April 9, 2020

Considerations for Reducing Hours or Terminating Employment

During this time of uncertainty, consider your options for a reduction of hours or termination of employment.

Furlough

A furlough is an alternative to layoff. When an employer furloughs its employees, it requires them to work fewer hours or take a certain amount of unpaid time off. For example, an employer may furlough its nonexempt employees one day a week (or one week a month, etc.) for a period and pay them at a reduced rate instead of their normal 40 hours each week. A furloughed employee may qualify for unemployment on the hours lost.

Another method of furlough is to require all employees to take a week or two of unpaid leave sometime over an identified period. 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 the Fair Labor Standards Act (FLSA). A furlough that encompasses a full workweek is one way to accomplish this, since the FLSA states that exempt employees do not have to be paid for any week in which they perform no work.

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.

Under the furlough method, your employees are still employed by the company and still receive some amount or even all of their previous benefits. They will be forbidden to do any work on the days when they are furloughed. If a salaried employee does any work while on furlough, the employer must pay them the equivalent of their salary for the entire day. If an hourly employee works on furlough, employer must pay them their hourly rate for the time worked. Also, under this method, the employee has the expectation that they will return to their normal schedule when things improve.

Layoff

A layoff is a separation of employment from the employer. 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 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 as an incentive to remain available for recall.

If any employee is laid off prior to April 2, they would be ineligible for the benefits associated with H.R. 6201, however they would be entitled to unemployment.

Termination/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 "riffed." 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.