

## ONE-PAGE FAQ: LAYOFFS AND FURLONGHS REQUIRED BY COVID-19 CONDITIONS

Jeffrey A. Calabrese - Stoll Keenon Ogden PLLC -Louisville, Kentucky

[jeff.calabrese@skofirm.com](mailto:jeff.calabrese@skofirm.com)

### 1. What is the difference between a furlough and a layoff?

While neither term carries a specific legal definition, “furlough” generally refers to a temporary period of time during which employees are not paid and not actively working - much like a leave of absence initiated by the employer. Furloughs are used during limited, but severe economic conditions, and in seasonal industries. Employers typically attempt to maintain employee benefits for furloughed employees, and keep the employee in its payroll system. Furloughs allow an employer to save money (both in payroll and hiring/replacement costs) and maintain relationships with good employees.

“Layoff,” on the other hand, generally refers to a complete termination of employment caused by economic factors, without any contemplation of recall or rehire. Like other types of involuntary terminations, layoffs typically result in benefits being discontinued, and the removal of the employee from payroll. Layoffs are conducted when there is less certainty that economic conditions will improve.

### 2. Can an employee collect unemployment insurance (“UI”) benefits if he or she is furloughed or laid off?

Generally, yes. While each state runs its UI program slightly differently, most states permit employees to obtain the maximum UI benefit for any week in which the employee performs no work or receives no income through no fault of their own— regardless of whether it is described as a furlough or layoff. In most states, even a material reduction in hours worked can lead to eligibility for partial UI benefits. Recent state orders and federal legislation have made it even easier for people to claim unemployment if they have lost work due to COVID-19.

### 3. How might health insurance coverage be affected by a furlough or layoff?

A furlough or layoff may cause an employee’s active work hours to drop below specified eligibility requirements set forth in an employer’s group insurance benefit policy – which, depending on the language of the policy, could require the employee to drop off of the plan. (The employee may be eligible to continue coverage through COBRA, though he or she would be responsible for the entire premium amount). Recently, however, many health insurance companies have been willing to interpret their policies to permit furloughed employees to stay covered; employers should contact their insurance agents to learn more.

### 4. What are some other related issues employers should consider?

- Employment contracts may limit an employer’s ability to enact layoffs, pay reductions, etc.
- Mass layoffs may require advance notice under state and federal law.
- Wage/salary reductions may require advance notice under state law.
- Ensuring furloughed employees do not perform work while on furlough without permission.
- Ensuring employees timely receive all earned compensation, including accrued PTO/vacation.
- Using neutral business criteria to decide who is included in a furlough/layoff, and who is recalled.
- **Call your lawyer if you have questions** – these are often not matters of mutual agreement, but steps that must be done consistent with specific legal standards.