



ATTORNEYS AT LAW



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# FURLOUGH VERSUS LAYOFF

What's the difference?



- Furlough – A short term leave of absence or temporary layoff.
- Lay-off – typically suggests that its permanent.



# UNEMPLOYMENT

- Are employees eligible for unemployment if I put them on a furlough?



# BENEFITS

- What benefits am I required to offer if I place an employee on furlough?



# LAYOFF/FURLOUGH DOS AND DON'TS

- Don't be discriminatory in how you choose employees for a furlough or layoff.
- This is not the time to say, "Oh by the way, I've been meaning to talk to you about your performance. . . ."



# WHAT SHOULD YOU SAY?

- “We have made the difficult decision to place you on furlough.
- You are eligible for the following benefits . . .
- We encourage you to apply for unemployment. Here is the link . . .
- New notice to employees required by Government.



# WAGE AND HOUR ISSUES

## From the DOL

- If your business has a shortage of workers and is looking to “volunteers” to help out, be aware that the FLSA has stringent requirements with respect to the use of volunteers.
- In general, covered workers working for private, for-profit employers have to be paid at least the minimum wage and cannot volunteer their services.





# PAYMENT OF HOURLY EMPLOYEES

- Hourly employees must be paid minimum wage and overtime



## PAYMENT OF EXEMPT SALARIED EMPLOYEES

- The FLSA requires payment of at least \$684 per week on a "salary" basis for those employed as an exempt employee.
- A salary is a predetermined amount constituting all or part of the employee's compensation, which is not subject to reduction because of variations in the quality or quantity of the work performed.



- 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.
- Deductions may not be made from the 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.
- All the rules above are subject to the general rule: There is no requirement that the predetermined salary be paid if the employee performs no work for an entire workweek.



# WHAT CAN I DO TO REDUCE COSTS?

- Full Week absences
  - One week on, one week off
- Reduced Pay - An employer may need to reduce the pay of an exempt employee but keep the hours the same
- Voluntary reductions in hours – an employer may seek volunteers to take time off due to lack of work.
  - The employee must volunteer to take the time and it must truly be completely voluntary.



## PROSPECTIVE REDUCTIONS IN PAY FOR A SALARIED EXEMPT EMPLOYEE DUE TO COVID-19

- An employer is not prohibited from **prospectively** reducing the predetermined salary amount to be paid regularly exempt employee during a business or economic slowdown.
- The reduction must be 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.



- But, deductions from predetermined pay occasioned by day-to-day or week- to-week determinations of the operating requirements of the business constitute impermissible deductions from the predetermined salary and would result in loss of the exemption.
- The difference is that the first instance involves a prospective reduction in the predetermined pay to reflect the long term business needs, rather than a short-term, day-to-day or week-to-week deduction from the fixed salary for absences from scheduled work occasioned by the employer or its business operations.



# QUESTIONS?

## Thank you.