



Termination, Layoff & Furlough Checklist

- What options may be available for letting staff go, temporarily or permanently?
- Are there any prohibitions against using any of these options?
- What pay is owed to employees terminated, laid off, or placed on LOA/furlough?
- Am I required to pay severance or some other type of layoff or LOA/Furlough pay?
- Is any particular notice required before action is taken?
- Can the individual receive unemployment benefits from the state?
- Will the individual continue to be eligible for health insurance or other benefits?
- Are there additional/different requirements for employees working under H1B visa or other sponsored status?



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	Permanent Layoff (Terminated)	Temporary Layoff (Terminated)	Leave of Absence/Furlough
What options may be available for letting staff go, temporarily or permanently?			
	Employee is permanently terminated from employment and removed from payroll. No rehire is anticipated.	Employee is temporarily terminated from employment and removed from payroll. Rehire is anticipated, but not guaranteed.	<p>Employee ceases work, placed in unpaid leave status, but remains in employee status. Return to work is anticipated, but not guaranteed.</p> <p>Furloughs can also involve employees working fewer days a week or weeks on/off. (See What options may be available for retaining staff but reducing payroll costs?)</p> <p>Furloughs can pose risk of violations of federal wage and benefits law and should not be undertaken without legal advice.</p>
Are there any prohibitions against using any of these options?			
	Employees with employment contracts (or letter agreements) cannot be permanently laid off unless the document permits such action.	Employees with employment contracts (or letter agreements) cannot be temporarily laid off unless the document permits such action.	<p>Employees with employment contracts (or letter agreements) cannot be placed on leave of absence/furlough unless the terms of the document permit such actions.</p> <p>See below for H1B or other sponsored status.</p>



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	Permanent Layoff (Terminated)	Temporary Layoff (Terminated)	Leave of Absence/Furlough
What pay is owed to employees terminated, laid off, or placed on LOA/furlough?			
A final paycheck which must include:			
<ul style="list-style-type: none"> Salary/wages for all time worked through date of action 	Yes	Yes	Yes
<ul style="list-style-type: none"> Payout of accrued but untaken paid time off <ul style="list-style-type: none"> NC requires payout unless policy expressly states that untaken time is forfeited at termination. GA, NJ, PA, VA allow for use it or lose it policy (written policy or agreement likely is required). 	Required, unless state law allows forfeiture	Required, unless state law allows forfeiture	No; however, employees typically are allowed to use accrued PTO during unpaid LOA/furlough
<ul style="list-style-type: none"> Any bonus/incentive pay that is due as of action date (amounts that cannot be calculated until a later time must be paid as soon as they can be calculated) 	Yes	Yes	Terms of the bonus/incentive plan will govern payment, timing and amounts when on LOA or furlough
Final paycheck must be issued no later than the next regular payday (unless state law requires payment on day of layoff) <ul style="list-style-type: none"> NC, GA, NJ, PA, VA are next regular payday states 	Yes	Yes	Yes



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Am I required to pay severance or some other type of layoff or LOA/Furlough pay?			
<p>No, unless employment contract/letter agreement or employer policy provides otherwise. Employment contracts/letter agreements often require severance pay for terminations that do not qualify as “for cause” under the contract/letter terms.</p> <p>Employer may voluntarily offer severance pay in any amount it desires and typically requires employee sign a release of claims to be eligible for such pay. For employers with 20 or more employees, federal law imposes some requirements on the contents of the release to be enforceable.</p>	Same answer	Same answer	Same answer
Is any particular notice required before action is taken?			
<p>No, unless employment contract/letter agreement or employer policy provides otherwise or federal WARN or state counterpart applies</p> <ul style="list-style-type: none"> • Employment contracts typically require notice for terminations that do not qualify as “for cause” under the contract terms 	Same answer	Same answer	Same answer



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<ul style="list-style-type: none"> WARN, if applicable, requires 60 days' notice (WARN is unlikely to apply if the layoff/LOA/furlough does not exceed six months. It also applies only to employers with 100 or more employees whose actions affect 50 or more employees at single site of employment. Some exceptions apply.) A number of states have counterparts to WARN with different requirements and lower triggering thresholds. <ul style="list-style-type: none"> NC, PA, and VA do not have state counterpart. GA does not have state counterpart, but does require mass layoff notice to GA DOL when 25 or more employees are laid off on same day. NJ has state counterpart. 	Yes, if applicable	Only if layoff will last 6 months or longer	Only if layoff will last 6 months or longer
Can the individual receive unemployment benefits from the state?			
Eligibility, benefit amount, and period paid is governed by state law	Yes	Yes	Yes



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Will the individual continue to be eligible for health insurance or other benefits?			
Group health benefits	No, but a termination of employment that triggers a loss of group health plan coverage will entitle the individual to COBRA coverage (or state “mini COBRA” for those with under twenty employees)	Same as for permanent layoff	Yes, depending on the terms of your plan. Contact your plan to confirm. A reduction in hours or leave of absence/furlough could make employees ineligible to participate. If coverage is lost because of a reduction in hours, COBRA (or “mini COBRA”) coverage is triggered.
Other health and welfare benefits (e.g., disability, LTC benefits, life insurance)	No, but conversion options may be available	Same as for permanent layoff	Yes, depending on the terms of your plan. A leave of absence/furlough could make certain employees ineligible. Contact your plan(s) to confirm.
401(k), other retirement	No, except as to vested amounts	Same as for permanent layoff	Yes, but a leave of absence/furlough may affect future vesting and benefit accruals.
Are there additional/different requirements for employees working under H1B visa or other sponsored status?			
Yes, there are three requirements to avoid continuation of H1B pay obligations: immediate written notification to employee of termination, written notification to USCIS to cancel visa petition, and offer to pay reasonable transportation costs to return employee to home country. Other sponsored visas may require additional obligations. Check with USCIS before taking action.	Permitted with proper notice	Must be treated as termination	Not permitted



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