# Explore Furlough and Temporary Layoff Options Checklist

## When to Use

An employer may use this checklist to inform decisions regarding furloughs and temporary layoffs.

* A furlough is temporary in nature and often involves a reduction of hours and pay, while employees remain on the payroll and may continue to receive benefits.
* A layoff involves a termination of the employment relationship, which may be temporary in nature.

Not all items on this checklist may be applicable to every downsizing situation because of an organization's particular business circumstances or because of federal, state or local law requirements.

Employers should complete the following steps in sequential order.

## Customizable Checklist

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* Prioritize Employee Retention
* Make decisions related to downsizing and business downturns with a view to retain engaged employees.
* Explore Alternatives to Layoffs
* Consider instituting a hiring freeze.
  + Focus on non-essential positions.
  + Ensure that any managers with hiring authority abide by the freeze.
  + Withdraw any outstanding employment offers.
* Consider cuts to compensation and benefits, such as:
  + Salary freezes;
  + Bonus or pension freezes;
  + Salary rollbacks; and
  + Benefit decreases, such as elimination of fringe benefits or 401(k) matching.
* Consider flexible working arrangements.
  + Consider job-sharing arrangements.
  + Plan for different scheduling practices.
    - Schedule employees on alternating shifts.
    - Comply with any applicable scheduling laws.
    - Train supervisors on reduced-schedule leave.
* Consider Workforce Reductions in Advance of Downsizing
* Conduct selective, performance-based terminations that are carefully documented through performance reviews and performance improvement plans.
* Institute voluntary attrition programs (i.e., ask employees to voluntarily accept a layoff or early retirement, generally for a set dollar amount).
* Eliminate contract and temporary employees.
* Devise a Plan for Furloughs or Temporary Layoffs
* Consider a temporary layoff or furlough if business conditions warrant a temporary measure.
* Review public, private and collective bargaining agreements and any provisions that could affect decisions on compensation, benefits and employee retention.
  + Consider whether to waive any provisions of restrictive covenants.
  + Note any recall/callback rights under collective bargaining agreements.
* Consider whether to continue benefits and how to address eligibility for them.
  + Determine how to handle payment of the employee's portion of benefits during the period of furlough.
  + Review requirements and policy provisions with respect to group retirement and benefits plans.
  + Consider requirements under the Affordable Care Act (ACA), health care continuation laws (i.e., federal Consolidated Omnibus Budget Reconciliation Act (COBRA) and state counterparts) and other laws regulating benefits.
* Determine when compensation and benefits will end.
  + Consider any paid leave that may apply at the federal, state or local level.
  + Consider applicable federal, state and local wage and hour laws, particularly with respect to employee furloughs.
* Select employees for layoff.
  + Consider essential functions and/or positions.
  + Conduct an EEO disparate-impact analysis.
* Consider the process for the return of employer property.
* Address employee access to systems and locations.
* Decide on the timing of furloughs and/or layoffs.
* Decide on a communications plan for furloughs and/or layoffs.
* Execute Plan for Furloughs or Temporary Layoffs
* Communicate downsizing decisions.
  + Communicate the decision in-person, if possible.
  + Provide written information regarding the furlough or layoff package.
  + Explain that the step must be taken only due to circumstances outside of the employer's control, and that the decision is not based on performance or misconduct.
  + Provide:
    - The date of termination.
    - A statement regarding unauthorized work (i.e., employees may not perform work during furlough period).
    - Details on severance availability (if applicable), and compensation and benefits information.
    - If applicable, include a return date.
    - The name of a contact person or HR information for any questions or assistance.
* Secure severance releases, if offering severance payments.
  + Ensure all releases are knowing and voluntary.
  + Comply with Older Workers Benefits Protection Act (OWBPA) requirements, if applicable.
* Comply with notice and reporting requirements.
  + Provide federal Worker Adjustment and Retraining Notification (WARN) Act notices and any related state notices, if applicable (and note that indefinite or longer-term furloughs may trigger these requirements).
  + Provide any required benefits notices, depending on the jurisdiction and circumstances (e.g., unemployment notices and COBRA continuation information).
* Provide required leave benefits.
* Ensure proper compensation of employees.
  + Follow final pay requirements and inform employees of their last day of pay.
  + Comply with paid time off (PTO), vacation or sick pay requirements, if applicable.
* Arrange for the return of employer property and restriction of access to employer facilities, systems and devices.
* Remind employees of any applicable covenants, contracts or agreements (e.g., restrictions under a noncompete agreement).
* Restructure Business with Essential Employees
* Focus on morale.
* Communicate the business plan.
* Communicate any changes in internal policies and procedures.
* Reassign duties, if needed.

## Tips

### Paid time off (PTO), vacation and/or sick pay.

Include information on the payment of unused PTO/vacation/sick pay if applicable under state law or internal policy.

### Employee benefits

Include information on 401(k)s and other benefits if required by federal, state and local law and in compliance with the terms and conditions of the employer's various benefit plans, policies and agreements. New York, for example, requires specific reference to what the status of all employee benefits will be upon separation (not just health care insurance).

### Health care continuation

Include information on the organization's decision with respect to health care continuation and include any required notices. Certain events trigger Consolidated Omnibus Budget Reconciliation Act (COBRA) protections (e.g., a reduction of hours and loss of benefits), so ensure that the correct information is being provided to affected employees.

### Unemployment benefits forms

Many states require that specific unemployment benefits forms be provided.

### Notice and reporting requirements

When complying with notice and reporting requirements, note that a number of notice and reporting requirements may be relaxed due to a regional or national emergency (e.g., the coronavirus (COVID-19) pandemic).

## Warnings

Failure to follow applicable compliance provisions could result in civil fines and penalties, and prompt employee administrative and court claims.

The Older Workers Benefits Protection Act (OWBPA) may be triggered by a layoff of two or more employees. The Act requires a notice and specific procedural requirements for affected employees.

Health care insurance companies have different policies on eligibility for continued health care benefits for employees who are no longer on payroll. It is critical to consult with your insurance company prior to offering to provide healthcare coverage for employees who are no longer working or being paid. In addition, keep in mind that failure to provide insurance under certain circumstances may expose the employer to penalties under the Affordable Care Act (ACA).

Review state laws closely or consult local counsel if you are not familiar with all of the requirements for separating employees in a particular jurisdiction.

* Many states have very specific requirements regarding what must be provided to employees at separation. Some states' termination notice requirements (e.g., unemployment benefits information) are triggered by temporary or short-term furloughs or layoffs. Worker Adjustment and Retraining Notification (WARN) Act notice requirements are not typically triggered for furloughs lasting less than six months, but state protections vary.
* Many states also have strict penalties for not properly paying employees, including damage multipliers and attorney fee awards. In most instances, it is best to err on the side of caution in terms of final payment.
* In addition to the federal COBRA law, a majority of states have state health care continuation coverage (mini-COBRA) laws that vary among one another and from the federal law with respect to requirements such as covered employers, employee eligibility, qualifying events, length of coverage and reasons for early termination.