



## Furlough Considerations

Business closure and slow-down from COVID-19 pandemic have brought employers into challenging situations. Many businessowners for the first time are in the difficult position of considering reducing the size of their workforce. Acentria Insurance has compiled some considerations employers can use to help define policies for a temporary furlough or lay-off of their employees.

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## What is a Furlough?

The term “furlough” is not defined by any law or statute but is typically a temporary reduction of work/hours but the employees remain on the employers’ payroll as employees. Commonly furloughed employees are asked to take unpaid time off but often retain some level of employee benefits eligibility and are not treated as a new hire if they return to full-time status. The term “lay-off” is typically used if employees are terminated from payroll.

## Insurance Policy Eligibility

Employee benefits insurance contracts typically have actively-at-work and/or minimum hours worked eligibility language that would exclude a furloughed employee from eligibility for insurance coverage. Due to the current pandemic, many

insurance companies have instituted temporary non-enforcement periods of these provisions. Employers should work with their insurance agent to understand the carrier specific rules that apply to their policies.

## ACA Employer Mandate Considerations

The Affordable Care Act requires employers with 50 or more employees to offer health coverage to all full time employees. Large employers with Variable Hour employees will often use look-back measurement periods to determine full time status. If an employee is considered full time based on a measurement period, that employee must continue to be offered health coverage, even if they are furloughed, as long as they are an employee and in their stability period. Failing to offer coverage to full time employees in their stability period could subject the employer to ACA employer mandate penalties.

## Paid Leave Laws

The recently passed Family First Coronavirus Response Act impacts most employers with fewer than 500 employees and entitles employees to paid leave for certain absences related to the coronavirus. Employers are eligible for full reimbursement for the qualified paid leaves in the form of federal tax credits. Laid-off former employees generally would not be eligible for the paid leave while an employee that has been furloughed and is still an active employee or a rehired employee likely would be eligible.

## Unemployment Compensation

Included in the new CARES Act is a \$600/week as well as duration enhancements of unemployment compensation benefits. The state of Florida's unemployment benefit is up to \$275/week for 12 weeks. The state of Florida allows for partially unemployed individuals to be eligible for compensation, meaning an employee does not have to be terminated from payroll to be eligible for unemployment compensation. Offering employee benefits including health insurance to furloughed employees would not necessarily make the individuals ineligible for unemployment compensation.

## COBRA Coverage

Employers with 20 or more employees are required to offer COBRA coverage to employees that lose eligibility for health insurance coverage. Instead of keeping furloughed employees as active employees on the health insurance, some employers will instead utilize COBRA as a way of keeping furloughed or laid-off employees eligible for the health coverage. Employers may choose to subsidize the cost of COBRA coverage for furloughed employees.

COBRA Administrators can ease the administrative burden of collecting furloughed the employees' portion of the premium that they may be responsible for. Other advantages of utilizing COBRA include giving employees a 60 day election window where they only need to elect coverage if they need it, starting the COBRA coverage period earlier for employees that do not return to full time employment and easing any concerns over carrier actively at work provisions.

Employers with fewer than 20 employees may be able to utilize state continuation or "mini COBRA" as an alternative way to continue coverage for furloughed employees.

## Payment of Premiums

Employers that decide to offer coverage to furloughed employees will need to also decide what portion of the premiums the employees will pay while they are out on furlough and how the employer plans on collecting. Employers have flexibility on defining premium collection arrangements however it will be important to have a written policy as to when coverage will be cancelled for non-payment and that the employer applies the policies consistently.

## Individual Policies

Employees that lose coverage due to being laid-off or furloughed are eligible for special enrollment period to enroll on an individual policy. Cost of coverage for plans on the exchange (Healthcare.gov) are based on an employee's age, location and annual household income. Employees that are furloughed or laid-off may have lower cost coverage available to them on the exchange than the cost of COBRA.

## Waiting Periods After a Furlough

If coverage is not continued during a furlough or lay-off and the employee later returns to full time status, most carriers will allow for the employees' coverage to be reinstated without re-satisfying the customary waiting period particularly if the absence was short-term. In some instances, ACA even mandates that an employee's health coverage be reinstated without satisfying the waiting period.

## Fair Labor Standards Act (FLSA)

Employers should be cautious about reducing hours and compensation for Exempt (non-hourly) employees. The FLSA generally requires employers to pay Exempt employees for a full week regardless of the number of hours they worked. An employer likely will want to reduce exempt employees' hours to zero for an entire week if an employer intends to furlough them. Employers with exempt employees should have a written policy on how time off is treated after personal or vacation is exhausted. The written policy should include dispute resolution instructions.

## Paycheck Protection Program (PPP)

A significant portion of the Coronavirus economic stimulus bill known as the CARES Act is the PPP. The PPP allows for loans of up to 250% of monthly payroll costs for small businesses. PPP loans may be forgivable if an employer's average full-time equivalent employee count as of June 30, 2020 is the same or greater than it was prior to the crisis. The amount of the loan that is forgivable is reduced proportionally to the reduction in size of the employer's workforce.

## Plan Documents

Any changes employers make to benefits eligibility should be incorporated into the employer's Plan Documents including the Section 125 Plan Document and ERISA Summary Plan Document. Policies should also be applied consistently to similarly situated employees.

## State and Local Laws

Employers should be aware that many jurisdictions have additional regulations related to terminations and furloughs including advanced notice requirements, accrued paid time off payouts and additional job and leave protections. Employers need to check with their local state resources and regulatory bodies for additional guidance.

## Additional Resources

[Furlough and Layoff Flow Chart](#)

[IRS Website for Tax Filing Info](#)

[Department of Labor Coronavirus](#)

[SBA Loan Application](#)

[Foundation Risk Partners COVID-19 Resource Page](#)