

Managing Layoffs, Furloughs, and Reductions in Force

These guidelines are not intended as legal advice. Your organizational goals, purpose, and values should drive the creation of any policies or dissemination of information of this type. If you have questions or need further assistance, please call Foraker at 907-743-1200.

Please note that options and questions to consider are highlighted in yellow.

Definitions

At-will Employer

At-will means that neither the employer nor the employee has entered into a contract regarding the duration of employment. An employee is free to terminate his or her employment with the employer at any time, with or without cause. Likewise, the employer has the right to terminate employment with an employee at any time, with or without cause.

Layoff

A layoff is a temporary separation from payroll. An employee is laid off because there is not enough work for him or her to perform, or there isn't adequate funding/revenue to support on-going employment. The employer, however, believes that this condition will change and intends to recall the person when work again becomes available. 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 defined period of time as an incentive to remain available for recall.

Furlough

A furlough is considered to be an alternative to layoff. When an employer furloughs its employees, it requires them to work fewer hours or to take a certain amount of unpaid time off. For example, an employer may furlough its nonexempt employees one day a week for the remainder of the year and pay them for only 32 hours instead of their normal 40 hours each week. Another method of furlough is to require all employees to take a week or two of unpaid leave sometime during the year.

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.

An employer may require all employees to go on furlough, or it may exclude some employees who provide essential services. The theory is to implement a furlough instead of having some employees losing their jobs completely.

Reduction in Force

A reduction in force (RIF) occurs when a position is eliminated without the intention of replacing it and involves a permanent cut in headcount. A layoff may turn into a RIF or the employer may choose to immediately reduce their workforce. A RIF can be accomplished by terminating employees or by means of attrition.

When an employee is terminated pursuant to a reduction in force, it is sometimes referred to as being "rified." However, some employers use layoff as a synonym for what is actually a permanent separation. Using the term "layoff" instead of RIF may be confusing because it implies that recall is a possibility.

Provisions related to Layoffs

At the time of the layoff:

- Unemployment benefits – if an employee is subject to being laid off work, the employee may elect to file for unemployment benefits. (Name of agency) will not contest the employee's right to such a benefit.
- Benefit plans
 - Health care plans – An employee may retain his or her participation in the health care plan for a period of 30-60-90 days (Note: The number will be determined by the employer), providing that the employee arranges to pay the full premium during this period. (Or, the employee arranges to pay his or her portion of premium contributions during this period.)
 - Retirement plan – Retirement plan benefits will be distributed in accordance with the plan provisions.
 - Group Term Life Insurance (GTLI), Accidental Death & Dismemberment (AD&D), Short-term Disability, and Long-term Disability will end on the employee's last day of work.
 - Paid Time Off (PTO) – During the layoff, PTO does not accrue.

- PTO cash out – An employee may elect to cash out his or her accrued, but unused PTO on the last day worked, or the employee may elect to cash out at a later date, but no later than the last day of the month after the month of the last day of work.
 - Vacation – An employee may elect to cash out his or her accrued, but unused vacation on the last day worked, or the employee may elect to cash out at a later date, but no later than the last day of the month after the month of the last day of work. (Note: This applies if the agency has a vacation and sick leave plan, not a PTO plan.)
 - Sick leave – Sick leave will not be cashed out. (Note: This applies if the agency has a vacation and sick leave plan, not a PTO plan.)
 - Holidays – An employee is not entitled to holiday cash out for agency-recognized holidays that have not yet occurred in the remaining calendar year.
- Final Pay – The employee will be paid through his or her final day of work. Final payment will be made in accordance with Alaska statute.

Recalled Employees after a Layoff

A “recall” following a layoff is an offer of reemployment to the same or equivalent position, which occurs within 90 days of the layoff, for employees who remain eligible for employment with (name of agency). If an employee is recalled to work, the employee will have three calendar days to notify (name of agency) whether they accept the recall, and a total of seven business days to return to work from the time of notice of the recall option, unless (name of agency) waives the time limits in writing. If the employee does not respond affirmatively, or fails to return as scheduled, all recall opportunities are deemed automatically forfeited. (Note: The agency can make its own determination on the number of days related to the recall.)

Re-Employment after a Layoff

If you are re-employed, you will be processed as a new employee. Previous service will not be used to increase the PTO accrual schedule. Other benefits may be reinstated if re-employment occurs within 90 days of separation. (Note: Reinstatement depends on plan benefit designs, agency requirements, etc.)

Provisions related to Furloughs

Rule #1 – Do not furlough employees with regard to race, religion, color or national origin, age, physical or mental disability, gender, sexual orientation, marital status, changes in marital status, pregnancy, parenthood, changes in military or veteran status, genetic information, or any other

characteristic protected by law, when the reasonable demands of the position do not require distinction of the aforementioned items. Such action could be deemed as discriminatory and subject the employer to legal action.

- An employer may decide to furlough employees in a manner that is appropriate for the organization, for example:
 - Employees are required to take one-day off per week. The employee could choose to use his or her vacation or PTO time. If the employee did not have vacation or PTO time available, the time would be without pay.
 - Employees are required to take “XXX” amount of days off per month. Again, the employee could choose to use his or her vacation or PTO time. If the employee did not have vacation or PTO time available, the time would be without pay. The “XXX” number of days could be consecutive or non-consecutive.
 - *Note: The employer should not allow the employee to choose his or her furlough days. The days should be directed by the employer, or by mutual agreement.*
- An employer may decide to furlough employees in one department or division and not another for various reasons, e.g. due to different funding sources, or perhaps due to mission requirements. **But remember Rule #1 – don’t discriminate!**
- FLSA for exempt employees – To avoid an exempt employee from losing his or her exempt status, an employer cannot deduct hours from the employee’s pay in less than 8-hour increments.
 - What is permissible:
 - Absence from work for one or more full days for personal reasons, other than sickness or disability.
 - Absence from work for one or more full days due to sickness or disability if deductions made under a bona fide plan, policy, or practice of providing wage replacement benefits for these types of absences.
 - To offset any amounts received as payment for jury fees, witness fees, or military pay.
 - Penalties imposed in good faith for violating safety rules of “major significance.” Must be made in one or more full-day increments.

- Unpaid disciplinary suspension of one or more full days imposed in good faith for violations of workplace conduct rules.
 - Proportionate part of an employee's full salary may be paid for time actually worked in the first and last weeks of employment.
 - Unpaid leave taken pursuant to the Family and Medical Leave Act, partial or full day deductions allowed.
 - Taking deductions (in less than 8-hour increments or greater) from exempt employees accrued leave accounts.
- Non-exempt employees – Any work that is performed by a non-exempt employee, whether it is at work or at home, i.e. away from the office, is compensable. To ensure the employee is truly furloughed, instructions to the employee must be the “no work rule.” That includes no cell phones, no laptop use, etc.
 - Keep in mind the employee would need to have enough work hours per pay period to allow for all appropriate withholdings (taxation, benefit plan premiums, etc.) inclusive of garnishments.
 - Benefit Plans – Typically, benefit plans remain in place during a furlough. But, as noted above the employee must have enough work hours to pay for his or her share of the premiums. If they don't, insurance coverage may be cancelled.

Additional considerations related to furloughs

- **Can an employee volunteer during a furlough?** Non-exempt employees who “volunteer” during a furlough have to be paid if the work performed is similar in nature to the work that he or she performs while not on furlough. In short, don't allow employees to volunteer.
- **Can an employee take a position with another employer while on furlough?** This is up to the employer who actions the furlough. Generally, however, it is not a good idea since another employer might have conflicting work schedules, or the “other employer” might be an agency that in some way conflicts with the “furloughing agency.”
- **What happens during the furlough to an employee's accrual rates for leave, PTO, and sick time?** Generally, the accrual of leave time should not be affected during a furlough. However, if the furlough goes for an extended period of time, perhaps six months or more, the agency may want to revisit this policy. The agency could adjust the accrual based on a proportion of the employee's work schedule, i.e. four-fifths time (80%), three-quarter time (75%), one-half time, etc.

- **Will an employee receive holiday pay if his or her scheduled furlough day is on a recognized agency holiday?** This would be up to the employer. There are no set or established rules or guidelines.
- **May an employee who is furloughed file and receive unemployment benefits?** According to the Alaska Department of Labor and Workforce Development, under Total & Partial Unemployment, section 80.1.A Reduction in Hours:
 - An otherwise eligible claimant placed on reduced weekly hours or an alternate weekly schedule is eligible for benefits in any week in which the earnings are less than excess and the hours are less than full-time, provided the claimant is available to work full-time hours.