



# BARKLEY

RISK MANAGEMENT & INSURANCE

## EMPLOYEE LAYOFFS VS. FURLOUGHS

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DURING COVID-19

# Employee Furloughs & Layoffs During COVID-19

It is certainly a time when employers are faced with unprecedented and difficult decisions due to the Coronavirus pandemic. You may be forced to make choices right now that you never expected to be making in 2020, or ever.

In this article, we will cover the differences between furloughs and layoffs and pros & cons of each option. Of course, when making such an impactful decision, it is imperative to work with your legal counsel to determine best steps. This information is for consideration only.

## What is an Employee Furlough?

Employee furloughs are when employees are required to take mandatory time off work with no pay. Partial furloughs can include reduction in hours.

The goal of an employee furlough is to save money for the company or organization by lowering employee salary expenses while avoiding layoffs.

Examples of employee furloughs include closing a business for two weeks, reducing employee time on the job to three weeks a month instead of four, and asking employees to take two days a month off without pay.

## How Is an Employee Furlough Different from a Layoff?

In mandatory employee furloughs, employees take unpaid or partially paid time off of work for periods of time. This is a practice that an unprecedented number of employers may choose to exercise now and in the months to come due to COVID-19.

In a layoff, employees generally have no right to recall and no expectation of the job returning. In a furlough, employees are usually given a time frame—although this sometimes changes, especially during a pandemic such as COVID-19.

## What Happens to Employee Benefits?

During employee furloughs, benefits usually continue, which is one of the ways in which employee furloughs are distinguished from a layoff, where benefits generally end either on the last day of work or at the end of the month.

**Employers should refer to their [Leave of Absence policies](#)** when determining benefit continuation and/or premium payments during a furlough. We will notify you of special provisions and/or changes as we learn more from the carriers.

**Employee furloughs can have advantages and disadvantages.**

### Advantages

While not ideal, furloughs can provide a solution during a pandemic such as COVID-19:

- **Employer cost management:** Employees who are not working don't need to be paid. By reducing staff or shutting down completely for a period of time, businesses can manage costs during a pandemic.
- **Avoiding layoffs:** Even though employees are not receiving paychecks during a furlough, they have the assurance that they will have jobs in the future. This can provide some level of comfort, especially if employees know the furlough will be for only a short period of time.
- **Reduces rehiring needs:** While there's no guarantee that all furloughed employees will return, companies can be fairly confident that they'll have experienced workers ready to return as soon as the doors re-open for business.

## Disadvantages

Even a temporary closure of a business or reduction in days/hours can significantly impact both the employer and employees.

- **Losing employees:** Employers risk losing employees, especially top performers during a furlough as they would be most likely to find new employment.
- **Limited savings:** Employers save money during a furlough, but benefits may still be paid to employees during a furlough, depending on the length of the furlough and company policy. The bottom line is that expenses will be cut, but they won't be eliminated.
- **Re-opening takes time:** Even after a relatively short furlough, it will take time to get things back up and running to previous levels. Employees will need time to get back into their routines with the same efficiency, and if any employees did not return, some employees may be in different positions, and new employees will need to be hired and trained.
- **Work interrupted:** Innovation and continuous improvement can suffer when employees are furloughed. Projects that were only partially complete when the furlough began will need to be restarted, and whatever momentum employees previously had may have been lost.
- **Lower morale:** If a furlough is unexpected, employees can become insecure about the future of the company. Staff will experience greater stress and work productivity can decrease.

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## Legal Considerations - Q&A

Question:

**If we close temporarily, will employees be able to file for unemployment insurance?**

Answer:

Depending on the length of the closure, employees may be able to file for unemployment insurance. Waiting periods range from 1 – 3 weeks and are determined by state law. Be prepared to respond to requests for

verification or information from the state unemployment insurance department if you close for longer than the mandatory waiting period.

**In California, the wait period is 1 week.**

Question:

**Do any leaves apply for missing work due to COVID-19?**

Answer:

Whether Family and Medical Leave Act (FMLA) leave or a state family and medical leave or insurance program will apply to a particular case of COVID-19 will be fact-specific. Even if FMLA or state leaves do not apply, though, it is recommended that employers treat leaves related to this illness as job-protected, both for legal reasons and because it's the right thing to do. If you're in a state with a sick leave law, that will apply if the employee is sick, a family member is sick, or (in many states) when an employee is told to stay home by a public health authority.

**Can an employer require its employees to use their accrued paid time off during an employer-required furlough? And, if salaried exempt employees work during the furlough, how is pay calculated for these employees?**

Answer:

Yes, an employer can require employees to use their accrued paid time off, for example vacation, for time not worked during a furlough. If an employee has no accrued time off, the employer can even put the employee into a negative paid leave balance.

Even while furloughed, however, the Fair Labor Standards Act (FLSA) applies to employees. The FLSA mandates compliance with the salary basis requirements for salaried exempt personnel. Accordingly, if such an employee performs any work during that week, the employer may not dock the employee's pay for the absence. When a furlough is for one or more full weeks, federal law generally does not require payment to an employee.

Employers must be mindful that employees on furlough continue to accrue vacation days, sick days, and personal days, and continue to receive other benefits such as health insurance.

## Question

### **If we choose to close temporarily, do we need to pay employees?**

Answer:

It depends on the employee's classification.

Nonexempt employees only need to be paid only for actual hours worked. For these employees, you may:

1. Pay the employee for the time, even though they did not work;
2. Require they take the time off unpaid;
3. Require they use any available vacation time or paid time off (PTO);  
or
4. Allow employees to choose between taking an unpaid day or using vacation or PTO.

All four options are compliant with state and federal law. Generally, option 4 is recommended — allowing but not requiring employees to use vacation time or PTO. If your office is required to close by health authorities and your state has a sick leave law, employees may be able to use accrued paid sick leave during the closure.

Exempt employees must be paid their regular salary unless the office is closed for an entire workweek and they do **no work at all from home**. You can, however, require them to use accrued vacation or PTO during a closure if you have a policy that indicates you will do so, or if this has been your past practice. When it comes to accrued vacation or PTO, it is safest to give employees advance notice if there are situations where you will use their accrued hours whether they like it or not.

Question:

### **Can we require or allow certain groups of employees, but not others, to work from home?**

Answer:

Yes. Employers may offer different benefits or terms of employment to different groups of employees as long as the distinction is based on nondiscriminatory criteria. For instance, a telecommuting option or requirement can be based on the type of work performed, employee classification (exempt v. nonexempt), or location of the office or the employee. Employers should be able to support the business justification for allowing or requiring certain groups to telecommute.

For additional information for CA employer and employees, please refer to EDD:

**Coronavirus 2019 (COVID-19) Main Page**

[https://edd.ca.gov/about\\_edd/coronavirus-2019.htm](https://edd.ca.gov/about_edd/coronavirus-2019.htm)