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Compliance Connection

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Guidelines on Furloughs and Layoffs

While reductions in our workforce may be a difficult process, with a well-defined structure, the situation may be easier for both the employer and the employee. The following steps assist organizations to prepare for these decisions.

STEPS TO CONSIDER:

- Determine the reason, need, and timing for the reduction as soon as possible: permanent situation (layoff) or a temporary situation (furlough). If not all employees are effected, determine the need for freezing hiring, promotions, pay increases, etc. This decision should be decided by a committee or team if possible. Discuss alternatives through resource such as <https://www.colorado.gov/pacific/cdle/employer-services>
- Determine different departments and the number of staff effected (all or partial).
- Determine any contractual considerations or collective bargaining situations.
- Determine objective criteria for furloughs/layoff selection: seniority, performance, PT/FT, education/experience/knowledge/skillsets, volunteer for reductions, etc. Avoid discrimination or disparate practices (age, race, religion, gender, pregnancy, disability, etc.)
- Determine if severance packages will be offered. If offered, ensure compliance with all regulations, including the Older Workers Benefit Protection Act (OWBPA) and ERISA.
- Be aware of specific regulations, such as the Worker Adjustment and Retraining Notification (WARN) Act for employers with 100 or more employees, or state specific requirements.
- Be aware of requirements for specific industries under the Colorado HELP regulations requiring paid leave and separation considerations.
- Determine if employees must return company property or not. If so, how and when?
- Give your employees as much advanced notice as possible.
- Provide information regarding benefits, pension plans, COBRA and/or the Colorado Continuation of Coverage, including contact information and how long their benefits will remain in effect.

- Provide a letter to employees explaining the following (not an all-inclusive list):
 - Specific details of situation
 - Effective dates of reduction of hours, furlough or layoff
 - Contact information on filing for unemployment insurance (<https://www.colorado.gov/pacific/cdle/qualifying-benefits>)
 - State if you expect to reinstate the employee's hours within 16 weeks
 - If a permanent layoff, include information for the local workforce center (<https://mcwfc.us/>)
 - Information on their final paycheck (all wages earned, vacation, PTO, etc.)
 - Information regarding benefits, pension plans, COBRA and/or the Colorado Continuation of Coverage, including contact information and how long their benefits will remain in effect.
- Be aware of the potential for emotional responses and secure your workplace against possible workplace violence situations. If you have an Employee Assistance Program, invite them to the worksite to assist those laid off, furloughed, or retained.
- Work with accounting/payroll professionals to determine any financial considerations.
- When an employee's work ends due to no fault of their own, they must receive all wages due, including PTO/Vacation, within 24 hours. Determine the payment requirements for commissions or bonuses.
- Develop a schedule for individual employee meetings.
- When re-hiring, be aware of requirements to offer positions to those laid off or furloughed.

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