



Employment Transitions for Small Businesses in the COVID-19 Era

Workforce Reduction Options

- **Reduction to Part-Time Employment:** Workers remain employees and work a reduced schedule. Workers retain important company benefits and may qualify for *partial* unemployment benefits.
 - **Furlough:** Workers remain employees, may maintain important company benefits and may qualify for unemployment benefits.
 - **Layoff:** Workers are terminated from employment with the expectation of re-employment. Company benefits end and employee may qualify for unemployment benefits.
 - **Termination:** Workers are terminated with no expectation of re-employment. Company benefits end and employee may qualify for unemployment benefits.
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Reduction to Part-Time Employment

- Allows employer and employee to maintain employment relationship. Reduction in cost while meeting employer staffing needs.
 - Paycheck Protection Program (PPP) loan forgiveness obligation benefits.
 - Workers may retain health insurance, 401(k), earned time and other employment benefits. ***Check employee handbooks and benefit plan documents to ensure part-time participation is allowed.*** If not, employer must determine exercise of discretion.
 - If insurance is retained, how will premiums be paid?
 - COBRA triggered by increase in employee premium as a "loss of coverage."
 - ACA penalty for failing to offer coverage to 95 percent of full-time employees.
 - Employee may qualify for *partial* unemployment benefits. 33% cut from benefit calculation but possible \$600 bump. Determination by the Massachusetts Department of Unemployment Assistance (DUA).
 - Workshare Program offered by the DUA:
 - allows an employer to reduce hours of full-time employees in specific departments by 10%-60% due to a decline in work or cash flow.
 - The employee can receive partial unemployment benefits and the employer must keep employee benefits plans intact.
 - No 33% cut from base benefit amount.
 - <https://www.mass.gov/service-details/workshare-information-for-employers>.
 - Document Transition!
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Furlough

- Workers remain employees but do not work and receive no pay.
- Workers may retain benefits *at employer option*, including health insurance, 401(k), earned time and other employment benefits. *Check your employee handbooks and benefit plan documents to ensure part-time participation is allowed.* If insurance is retained, how will premiums be paid?
- COBRA triggered by increase in employee premium as a "loss of coverage."
- ACA penalty for failing to offer coverage to 95 percent of full-time employees.
- Employee may qualify for unemployment benefits. Determination by the DUA.
- Document Transition!
 - Include anticipated return date with room to amend.
 - Clarity on no work and no pay (may impact unemployment).

Layoff

- Worker is terminated with expectation of return – but not commitment.
- Employment and employment benefits end on termination date.
- Wages, including vacation pay, issued on termination date.
- COBRA triggered - loss of coverage is termination date.
- ACA penalty for failing to offer coverage to 95 percent of full-time employees.
- Employee may qualify for unemployment benefits. Determination by the DUA. Possible \$600 bump.
- Document Transition!
 - May call termination a layoff but provide no return date.
 - No promise of return.

Termination

- Worker is terminated with no expectation of return.
- Employment and employment benefits end on termination date.
- Wages, including vacation pay, issued on termination date.
- COBRA triggered - loss of coverage on termination date.
- ACA penalty for failing to offer coverage to 95 percent of full-time employees.
- Employee may qualify for unemployment benefits. Determination by DUA. Possible \$600 bump issue.
- Document Transition!

**Please contact John F. Tocci, Esq., Manager of Tocci & Lee's Employment and Litigation Practice
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