



## **How to Handle Workplace Reductions Due to the Coronavirus**

### **Consider the alternatives to layoffs**

- Pay cuts,
- Asking employees to take time off or reduce their hours,
- Cut other costs, or
- Remote work.

### **Develop a plan**

Create a conscientious plan ahead of time. Work details out such as:

- How and where the layoffs will be conducted (individually, in groups, who will be present, etc.)
- Deciding who. In the case of part time vs full time, usually the part time and the contingent workforce go first.
- Performing all in one day or all at one time (when there is more than one). This will reduce the anxiety of the remaining employee, so they don't stress over being next if there is a constant flow of separations over many days. It will stop the rumor mill.
- Once an employee has been informed, they should be told to immediately leave as there are many negative consequences that could occur by allowing employees to remain at work. This would include fraudulent workers' compensation claims or EEOC claims, direct sabotaging of the organization, or projection of a poor attitude within the workplace and/or outwards towards the customers.
- Employees are entitled to collect unemployment for the period they are off (and partial unemployment for reduction in hours) if the employer initiated the layoff, but not if the employee initiated leaving. Such as staying home because they are concerned that they may catch the virus.

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## **Communicate with compassion**

The key to conducting a compassionate layoff is to focus on the message, be as honest as is reasonably possible and empathize with the difficulty of the news. Reassure this is temporary until the business improves and is no fault of the employee.

## **Avoid Adverse Action/Disparate Impact**

Review the selected employees for layoff to determine if an adverse (disparate) impact exists for a protected class. Protected classes include individuals who are members of a certain race, color, ethnicity, national origin, religion, gender, genetic information, age (40 or over), those with a disability or those who have veteran status. Any protected class that may have a disproportionately larger percentage affected by the layoff (e.g., employees reaching retirement age) will need to be evaluated and substantiated with a legitimate and supportable rational.

## **Determine if there will be any payouts**

Consider paying them through the end of the day/week to soften the blow. Many employers offer severance packages to their displaced employees, which may include leave at full or at reduced pay or with a onetime lump severance payment. Employers are not obligated to provide severance to laid-off employees under federal law, but severance agreements may lessen the chance of legal action filed on behalf of former employees. Severance packages may include salary continuation; vacation pay; continued, employer-paid period of benefits coverage; or employer-paid COBRA premiums.

Review your HR policies to determine if your employees are owed a payout of any unused PTO and review applicable state law to determine if there are requirements for payout of PTO, sick and paid leave upon termination (Florida does not require).

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**Excerpts from the DOL Fact Sheet #70: Frequently Asked Questions Regarding Furloughs and Other Reductions in Pay and Hours Worked Issues.** <https://www.dol.gov/agencies/whd/fact-sheets/70-flsa-furloughs>

The Department of Labor's (DOL) Wage and Hour Division (WHD) is responsible for administering and enforcing some of our nation's most comprehensive labor laws, including the minimum wage, overtime, recordkeeping, and youth employment provisions of the Fair Labor Standards Act (FLSA).

**1. Is it legal for an employer to reduce the wages or number of hours of an hourly employee?**

The Act does not preclude an employer from lowering an employee's hourly rate, provided the rate paid is at least the minimum wage, or from reducing the number of hours the employee is scheduled to work.

**2. In general, can an employer reduce an otherwise exempt employee's salary due to a slowdown in business?**

Reductions in the predetermined salary of an employee who is exempt under Part 541 of the Department of Labor's regulations will ordinarily cause a loss of the exemption. Such an employee must then be paid at least the federal minimum wage and overtime pay required by the FLSA, as discussed in **FAQ #1** above. In some circumstances, however, a prospective reduction in salary may not cause a loss of the exemption. See **FAQ #5** below.

FLSA section 13(a)(1) requires payment of at least \$684\* per week on a "salary" basis for those employed as exempt executive, administrative, or professional employees.

An employer must pay an exempt employee the full predetermined salary amount "free and clear" for any week in which the employee performs any work without regard to the number of days or hours worked. However, there is no requirement that the predetermined salary be paid if the employee performs no work for an entire workweek. Deductions may not be made from the

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employee's predetermined salary for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing, and able to work, deductions may not be made for time when work is not available. Salary deductions are generally not permissible if the employee works less than a full day.

**3. Can an employer reduce the leave of a salaried exempt employee?**

An employer can substitute or reduce an exempt employee's accrued leave (or run a negative leave balance) for the time an employee is absent from work, even if it is less than a full day and even if the absence is directed by the employer because of lack of work, without affecting the salary basis payment, provided that the employee still receives payment equal to the employee's predetermined salary in any week in which any work is performed even if the employee has no leave remaining.

**4. Can a salaried exempt employee volunteer to take time off of work due to lack of work?**

If the employer seeks volunteers to take time off due to insufficient work, and the exempt employee volunteers to take the day(s) off for personal reasons, other than sickness or disability, salary deductions may be made for one or more full days of missed work. The employee's decision must be completely voluntary.

**5. Can an employer make prospective reduction in pay for a salaried exempt employee due to the economic downturn?**

An employer is not prohibited from prospectively reducing the predetermined salary amount to be paid regularly to a Part 541 exempt employee during a business or economic slowdown, provided the change is bona fide and not used as a device to evade the salary basis requirements. Such a predetermined regular salary reduction, not related to the quantity or quality of work performed, will not result in loss of the exemption, as long as the employee still receives on a salary basis at least \$684\* per week.

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