



RULES AND REGULATIONS GOVERNING EMPLOYEE RESTRUCTURING

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In these lean economic times, words such as “furlough,” “regular day off,” and “reduced pay” are frequently bantered about. However, each of these terms carries with it specific rules and regulations that must be followed when implemented. Handled improperly, a downsizing or a reduction in pay can damage the public standing of both the organization and its management, and expose the company to costly litigation or government action.

When implementing a reduction in work force, it is important to remember the following key tips:

1. Always be consistent with your policies, procedures and practices.
2. Document everything factually including the reasons for lay-off, selection criteria and specific selection decisions.
3. Review your selections to insure that there is not a disparate impact on a particular class of employees (age, gender, race, etc.).

Prior to implementing lay offs, consider whether there is a viable alternative, including:

- A. Pay Reduction
 - So long as it is for future pay
 - Exempt employees must maintain a fixed weekly salary, that does not vary based upon the hours worked
 - Exempt employees must maintain a salary that has an annualized rate of not less than \$33,280/year (2009)
 - Hourly rate of pay cannot drop below minimum wage (\$8.00/hour) or applicable prevailing wage (2009)
- B. Hours Reduction
 - Applies to non-exempt employees
 - Exempt employees are paid the same salary regardless of hours worked; you can reduce salary
 - Non-exempt employees who are reduced to less than six hours per day may waive meal break
 - Reporting time pay requirements still apply

Many employees appreciate the opportunity to keep their jobs and would accept a reduction in hours and/or pay in lieu of a lay off. What many employers do not know is that the EDD provides for partial unemployment benefits if an employee has greater than a 10% reduction in pay due to job reduction. In addition, the EDD has a work share program that enables employers to reduce the amount paid by the employer while having little or no impact on what the employee actually receives.

The chart that follows is an outline and summary of the many laws and regulations governing reductions in headcount, hours, or a restructuring of employment arrangements. It is important when considering any such change in your operation that you consult with someone experienced in work force reorganization.

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Rules and Regulations Governing Employee Restructuring

	CA WARN	FEDERAL WARN	NOTICE	UNEMPLOYMENT	FINAL PAY	COBRA	VACATION/PTO
LAYOFF	Yes. For employers with 75 or more full time employees, where 50 or more employees at a single site of employment are laid off in a 30-day period.	Yes. For employers with 100 or more full time employees, where 50 to 499 employees consisting of at least 33% of the workforce at a single site of employment or 500 or more employees are laid off in a 30-day period.	Yes. 60-days written notice is required if CA WARN or Federal WARN are triggered.	Yes.	Yes. Final pay is due at the time of termination including all accrued but unused vacation and/or PTO time.	Yes. CAL COBRA and COBRA apply to qualified employees. In addition, the American Recovery and Reinvestment Act of 2009 COBRA subsidy applies to qualified employees and requires employers to pay 65% of the premiums for 9-months.	Yes. All accrued but unused vacation and/or PTO is due to the employee at the time of termination.
HOURS REDUCTION	No.	Yes. If employees at a covered employer experience a reduction of hours of 50% or more in each month in any 6-month period.	Yes. 60-days written notice is required if Federal WARN is triggered.	Maybe. Depending on the amount of the hours reduction, employees may be eligible for partial unemployment or work share unemployment benefits.	No.	No.	No.
VACATION CAP	No.	No.	No. However, a vacation cap change cannot be implemented retroactively and the best practice is to provide advanced written notice to employees.	No.	No.	No.	Yes. Employees should be given a reasonable amount of time (generally 9 months) to bring their vacation/PTO accrual balance below the new accrual cap.

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VACATION ACCRUAL CHANGE	No.	No.	No. However, a vacation accrual change cannot be implemented retroactively and the best practice is to provide advanced written notice to employees.	No.	No.	No.	No.
VACATION/PTO FREEZE (USE OR ACCRUAL)	No.	No.	No. However, a vacation use or accrual freeze cannot be implemented retroactively and the best practice is to provide advanced written notice to employees.	No.	No.	No.	Yes. The vacation/PTO use or accrual freeze must be applied uniformly. In addition, employees should be allowed to use sick or PTO time for absences due to illness with a doctor's note.
BENEFITS CHANGE	No.	No.	Maybe. Benefit plans covered by ERISA such as health care benefit plans and retirement plans require 60-days written notice of any material change in coverage.	No.	No.	Maybe. If an employer discontinues its health care benefit plan, COBRA continuation coverage may also cease.	No.

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TEMPORARY SHUTDOWNS (ROLLING SHUT DOWNS/SHUT DOWN DAYS)	No.	Yes. If employees at a covered employer experience a reduction of hours of 50% or more in each month in any 6-month period.	Yes. 60-days written notice is required if Federal WARN is triggered.	Maybe. Depending on the amount of the hours reduction and the length of the shut down, employees may be eligible for regular unemployment benefits, partial unemployment benefits, or work share unemployment benefits.	No.	No.	No.
MANDATORY USE OF VACATION/PTO	No.	No.	Yes. If the employer mandates the use of vacation or PTO during mandatory time off, employees must be given reasonable notice (previously interpreted as 90 days notice).	Maybe. Depending on the amount of employees' vacation/PTO accruals and the length of the time off, employees may be eligible for regular unemployment benefits or partial unemployment benefits.	No.	No.	Yes. If the employer mandates the use of vacation or PTO during mandatory time off, employees must be given reasonable notice (previously interpreted as 90 days notice).