Furloughs: An Option for Employers to Save Money

When a company is struggling financially, layoffs may seem like the best or only solution. However, layoffs come with disadvantages, such as reduced morale and the loss of talented workers.

As an alternative to traditional layoffs, some companies opt to reduce worker hours or institute mandatory furloughs as a way to retain their top talent in preparation for a financial recovery or economic upswing. This eliminates the hassle of having to hire and train new employees later on, which could be even more costly in the long run.

Reducing Work Hours
One viable option for saving money when times are tough is to reduce employee work hours, either on a daily or weekly basis, such as keeping the office open only four days per week instead of five. This solution works well for those employees who are classified as nonexempt (paid only for hours worked) from overtime pay under the Fair Labor Standards Act (FLSA). However, the legalities of payroll become a bit trickier with regard to exempt employees, who could potentially lose their overtime exemptions with a reduced work week. Check with legal counsel before reducing the hours of exempt employees.

Furloughs
Another option for employers to save money on payroll costs is to institute mandatory furloughs (employees do not report to work for an entire week or more). This is often far less complicated under FLSA as compared to reducing work hours. While less complicated, it is still best to check with your legal counsel before implementing a furlough.

Furlough Considerations:
• Employees cannot work at all during the furlough. If exempt employees check email, voicemail or do any other even minimal tasks, then employers are obligated to pay their full salary. To avoid this, instruct employees not to partake in any form of work while on a furlough.
• Employees may use vacation time. While on a furlough, employees may want to use vacation or paid time off (PTO) to receive compensation to supplement their income. Some employers may want to require employees to use PTO during the furlough, to reduce the company’s liability. Employers must be aware of state laws that may restrict this option, as many states do not permit employers to require use of accrued time off while on a furlough.
• Voluntary use of time off is the safest route for employers.
• Employers must provide advanced notice to employees. Regardless of whether employers reduce work hours or require mandatory furloughs, they must provide advanced notice to employees of these changes, even if your organization does not have all the information right away. Many states have laws regarding the stipulations of the notice. In addition, furloughs for longer periods of time may be affected by the federal Worker Adjustment and Retraining Notification Act (WARN Act) and some states’ WARN laws.
• Furloughs may impact collective bargaining agreements. Some provisions of collective bargaining agreements may restrict employers from implementing a furlough policy, especially if there are no provisions regarding furloughs in the agreements. As a result, employers may need to renegotiate an
agreement with the union before implementing a furlough.

• **Employers need to consider the impact of furloughs on 401(k) plans.** If employers are implementing furloughs that affect more than a week or two per year and/or affect hourly employees, then they may also impact employee 401(k) plans.

• **Provide flexibility during furloughs, if possible.** If management agrees, allow employees to select when to take their furloughs to accommodate vacations, child care needs and other obligations. This will make the furlough seem less like a burden for employees and more like a much-needed break from the daily grind.

• **Spread the income loss.** Consult your employment attorney to determine if you can spread the income lost during a furlough over several pay periods.

• **Highlight the benefit of taking a “vacation.”** Start an employee newsletter in which individuals can share how they plan to spend their furlough. This will show disgruntled employees that they can potentially enjoy some time away from work, even though their wallets may be a bit thinner.

**Potential Legal Concerns:**
The cost savings of a furlough may be negated by the high costs of dealing with legal woes. Avoid the following problems by having your labor attorney review your furlough policy before implementing it:

• **Wage and Hour Concerns:** Maintain compliance with all salary requirements for exempt employees. If the furlough lasts for one or more full weeks, you are not obligated to pay a predetermined weekly salary. If the furlough lasts less than one week and an exempt employee performs any work during the week, you must pay a full week’s salary to the employee. Consider furloughing employees for a full week to avoid these hassles, or reduce the salaries of exempt employees who do not have compensation contracts.

• **Discrimination Concerns:** Do not discriminate against employees when selecting individuals for a furlough. Examine your proposal selections before implementing the program to ensure they do not unnecessarily impact a protected class of employees.

• **WARN Act Compliance:** If you expect your furlough to exceed six months’ time, you must issue a notice under the WARN Act. Also, if you are furloughing a significant number of employees, this may trigger WARN Act liability.

• **Labor Relations Concerns:** If you want to furlough employees in a union and furloughs are not part of your current labor agreement, you will need to reassess your management rights. If you do not have the right to implement a furlough, you will have to bargain with the union to do so. You must obtain consent to implement a furlough with union members if it contradicts the language in your agreement.

• **Benefits Concerns:** Furloughs may make 401(k) nondiscrimination testing more difficult because lower paid employees may reduce their contributions if their salaries are decreased. Furloughs may also affect pension plan eligibility, matching contributions and health care coverage.

**Selecting Employees for a Furlough**
Employers use a wide variety of determinants to decide which employees will be required to take a furlough. Some opt for company-wide furloughs, while others select certain departments based on their impact on the company’s business operations. Once employees are identified, employers must apply selection standards uniformly. In addition, when selecting employees for a furlough, employers may look to performance reviews and disciplinary issues to determine who is more valuable than others to the organization. While many people may have similar skill sets, only a few may have high performance marks and no disciplinary action on their records. Thus, these individuals would be more beneficial to keep on the payroll while requiring others to take a furlough.

Beyond these options, selecting employees for a furlough based on seniority is also a viable choice. Regardless of the selection process, it is best to have the policy reviewed by legal counsel.