

ASSESSING WORKFORCE OPTIONS: AMID FINANCIAL PRESSURES, WHAT'S THE RIGHT PLAN OF ACTION FOR MY BUSINESS?

Many businesses have faced significant economic challenges due to the coronavirus pandemic. If your business is considering making personnel decisions to improve financial stability, you have a number of options and considerations.

Generally, employers have four options for reducing their workforce costs:

1. Reducing employees' hours
2. Reducing employee compensation
3. Furloughs/temporary layoffs
4. Termination/permanent layoffs

You do not have to select one alternative – these options can be used in combination to address the unique needs of your business. For example, a portion of the workforce could be furloughed and a different portion could be laid off. Or, some employees may have their pay reduced and may later be laid off if conditions do not improve.

This chart summarizes key considerations when determining the right plan for your business. Keep in mind that if your business has applied for or received a loan from the Small Business Administration's Paycheck Protection Program (put in place as part of the CARES Act) a reduction in the number of employees, in work hours, or in payroll during the eight weeks after receiving the loan may impact the loan forgiveness. Employers, in some cases, have the opportunity to rehire employees or make up for wage reductions by June 30, 2020 and still receive loan forgiveness. Consult our specific [guidance on the CARES Act](#) or speak to your accountant or bank concerning the loan terms.

This chart is not intended to be all-inclusive. It is important to review any applicable employment agreements, collective bargaining agreements, and applicable federal, state, and local laws that may impose additional requirements or limitations. Levenfeld Pearlstein is available to review these options with you and assist in implementing the plan that is right for your business.

ACTION	DESCRIPTION	HOW TO IMPLEMENT	IMPACT ON BENEFITS	ELIGIBILITY OF EMPLOYEES FOR EPSL/E-FMLA UNDER THE FFCRA*	ELIGIBILITY OF EMPLOYEES FOR UNEMPLOYMENT BENEFITS
Reduction in Hours	<p>A reduction of hours of non-exempt hourly employees to reduce total payroll costs.</p> <p>Note that for exempt salaried employees, the focus needs to be on reduction of salary, not reduction in hours worked. An exempt employee's regular work schedule can be changed, but the employee cannot be paid based on his or her output. If the employee works more or less than scheduled, he or she still receives weekly salary.</p>	<p>Determine which employees to include in the reduction, if possible avoiding disproportionately impacting protected classes of employees.</p> <p>Notify affected employees in writing before the start of the pay period in which hours are reduced.</p> <p>Notify supervisors of schedule changes and make any necessary workflow adjustments.</p>	<p>Benefits may be impacted if the reduction in hours moves the employee from full- to part-time status (as defined in benefit plans). Employees will continue to accrue benefits based on the hours actually worked, if applicable.</p> <p>If employees are no longer eligible for benefits, they should receive COBRA notices.</p>	<p>Employees are not eligible for EPSL or E-FMLA simply because their employer has reduced their hours, but would be eligible for EPSL or E-FMLA if they otherwise need leave for a qualifying reason.</p>	<p>Employees with reduced hours may still be eligible for partial unemployment benefits, in accordance with applicable state law and the provisions of the CARES Act.</p>

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Reduction in Pay	A reduction of salaries and/or hourly compensation.	<p>Determine which employees to include in the reduction, if possible avoiding disproportionately impacting protected classes of employees.</p> <p>Ensure that all employees are still making above minimum wage.</p> <p>Review whether wage reduction will affect employees' exempt status (i.e. will reduce salary below minimum salary for exempt status, currently \$684 per week under federal law for most positions).</p> <p>Notify affected employees in writing before the start of the pay period in which compensation is reduced.</p>	A reduction in salary without a reduction in hours typically will not impact benefits, but employer should review existing policies.	Employees are not eligible for EPSL or E-FMLA based simply on an employer's decision to reduce compensation, but would be eligible for EPSL or E-FMLA if they otherwise need leave for a qualifying reason.	Employees with reduced salaries may not be eligible for partial unemployment benefits unless they are also working reduced hours. Will depend on definition of "unemployed" for purposes of applicable state law.
Furlough	<p>This is generally used to refer to a short-term period during which the employee remains employed but is not scheduled for work and is not paid.</p> <p>Employees can be partially furloughed (see reduction in hours above).</p>	<ol style="list-style-type: none"> 1. Determine which employees to include in the furlough, if possible avoiding disproportionately impacting protected classes of employees. 2. Determine whether federal or state WARN Act requirements apply, and follow notification procedures. Federal WARN defines "employment loss" as 1) a termination, 2) a layoff of more than six months, or 3) a reduction in work hours by more than 50 percent during each month of any six-month period. 3. Notify affected employees in writing, including the expected start date and anticipated end date of the furlough. 	<p>Consult with your insurance provider regarding the impact of a furlough on group health insurance. Some policies will cover employees as active employees, others may require giving the employees COBRA notices. During any period that employees are unpaid, employer will need to decide how to collect employee portion of premiums.</p> <p>Employers need to decide how to handle accrued vacation or PTO. State law often is unclear, so it may be safest to pay it out or at least give employees the option to use or retain until furlough is over. However, employers may have a technical argument that the employee has not been terminated and payout of accrued time is not required.</p>	<p>Furloughed employees will not be eligible for EPSL or E-FMLA for periods during which they are not scheduled to work.</p> <p>Employers should determine whether benefits may be required under state or local paid sick leave laws if covered events are triggered.</p>	Employees generally will be eligible for unemployment benefits, in accordance with applicable state law and the CARES Act.

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Layoff/ Termination	A temporary or permanent separation from employment.	<ol style="list-style-type: none"> 1. Determine which employees to include in the layoff, if possible avoiding disproportionately impacting protected classes of employees. 2. Determine whether federal or state WARN Act requirements apply, and follow notification procedures. Federal WARN defines "employment loss" as 1) a termination, 2) a layoff of more than six months, or 3) a reduction in work hours by more than 50 percent during each month of any six-month period. 3. Decide what severance, if any, to offer and whether to request releases from impacted employees. If releases are requested, be sure to follow group termination provisions of the Older Workers Benefit Protection Act. 4. Inform affected employees and provide necessary information regarding benefits, unemployment, and other separation matters. 	<p>Consult with your insurance provider on the termination date for benefits and provide information regarding COBRA election procedures.</p> <p>Accrued vacation or PTO is paid out upon termination or permanent layoff, in accordance with state law.</p>	Laid off employees will not be eligible for EPSL or E-FMLA.	Employees generally will be eligible for unemployment benefits, in accordance with applicable state law and the CARES Act.

* For more information on the [Families First Coronavirus Response Act](#).