



Layoffs, Furloughs and More

When there is a slowdown in your business or you are mandated to cease or significantly limit operations, what options do you have to reduce your overhead? Keep in mind, a combination of the options below may be necessary depending on the needs of your business.

It is important to ensure any decisions relating to reduction in hours or pay are based on objective business reasons and are non-discriminatory.

Furlough/Reduction in Hours¹

A furlough is considered to be an alternative to layoff. An employer may require all employees to go on furlough, or it may exclude some employees who provide essential services. Generally, the theory is to have the majority of employees share some hardship as opposed to a few employees losing their jobs completely. A furlough is distinguishable from a layoff or termination in that it is temporary and the employer expects to have a continuing working relationship with its employees.

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 a specified amount of unpaid time off. 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 California Wage Orders or the Fair Labor Standards Act (FLSA). A furlough that encompasses a full workweek is one way to accomplish this, since both the California Labor Commissioner and FLSA state that exempt employees do not have to be paid for any week in which they perform no work.

Employees will typically be eligible for Unemployment Insurance benefits through the California Employment Development Department (EDD) when furloughed or when their hours are reduced. There is also the [EDD's Work Sharing Program](#), which we discuss further, below.

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. The employer, however, believes that this condition will

¹ Source for definitions: <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-ga/pages/furloughlayoffreductioninforce.aspx>



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.

Layoffs may include plant closings and mass layoffs of a certain percentage of the work force.

The State of California, as well as a number of cities or counties, have issued shelter-in place-notices in relation to the COVID-19 pandemic. These employers may be confronted with the need to immediately close business. For information on essential businesses or positions, see the [California Stay-Home](#) requirements.

Normally, CalWARN notice requirements (75+ employees) are triggered by even temporary layoffs, while federal WARN (100+ employees) is triggered generally by layoffs that are more than six months.

However, while CalWARN still applies, Governor Newsom has issued an [executive order](#) stating that notice requirements have been relaxed to be “as soon as practicable” (instead of 60 days). More on the suspension can be found [here](#).

The notices must include all of the normal WARN Act information plus:

- (1) The basis for reducing the notification period, including reference to being due to “business circumstances that were not reasonably foreseeable as of the time of the notice would have been required.”
- (2) The following statement: “If you have lost your job or been laid off temporarily, you may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at <http://www.labor.ca.gov/coronavirus2019>.”

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. This may be confusing to the affected employee because it implies that recall is a possibility which may prevent the employee from actively seeking a new job. Communication on return rights is imperative in these situations.

[CalWARN](#) may apply.



If you are planning a closure or major layoffs as a result of the coronavirus, you can get help through the Rapid Response program. Rapid Response teams will meet with you to discuss your needs, help avert potential layoffs, and provide immediate on-site services to assist workers facing job losses. For more information, refer to the [Rapid Response Services for Businesses Fact Sheet \(DE 87144RRB\) \(PDF\)](#) or contact your local [America's Job Center of CaliforniaSM](#).

Furlough Procedures

In the instance of a temporary shutdown or reduction in hours for your workforce, a furlough can be a good option as your organization will not have to process final pay, payout PTO/vacation or provide the other termination paperwork.

If your organization has determined that a furlough is the best option, we recommend the following:

- **Is it a temporary shutdown or reduction in hours?** Determine whether you are ceasing operations completely for a short period of time, if you are reducing the hours of some employees, or a combination of both.
- **Consider Work Sharing:** Employers considering should consult programs such as the [EDD's Work Sharing Program](#), which permits employers to reduce hours for employees, while providing wage replacement through UI, without laying off workers or removing them from the payroll. Employers must apply for the Work Sharing Program by submitting the Plan Application Form DE8686. The application is lengthy and it has to be mailed to the EDD. The set up and approval time is approximately 10 days. All Work Sharing plans are approved for one year. There are administrative requirements.
- **Notify Employees.** Send out a memo explaining what dates your company is **temporarily** suspending business operations or how this furlough is going to look for your company regarding scheduling changes/ reduction in hours.
 - Communicate an end date. Note in your communication that the end date may need to be revised based on any emergency or other business related situations as circumstances develop. Failure to include an end date could trigger final pay obligations.
 - Provide the [Notice to Employee as to Change in Relationship](#) – According to the EDD, written notice must be given immediately to employees of their discharge, layoff, leave of absence, or change in employment status. The sample notice meets the minimum requirements. You may wish to prepare a duplicate employee notice and keep a copy for your records. No written notice is required if it is a voluntary quit, promotion or demotion, change in work assignment or location



(some changes in location require a WARN notice), or if work stopped due to a trade dispute.

□ **Pay while not working.**

- An exempt (salaried) employee who works at all in a workweek must be paid for that workweek. If you have to shut-down mid-week, pay exempt employees for the full week. An exempt employee who performs no work at all during a workweek may have their weekly salary reduced for that week as long as it doesn't fall below the minimum salary required for the exemption (or it may result in a loss of the exemption).
- It may be possible for an employer to reduce an exempt employee's salary and adjust schedules as a mechanism to address business disruption as long as the reduction is for a substantial period of time and not fluctuating (see "Other Considerations" below).
- Non-exempt (hourly) employees can be furloughed by the day or partial day (meaning the furlough could start mid-week or daily schedules can be reduced) as they only get paid for the hours they actually work.
- Offer employees the option of using their PTO/Vacation time. This is not required but they will get their full pay this way as opposed a percentage of pay through the unemployment insurance system.
- Employees may choose to use their California Paid Sick Leave if ill or quarantined. Find more information about California paid sick leave and COVID-19 [here](#).

□ **Unemployment Insurance and other state benefits.** Employees can file for Unemployment Insurance. The EDD web site has additional information on [total or partial unemployment benefits](#) and assistance relating to the [coronavirus](#) and [coronavirus FAQs](#).

- All employees need to be provided a copy of the UI pamphlet "For Your Benefit" at https://www.edd.ca.gov/pdf_pub_ctr/de2320.pdf.
- Depending on the circumstance State Disability Insurance or Paid Family Leave benefits may also be available (e.g. COVID-19). If SDI or PFL apply, provide these pamphlets as well. [Disability Insurance Provisions \(DE 2515\)](#); [Paid Family Leave \(DE 2511\)](#).

□ **Benefits while not working.** Consider whether you will continue health benefits or other employer contribution benefits during the furlough as well as how to obtain the employee portion (e.g., payroll deduction upon return to work, a check every other week while on furlough.). Include that information in your notice to employees.



- **Communication is key.** Have a communication plan in place for the duration of the furlough. You will want to be sure you have current phone numbers and personal e-mail addresses of your entire team so you can let employees know when and if the recall date changes, or any other policy updates. Also, if you change the original recall date, inform employees how much time they will have to return to work once recalled.

Other Considerations

Looking at the big picture, there are other considerations you can take to control costs and allow your company to adjust to difficult circumstances.

1. Analyze your workforce.

Review workload in light of the circumstances and determine if you have on-call or temporary workers that you can let go before impacting your regular employees.

2. Reduction in Hours and Corresponding Reduction in Pay

Consider shortening the work week or work day so employees' schedules can be reduced. For non-exempt employees, they will only be paid for hours worked – just be sure they are earning at least [minimum wage](#) and receive an updated [Wage Theft Notice](#). If the workload and job expectations, including availability for clients, is reduced for exempt employees their salary can be reduced as well so long as it is not a fluctuating reduction in salary and meets the [California minimum salary for exempt employees](#). The general rule is that employers cannot fluctuate exempt employees' salaries based on volume of work (meaning, employers cannot adjust exempt employees' salary from week to week). But it may be possible to reduce exempt employees' salaries prospectively, tied to a specific reason, if a business must cut operations for a period of time. For example, if a business will open only four days per week instead of five for three months while the pandemic endures, the law may permit a reduction in salary. Indeed, if the employer determines after 3 weeks that it must cut hours of operation further, an additional adjustment may be made as well. However, this must be a set reduction for a specific period and not vary from week to week. *Use caution when reducing exempt employee pay – discuss with counsel or an HR Advisor.*

- Example: During the crisis, you will be paid 4/5 your base salary. Your work schedule is Monday through Thursday, offices are closed on Friday- Sunday.

Employees should be given advance notice of any change in pay.

Employees may qualify for [partial unemployment benefits](#) if their hours and wages are reduced due to lack of work.



4. **Modify or Remove Benefits and Perks**

If you have open enrollment coming up, ask employees to pay a larger portion of their benefit premiums, stop covering family members, dial back retirement contributions (within plan rules), stop the free lunches, coffee, etc. to cut costs. Cutting back is better than laying off.

5. **Offer Vacation Time Use**

Employees may want to spend extra time with their families, complete home projects, take that online course they've been talking about. Now might be the perfect time for them to use their accrued vacation time or, if they don't have the time accrued, using unpaid time off. Remember, exempt employees must perform no work in a workweek if they are taking unpaid time.

6. **Incentivize Employees to Leave (and Ask for Volunteers)**

Many employees are working with a lot of fear and want to be at home. You can ask for volunteers for layoff so they can collect unemployment while waiting out the virus and feeling safe before laying off others who want to work.

Other options include asking employees to take voluntary layoffs, offer a buyout to end the employment relationship, or offer early retirement to eligible employees.

7. **Payroll Tax Assistance**

Employers experiencing a hardship as a result of COVID-19 may request up to a 60-day extension of time from the EDD to file their state payroll reports and/or deposit state payroll taxes without penalty or interest. A written request for extension must be received within 60 days from the original delinquent date of the payment or return.

For questions, employers may call the [EDD Taxpayer Assistance Center](#).

- Toll-free from the U.S. or Canada: 1-888-745-3886
- Hearing impaired (TTY): 1-800-547-9565
- Outside the U.S. or Canada: 1-916-464-3502