

Frequently Asked Questions

Staffing Reductions During COVID-19

This is general information to guide decision making. Consult an employment attorney for specific guidance based on your situation, including WARN act requirements.

1. What is a furlough?

A furlough is a mandatory, temporary, unpaid leave. Employees who are furloughed are still active employees **and** they are eligible for unemployment. The goal is employees would return to their jobs when business improves, and become active, working employees again.

2. What are the benefits of a furlough?

Furloughs keep the employment relationship active. It is a way to reduce labor costs without adding new costs like severance and outplacement services. It also reduces future recruiting and training costs, as you would return employees to their jobs.

3. Can I furlough an exempt employee?

Generally, yes. However, you need to be careful as the furlough must be for full weeks of time, and the employee cannot perform any work during this period. For exempt employees under the FLSA, if they perform any work during the week, you must pay their full weekly salary.

4. Can employees stay on benefits if they are furloughed?

Most insurance carriers are allowing employees to stay on benefits through the end of May if they are temporarily furloughed. You will need to check with your insurance carrier to confirm what allowances they are providing.

5. What is a layoff?

A layoff is a full separation from the company. The employee is terminated and eligible for COBRA.

6. How do I select employees for a layoff (or furlough)?

It's important to follow a consistent decision-making process when determining who will be impacted by a layoff (or furlough). These types of staffing reductions are based on business needs and economic conditions, and generally not individual performance.

- First, check collective bargaining agreements or other existing policies and practices (such as last in, first out).
- If there aren't existing agreements, policies or practices, here is an example of a decision-making process:
 - Reduce any jobs that are no longer needed based on their essential functions
 - Such as dining room staff in a restaurant due to carry-out order mandate
 - Reduce any individuals (in jobs with multiple incumbents that are no longer needed) with documented performance issues (discipline or below expectations review ratings)
 - Such as, you need to reduce five out of ten field service technicians, and two field service technicians are on a final written performance warning. Two of your five selected technicians could be the individuals on the documented performance warning.
 - Use a consistent criteria for the remaining decisions, such as seniority (last in, first out).
- Document your process and consult an employment attorney for specific guidance.

7. Can I cut hours and pay?

For hourly employees, yes, you may reduce schedules and working hours, so they would be paid less on a weekly basis. They would likely be eligible for unemployment for the difference in their typical weekly hours/pay and the new, lesser amount.

For exempt employees (like a furlough), if any work is performed in the week, you must pay the full weekly salary. Also, you cannot reduce the salary of an exempt employee below the weekly threshold (federal is \$684). See the Department of Labor specific FLSA FAQs on this topic [here](#).

8. Can I reduce an exempt employee's schedule and pay going forward?

You can truly reduce a schedule going forward, but it should not be an intermittent reduction.

- Employers may reduce an exempt employee's work assignments and compensation on a prospective, forward-looking basis, as long as the exempt employee's guaranteed salary meets minimum threshold requirements (federal is \$684 a week).
- For example, an employer may notify an employee as follows: "Starting in the next pay period, your job is going to change temporarily in light of coronavirus. You will work a reduced schedule and your pay will be 75 percent of your prior salary."

9. Can I reduce an exempt employee's pay due to business needs and not change their schedule?

Yes, but it still needs to be above the minimum threshold (federal is \$684 a week).

Here is an example communication:

- In light of the recent economic downturn, we are looking for ways to identify cost-saving measures other than permanent employment terminations. Starting with the next pay period, the company will be reducing pay for certain exempt employees. Starting on the pay period that begins on March __, 2020, your pay will be reduced by 25 percent.
- We know that this is a difficult time for workers and families alike, and we are hopeful that this cost-cutting measure will prove to be short-lived and manageable in a way that allows our business to continue to serve our customers, and which still permits our workers to maintain an income stream. We are grateful for the services you provide, and we are hopeful that if we can all work together through the next few months, we will see normal business operations resume, along with normal (unreduced) paychecks for our employees.

Source: [Ogletree Deakins Article – You Need to Cut Costs, But Don't Want a RIF](#)

10. If an employee's hours are reduced, are they allowed to stay on benefits?

If an employer has 50 or more employees or otherwise subject to the ACA's employer mandate, they are allowed to stay on benefits through the end of the plan year (the ACA calls this the stability period) even if hours are reduced. An employer can allow an EE to drop coverage, but they cannot require it. This is for medical only; other benefits are not subject to the ACA's rules.

11. If an employee has not been eligible for health insurance subsidies on the exchange, but now might be based upon income loss, how can they learn more about this and what is the process to “apply”?

This is likely affecting a number of employees now on reduced incomes. Healthcare.gov says that a change in income could be a qualifying event by saying “Changes in your income that affect the coverage you qualify for.” An individual who wants to see if they may now qualify for a subsidized marketplace plan can use [this link](#) to answer the questions if they have experienced an event that may qualify for a special enrollment period.

This would also be useful for someone who was already on a non-subsidized plan to see if they may now be eligible for a subsidy based on the reduced income. In either situation the link above would allow someone to either start a new application or amend an existing one to see what they may qualify for. It should also alert someone if they now qualify for Medicaid or CHIP and if so direct the individual to those resources as well.

12. How does unemployment work?

Please see specific FAQs about unemployment [here](#). To find out more about employment and to file a claim, visit [Indiana Website to File an Unemployment Claim](#).

- [Indiana Dept of Workforce Development EMPLOYER FAQ](#)
- [Indiana Dept of Workforce Development EMPLOYEE FAQ](#)
- [Indiana Department of Workforce Development UI Claimant Handbook](#)