

# Furlough vs. Layoff

The decision to furlough or layoff an employee is one filled with nuanced ramifications. This chart provides an executive overview of the impact of a furlough vs. a layoff on a number of employment factors. It's important to note that given the fast-moving fluidity of the Coronavirus impact on state and federal regulations along with insurance carriers and employers this information subject to change.

As of March 26, 2020

	Furlough/Unpaid LOA	Layoff
<b>Employment Status</b>	Remains an "inactive" W2 employee.	Employment relationship ends.
<b>Job Restoration</b>	<p>Generally, no job restoration rights unless otherwise required to do so under other obligations such as regulations like the Family and Medical Leave Act, an employment contract, and/or a Collective Bargaining Agreement.</p> <p>Employers should be careful regarding what they communicate employees about job restoration. Verbal commitments to job restoration may become problematic for the employer implying a guarantee or contract for employment or re-employment.</p>	No re-hire or re-employment rights unless required to do so by contract or Collective Bargaining Agreement.
<b>Group Employee Benefits</b>	Some insurance and stop-loss carriers will allow group insurance to continue - some carriers will enforce the LOA and Active at Work provisions and require termination of coverage and COBRA offer for "reduction in hours."	Because the employment relationship has ended, eligibility for group insurance ends and the employee must be offered COBRA for the COBRA eligible plans (health, dental, vision, FSA).
<b>Affordable Care Act</b>	<p>If an ongoing full-time employee transfers to a position that would have been considered part-time if the employee had originally been hired into that position (including by having his/her hours cut to a point where the employee would be considered part-time), the employer has two options:</p> <ol style="list-style-type: none"> <li>1. Continue to offer coverage until the end of the stability period (typically the plan year). This is the only option for most employees; or</li> <li>2. Offer coverage for three full months following the change in status and then terminate coverage on the first day of the fourth month following the status change (sometimes called the "downshift" rule).</li> </ol> <p>To be eligible to use the downshift rule, the employee must have been offered minimum value coverage continuously from the at least the first day of the fourth calendar month after they are hired through the date of the employment change (i.e., this can't be used on variable hour employees who became eligible based on completing a measurement period).</p> <p>To terminate coverage, the employer must measure the employee's hours during the 3 full months following the status change to determine if the employee average less than 130 hours per month.</p>	Because the employment relationship has ended, the employer's ACA obligations likewise end. ACA re-hire rules may apply if/when the employee is re-hired. The re-hire rules apply when an employee is re-hired within 13 weeks of providing an hour of creditable service (i.e. within 13-weeks of the last day worked).

	Furlough/Unpaid LOA	Layoff
<b>Wages</b>	<p>Wage and hour rules apply for any time worked.</p> <p>Exempt: the general rule is exempt employees must be paid in full week increments if they perform any work during the work-week. Employers may not vary exempt employee's pay for hours/days worked.</p> <p>Non-exempt: must be paid for all hours worked - when the non-exempt employee does not work the employer generally does not have to pay the employee.</p>	<p>Because the employment relationship has ended, the worker should not be providing any services for which W2 compensation is due (if the employee chooses to continue to use the worker in at 1099 capacity the employer must be careful that the worker meets the criteria for a 1099 worker).</p>
<b>PTO/Vacation/Sick</b>	<p>Employer may allow (or require) the use of any available time off. The employer should be consistent with existing handbook policies. If the employer wishes to change existing policies, it must do so uniformly and consistently across the company and issue an amendment to the handbook.</p>	<p>Employer may allow a payout at the end of the employment relationship but should be consistent with current handbook policies - if the employer chooses to make an exception at this time it should be applied uniformly and consistently across the organization. The employer may also want to update the employee handbook.</p>
<b>STD/LTD Claims</b>	<p>Claims in which benefits payments began prior to a furlough generally would continue during the furlough - the employee would continue to receive the disability payments and benefits. Claims that occurred during the furlough may be payable if the carrier has agreed to waive the "actively at work" provisions.</p>	<p>Claims in which benefits payments began prior to a layoff generally would continue during the layoff - the employee would continue to receive the disability payments and benefits. Claims that occurred after the employee's separation/layoff will likely not be payable because the employment relationship has ended.</p>
<b>Unemployment</b>	<p>Most states are providing unemployment benefits to employees who experience either a reduction in hours or a furlough - employers should check with their states - the unemployment rules and laws are being updated on a daily basis.</p>	<p>Generally, employees who lose employment due to no fault of their own (i.e. layoff) are eligible for unemployment benefits - rules vary by state and employers should check with their state.</p>
<b>Liability</b>	<p>Employer's liability for employment law related claims continues during a furlough.</p>	<p>At the time of separation, the statute of limitations begins for employment law related claims with the exception of those claims that are based on post-employment actions.</p>

*Get the latest information, guidance and resources on Coronavirus (COVID-19) to help you protect what matters most at [hubinternational.com/coronavirus](https://hubinternational.com/coronavirus). For additional support, please reach out to your local HUB office.*

## We're HUB

When you partner with us, you're at the center of a vast network of experts who will help you reach your goals. With HUB, you have peace of mind that what matters most to you will be protected — through unrelenting advocacy and tailored solutions that put you in control.

Learn more at [hubinternational.com](https://hubinternational.com)

DISCLAIMER: The foregoing content is informational in nature and based on information that is generally available. Hub International does not make any representation or warranty as to its accuracy. Any recommendation or analysis provided herein is not intended to be taken as advice regarding any particular situation and should not be relied upon as such. Any decision by the reader related to the foregoing content shall be the sole responsibility of the reader after consultation with legal, tax or other advisors.