



**IMPORTANT INFORMATION FOR MEMBERS OF TSO, INC.
EMPLOYER ISSUES & OTHER CONSIDERATIONS IN LIGHT OF COVID-19**

March 25, 2020

This memorandum is being issued as a follow up to the webinar held on March 24, 2020. Specifically, this memorandum discusses employment issues and practical considerations in light of 2019 coronavirus disease (“COVID-19”). The circumstances surrounding COVID-19 are constantly changing on a daily basis. The information provided herein is based on the current information known as of the date of this memorandum.

PART ONE: Furlough versus Layoff

- **What is the difference between a furlough vs. layoff?**

	FURLOUGH	LAYOFF
What is it?	Mandatory suspension from work without pay	Termination of employment
Does the employee stop working?	Yes, for periods of the furlough (furloughs can be taken on a 100% basis or be a reduction in work time)	Yes
How long does it last?	Temporary (can last as long or as short as necessary) However, different rules apply for employees who ARE NOT exempt from overtime laws (ex. hourly) versus those who ARE exempt (ex. salary) – see below for further details	Can be permanent or temporary
Is the person still considered my employee?	Yes	No
Can they file for unemployment?	Yes	Yes
Do insurance benefits continue?	Maybe – some insurance benefits plans will permit the employee to be covered during a furlough period, while other	No – but you can pay all or part of the employees’ COBRA premiums (if such payments are made directly

	plans may require the employee to be actively working to receive benefits; check with your plan provider to see how a furlough may affect your employees' benefits	to the insurance company, they are nontaxable to the employee and excluded from wages)
Easy transition back to work?	Yes, furloughed employees have an expectation that work will resume, which makes the transition easier	No, the person would need to be re-hired in order to come back to work
When should it be used?	Furloughs are appropriate when you need to cut down payroll costs but want to keep your employee on staff	While layoffs also cut payroll costs, they give more of a sense of finality, and even if the layoff is intended to be temporary, it can cause some employees to look for work elsewhere

- **What rules apply for furloughing salary vs. hourly employees? What steps do I need to follow?**

For hourly employees, furloughs can be by the day. For example, you may reduce a worker to working one or two days in a week and only pay them for the hours worked.

For salary employees, furloughs must be by the week. For example, you may schedule a salary employee to work every other week and only pay them for the weeks worked. You may not reduce a salary employee's hours and pay them for a partial week. Be very cautious with furloughs for salary employees. If they work for even a few minutes (answering an email or call), they are entitled to their salary for the entire week. Otherwise, you risk losing the exemption in the future. For similar reasons, we do not advise converting salary employees over to hourly.

- **What is the best plan for bringing my employees back on board after this pandemic subsides?**

The method that provides for the easiest transition is a furlough rather than a layoff. Employees have the expectation of returning to work and are be entitled to unemployment benefits in the interim. Keep in mind, "furlough" can be in the form of either 100% stopping work (ex. shutting down your office completely) or a reduction in hours (ex. reducing office hours and only paying for those hours worked).

PART TWO: Unemployment Issues

- **What actions, if I decide to take them, would negatively impact my employees with respect to unemployment? Are there any legal work-arounds I can use to avoid these impacts?**

There are very few actions an employer can take to negatively impact an employee's right to obtain unemployment. In general, however, employers should be on the lookout for and respond promptly to any requests for information from the Texas Workforce Commission.

- **Which doctors can apply for unemployment? Does it matter how my practice is legally organized (PA, PLLC, Sole Proprietorship, Corporation)?**

Eligibility for unemployment is not based on profession, but rather your working status. If you are operating as self-employed or an independent contractor (i.e. a 1099 worker), you are not considered an employee and are not eligible for unemployment, regardless of the organization of the business. If you are an employee (i.e. a W-2 employee) and meet the other eligibility requirements (which can be found here <https://twc.texas.gov/jobseekers/eligibility-benefit-amounts>), then you can apply for unemployment in the event of a reduction in work or layoff.

PART THREE: Practical Considerations

- **Should I stay open? Am I limited to only seeing emergency patients?**

Many healthcare professionals are under the impression that they must shut down their offices and/or only see emergency patients pursuant to Gov. Abbott's Executive Order No. GA-09. However, the purpose of this Order is to conserve hospital capacity & personal protective equipment needed to cope with COVID-19. There is an express exception in the Order which allows for the continuation of medical procedures which, if performed, would not deplete such resources. Many local shelter-in-place orders also have exceptions for "Essential Businesses," which includes healthcare providers.

Optometrists are healthcare providers. To the extent the eye care services you provide do not deplete hospital capacity or personal protective equipment needed by those on the front lines, you have the option to remain open to see patients if it is feasible to do so. Keep in mind, however, you are required to follow the social distancing guidelines to the maximum extent possible (i.e., no more than 10 people in the office at a time, having hand-washing stations available for employees and patients, regularly cleaning all surfaces that are commonly touched, etc.).

- **What is the best use of time while in the midst of this pandemic if my office is shut down?**

First and foremost, stay in contact with your patients. Ensure your office phone is still being answered, either in person or via call forwarding to your phone. Be sure patients are aware of reduced hours and let them know how you are handling pickup/delivery of eyewear products.

Next, communicate with your vendors, landlords, and other creditors to see if you can postpone/defer/reduce payments to help cash flow.

You may also use this time to market to patients. Now more than ever, people are concerned about their health. Let patients know what you are doing to help prevent the spread of the virus or inform them of any eye-related symptoms to look out for with respect to COVID-19. If you've been thinking about posting a video or blog, now is the perfect time.

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