

MPCC Roundtable
July 7, 2020 TPO Update



For questions or additional information regarding the below update, please contact Michaelle Stanford, PHR-ca, M.A. at michaelles@tpohr.com. **TPO Note:** *As a reminder, these updates are provided for informational purposes only. For unique situations to your business, please consult with your Human Resource provider or employment expert.*

Back to “Square One” ... My business has again closed.

- 1) ***Do I place them on another temporary leave of absence, furlough, reduce hours or will I need to lay employees off?*** That is a difficult decision that all businesses will need to make. Without a contingency plan in place, businesses should do a careful re-evaluation of the business, (e.g., customers, markets, products/services, distribution channels, suppliers, capital, cash flow) to determine what the direct impact will be to their employees. Outcomes could be one or more of the following:
 - **Temporary Furlough/Leave/Layoff (without the ability to work at the site or remote and with an unknown return date).** Employees are not eligible for Emergency Paid Sick Leave (EPSL) or Expanded Paid Family Leave (EFMLA). Employees are Unemployment-eligible; however, benefits are determined by EDD. Employers will need to decide on whether they can continue health insurance premium payments. As a “second round” of business closures, it may be difficult to pay the employer portion until the employee returns of which Cal-COBRA may be an alternative; however, talk with your broker.
 - **Reduced Hours (either at the site or remotely).** Employees are eligible for Emergency Paid Sick Leave (EPSL) or Expanded Paid Family Leave (EFMLA) if they meet one of the six (6) qualifying reasons while working and only for the hours reduced. Employees are Unemployment-eligible although earnings will offset unemployment benefit amounts and again, eligible benefits are determined by EDD. As a “second round” of business closures, it may be difficult to pay the employer portion until the employee returns of which Cal-COBRA may be an alternative; however, talk with your broker. If an employee goes on EPSL or EFMLA, health insurance premiums continue as was done prior to the leave.
 - **Permanent Lay-Off Termination.** This occurs for terminations such as closing a division or other location, seasonal work ending, business down-turn requiring less staff of which there is no work or not enough work available to sustain the same number of workers. **Employees are paid for unpaid wages and accrued/unused vacation or PTO time on the date of termination.** Employees are Unemployment-eligible, and benefits will be determined by EDD.
 - **Employee Status Unchanged.** Employee work schedules and assignments may need to be adjusted either working at the site or possibly remotely. **Be mindful of Wage & Hour regulations affecting Exempt employee status** and consult with TPO or an HR expert before making any changes. Employees are eligible for Emergency Paid Sick Leave (EPSL) or Expanded Paid Family Leave (EFMLA) if they meet one of the six (6) qualifying reasons while working.

2) **What actions are required if I have to furlough or permanently lay-off and terminate staff members?** https://edd.ca.gov/Payroll_Taxes/Required_Notices_and_Pamphlets.htm

Provide employees with:

- [**For Your Benefit: California's Programs for the Unemployed \(DE 2320\) \(PDF\)**](#)

Provides information on UI, DI, PFL, and Job Service benefits available to the employee. **Although not required**, it is recommended that employees who are furloughed/temporary laid off, are also provided with a copy.

- **Notice to Employee as to Change in Relationship - Written notice must be given immediately to employees of their discharge, layoff, leave of absence, or change in employment status**. This [**sample notice \(PDF\)**](#) meets the minimum requirements. You may wish to prepare a duplicate employee notice and keep a copy for your records. No written notice is required if it is a voluntary quit, promotion or demotion, change in work assignment or location (some changes in location require a WARN notice), or if work stopped due to a trade dispute.
- The [**Worker Adjustment and Retraining Notification Act**](#) requires certain employers to give affected employees at least 60 days written advance notice of any plant closing or mass layoff. "For Covid-19, Recognizing that employers have had to rapidly close down their businesses to prevent or mitigate the effects of the COVID-19 pandemic, but have not been able to provide their employees the usual advanced notice of at least 60 days, the Executive Order provides a conditional suspension of the usual 60-day notice requirement". https://www.edd.ca.gov/about_edd/coronavirus-2019/faqs/WARN.htm

For purposes of the **California WARN Act**, closures can occur in one of three ways:

- A mass layoff: a layoff during any 30-day period of 50 or more employees at a covered establishment. Lab. Code § 1400(d).
- A relocation: the removal of all or substantially all of the industrial or commercial operations in a covered establishment to a different location 100 miles or more away. Lab. Code § 1400(e).
- A termination: the cessation or substantial cessation of industrial or commercial operations in a covered establishment. Lab. Code § 1400(f).