California Employers Association™

FACT SHEET

Terminating Multiple Employees

While most terminations involve a single employee due to policy violations and/or performance concerns, sometimes employers need to terminate a group of employees, whether due to organizational restructuring, budgetary issues, or other reasons.

If you are ending the employment relationship or mandating an unpaid leave of absence for *multiple employees*, you may have additional considerations and legal obligations.

First, it is important to understand the distinction between a "furlough," "layoff," and "reduction in force (RIF)." Although in everyday conversation these terms are often used interchangeably, there are differences with legal implications.

- A "**furlough/reduction in hours**" refers to when employees are required to work fewer hours or to take a certain amount of unpaid time off on a temporary basis, with the expectation that the work relationship will continue. The employees are not separated from payroll.

- A "**layoff**" refers to a cessation of employment for a defined group of employees; however, the employer intends to recall employees if/when work again becomes available. Sometimes, an employer will choose to maintain benefit coverage for a defined period of time, as an incentive to remain available for recall.

- A "**reduction in force (RIF)**" refers to when positions or departments are eliminated without the intention of replacement and involves a permanent cut in headcount.

For more information, refer to our Layoffs, Furloughs and More Fact Sheet.

When do final pay requirements apply?

It is important to determine in these circumstances when final pay requirements are triggered. Note that if the final paycheck is untimely or does not include all wages and vacation owed, the employee is entitled to waiting time penalties. These penalties are calculated based on the employee's average daily wage for each day the employer is late, up to a maximum of 30 days.

Final pay always applies in the case of a layoff or reduction in force, as this ends the employment relationship. Moreover, in some cases, the California Division of Labor Standards Enforcement (DLSE) will consider a furlough to be a "termination" for final pay purposes.

Based on DLSE opinion letters here and here, if your furlough extends beyond 10 days or beyond the pay period in which the furlough began, you should treat it as a termination for final pay requirements. In this case, it is recommended to pay the furloughed employee all of their wages, including accrued vacation, in accordance with the final pay requirements above, by their **last day of work** before the furlough begins.

What about advance notice requirements?

The federal Worker Adjustment and Retraining Notification Act (WARN Act) and California's version (Cal-WARN) require advance notice for certain worksite closures, mass layoffs, etc., as defined. Both of these acts require employers to provide at least 60 calendar days' advance **written** notice for a triggering event. Penalties for failing to give proper notice can include up to 60 days' back pay per employee.

In general, federal WARN covers employers with at least 100 or more employees, although some part-time employees are not counted for coverage purposes. Cal-WARN covers any industrial or commercial facility that employs or has employed 75 or more persons within the preceding 12 months.

California's version is broader in scope and applies to more employers. However, employers must ensure compliance with both the federal and California version, as applicable.

Notice requirements may be triggered by a:

- **Plant Closing** (federal law)
- **Mass Layoff** (federal and state law)
- **Termination** (state law)
- **Relocation** (state law)

For definitions, and a comparison of the two laws, refer to the EDD's website here. Employers should consider consulting legal counsel before taking action.

What Else Should We Consider?

In most cases, there are no specific laws indicating how to select workers for a furlough, layoff, etc. However, employers should be mindful to avoid unlawful discrimination or retaliation and/or the appearance of it. For example, it would be unlawful to select an employee for a layoff because they belong in a protected class.

Make sure to document your criteria for selection and show the action was carried out in an objective manner (e.g., by seniority, job position, etc.). Consult legal counsel if you believe your intended furlough, layoff etc. will result in a protected group being disproportionately impacted (e.g., workers over 40, women, a certain race, etc.).

Further, under Labor Code section 1197.5, if an employer terminates an employee within 90 days of the employee taking protected action under the Labor Code, there is a rebuttable presumption the employer engaged in unlawful retaliation.