



Employment Law and COVID-19 FAQs

What is the difference in a furlough and a layoff?

- Furloughed employees retain their jobs but cease working for their employers for a period of time. A furlough is akin to an unpaid leave of absence. Furloughed employees in California are eligible to receive unemployment insurance benefits. They may potentially remain eligible for employer-sponsored benefits. A layoff ends the employment relationship and triggers termination obligations like providing final pay and paying out accrued vacation or paid time off benefits, etc. An employer may furlough employees rather than permanently laying off and terminating employees because the business downturn is expected to be temporary. A furlough helps the employer reduce its compensation costs and potentially hiring costs when it brings furloughed employees back to work instead of having to hire and train replacements.
- Depending on the length of the furlough, some government entities may consider the furlough a termination and accordingly, if a lengthy furlough is contemplated (more than one pay period), consideration should be given to treating it as a termination.
- Employers considering employee furloughs or layoffs should seek legal counsel, as they may trigger Cal-WARN requirements, other potential liabilities, and/or other requirements.

Regarding notifying people about potential exposure, does the exposure have to be a positive test to send persons home or could it be for a suspected case?

- The CDC guidelines state that an employer must notify employees who worked in close proximity to another employee who tested positive for COVID-19. For more information on employer obligations when an employee tests positive please see Wine Institute's health and safety protocols exemplar.

How do you handle benefits for an employee who chooses not to come to work when it is available and offered?

- If telecommuting is not a feasible option for this individual and they are an essential worker, you may consider allowing them to stay home and use any accrued paid time off before making any decisions about termination. If the individual has no accrued paid time off, you may consider allowing them to take a few days unpaid leave before making any decisions about termination. It is important to have a consistent policy to avoid potential claims of unfair treatment.

Is a furloughed employee entitled to employer-sponsored health insurance?

- It depends on the employers' benefit plan documents, which may require employees to be "actively at work" and working full time hours (e.g. 30 hours) to be covered by the benefit plans. This means that employees who have their hours reduced or who are furloughed will not be active full-time and may have their benefits terminated after a period of time. Employers should review plan documents to determine requirements

regarding employee eligibility and benefits continuation during unpaid/unprotected leaves of absence.

Is the FFCRA in addition to existing FMLA requirements?

- The FFCRA expands FMLA. It now applies to all employers with fewer than 500 employees. Employees will now be eligible if they have worked at the business for 30 days prior to their leave.

Please keep in mind that our intent is to offer general subject matter information to the wine industry, and it should be taken as general identification of issues rather than as specific legal advice. If you are interested in a legal consultation, please feel free to contact Leila Narvid directly. Subject to conflicts-checking and full factual context, she would be happy to discuss how Payne & Fears, LLP, could be of assistance regarding specific legal questions you may have.

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