

LAYOFFS & FURLOUGHS

Implications for Cities

JOBS

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As cities look for ways to fix their budgets, many struggle with whether to cut costs or to try an alternative, such as imposing furlough days or involuntary time off without pay.

Layoffs are an involuntary separation from employment due to a reduction in force. While the decision to impose layoffs is a management right, employers must bargain the impacts of a layoff with labor unions. Most collective bargaining agreements already include an article of the impacts of layoffs. That usually includes how much notice the employer must provide as to the need for layoffs, the order of layoffs, bumping rights and recalling employees back to work.

While layoffs seem to be an easy way to reduce costs in an organization, there are many implications that need to be contemplated. The most important is employee morale. Employees who survive the layoff process may lose morale if they feel the process was not adequately communicated or they feel grief from the loss of co-workers. Low employee morale may result in increased tardiness or absences and a lack of trust and loyalty toward the employer. Employers will want to allow these employees some time to grieve, and it will be important to keep the communication lines open and to also remind employees about outside assistance, such as the Employee Assistance Program (EAP), if an employee needs help in dealing with the situation.

There are also other potential costs to the employer from implementing layoffs. Employers may be required to pay severance packages and early retirement benefits, and there are costs of rehiring once the economy turns around. Employees will also be entitled to unemployment benefits, which is a cost borne by the employer.

To avoid some of the implications of layoffs, furloughs may be a way to keep employee morale high. However, implementing furlough days has some potential legal implications to keep in mind and may not have the effect employers were hoping for with employees.

When an employer implements layoffs, it is common for the remaining employees' overall morale to decrease. Furlough days might seem like a better alternative, because if it is implemented across the board – managers to employees alike – the employer is sending a message that everyone is in this together. Most of the time, employees would rather be subject to furlough days than watch a coworker lose his or her job. In addition, furloughed employees normally maintain benefit coverage.

However, there are potential legal implications for employers. First, employers need to be careful they do not run afoul of the Fair Labor Standards Act (FLSA). Non-exempt employees are only paid for the hours worked, so

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furlough days are not normally an issue for these employees under the FLSA. However, exempt employees, i.e. executive, administrative or professional employees, are paid on a "salary basis." The "salaried basis test" for exempt employees requires employers to pay these employees the same salary each week regardless of the hours worked. As a result, employers run the risk of exempt employees losing their exempt status if it reduces their hours through furlough days during any given week. The federal regulations provide that exempt public employees only lose their exempt status during the weeks in which they take furlough days. As a result, employers should be mindful during the week an exempt employee is taking a furlough day because that employee could be eligible for overtime that week.

Another legal implication of implementing furlough days is that its impact is a mandatory subject of bargaining. While the impacts of layoffs are found in most collective bargaining agreements, the same is not true for implementing furlough days. Unless the employer and the union have already negotiated the imposition of furlough days on represented members, the unions can demand to bargain the impact of furlough days. The parties will be required to bargain with about the decision to impose furlough days and the impact the furlough days will have on the

employees. As a result, it will be important to work out these issues with the union prior to making a decision on whether to impose furlough days for represented employees.

Finally, when implementing either layoffs or furlough days, the selection process should be impartial and consistently applied to avoid discrimination claims. Discrimination claims would arise if a protected class was affected more than another group of employees. For example, if layoffs or furlough days are only being applied to certain job classifications, there could be a disparate impact if a disproportionate number of employees in a protected category were affected, i.e. there were a disproportionate number of minority employees impacted by the decision. This is less likely to arise with represented employees, since the collective bargaining agreements dictate who is affected by the decisions.

If employers wish to implement furlough days rather than layoffs, it will require careful planning to sort through the issues. Whether the decision is to lay off employees or impose furlough days, it is not an easy choice. Employees will likely be unhappy at first with either decision. Good communication with employees about the need for these reductions is vital. ■



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