Layoff	Separation of employment but with intent to rehire if possible. Employer can elect to continue some benefits	<ul style="list-style-type: none"> • Significant reduction in payroll burden • Limited preservation of relationship with employees to hopefully expedite re-hire 	<ul style="list-style-type: none"> • Not employed • Eligible for unemployment benefits • May maintain certain benefits on limited basis if employer chooses (e.g. subsidize COBRA premiums) 	<ul style="list-style-type: none"> • Communicate any benefits assistance that will continue • COBRA notice • Provide UI information/assistance
Termination	Separation of employment without reasonably foreseeable likelihood of return	<ul style="list-style-type: none"> • Elimination of payroll burden 	<ul style="list-style-type: none"> • Not employed • Eligible for unemployment benefits 	<ul style="list-style-type: none"> • COBRA Notice • Provide UI information/assistance