Information On Furloughs



Tough economic times often force employers to make difficult decisions to keep their businesses viable, including laying off employees to reduce payroll costs.

Employers, however, often consider alternatives to layoffs. These alternatives allow employers to retain their employees (particularly top talent and employees with institutional knowledge).

Employers understand that keeping employees on-board in anticipation of an upswing in the economy will also reduce the need to re-hire and re-train personnel – which could be costly.

Many companies institute short-term hiatuses, called furloughs, as an alternative to permanent job cuts.

Furloughs are not new but they generally were used in industries such as construction, auto workers, and seasonal industries. They are no longer limited to such use.

There are several considerations to be taken into account before instituting furloughs in an organization. A public entity (state or local governments) would need to consider issues such as a reduction in services to the public. In the case of furloughing police officers, fire fighters or emergency personnel this could impact the service provided to the public.

As either a public or private entity salary adjustments may need to be considered. Employees that are classified as non-exempt (those entitled to overtime pay) under the Fair Labor Standards Act (FLSA) FLSA you can reduce their hours which will create reduced pay with that reduction. An employee classified as an Exempt employee under FLSA cannot have heir salary based on time actually worked.

For example, an employer may want to shut down one day a week – Friday, for example – and reduce its payroll costs by 20 percent. Such a plan works well for nonexempt employees, who are paid only for the hours they actually work. The question is trickier for exempt employees, however, who potentially could lose their overtime exemption through such a plan.

Under the federal FLSA and most state laws, exempt employees must be paid the

same minimum salary ($455 per week under federal law, and higher in some states) for each pay period in which they perform any work. In other words, if the 20 percent pay cut would bring the employees' salaries below that threshold amount, it would threaten their exempt status.

Although you wouldn't reduce their pay based on the time actually worked – you could reduce their salary for the entire workweek (not under the $455). Courts have recently held that employers can make prospective reductions in exempt employees' compensation with a prospective adjustment in scheduled hours. These courts reasoned that, although the governing federal regulations preclude deductions from pay for current or past work periods, they do not preclude prospective reductions implemented for future work periods. Please check your STATE laws. Some states (CA for example) have stated that any reduction in pay associated with a reduction in hours defeats the overtime exemption.

Due to the various overtime laws from the federal and state labor codes many employers shut down for an entire week. A furlough of exempt employees for an entire workweek would not jeopardize the exemption because an exempt employee is not entitled to a weekly salary for any week in which no work is performed.

Some employers mandate the use of paid time off for exempt employees. This is acceptable unless it contradicts state laws.

As in all terminations, lay-offs, or furloughs there are several considerations. Please check with your legal counsel before implementing any furloughs or layoffs which may trigger other Federal Laws (such as the WARN act).