

Handling Furloughs of Exempt Employees

The U.S. Department of Labor explains that employers are also allowed to make a bona fide reduction of an exempt employee's salary "during a business or economic slowdown" if such a reduction is not related to the "quantity or quality of work performed" and is in place for a significant period.

Moreover, a reduction in an exempt employee's pay without a change in work hours is permitted as long as the change is prospective, without discrimination, and the minimum salary requirement is still met.

In some instances, employees may no longer be eligible for the employer's health insurance if their hours are reduced significantly, which would make them eligible for COBRA health insurance.

Introduction

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.

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 emails, 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.

Reduced Pay

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.

Voluntary Time Off

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