



Montgomery County Office
2617 Huntingdon Pike
Huntingdon Valley, PA
19006-5125

(215) 887-0200

www.sogtlaw.com

Bucks County Office
140 East Butler Avenue
Chalfont, PA 18914

(215) 822-5600

Furloughs

The following are thoughts and considerations for private employers placing employees on a furlough for a matter of weeks or possibly up to a couple of months.

Ø Furloughs are allowed for at-will employees, employer has broad discretion to determine who is furloughed, how long and under what conditions.

Ø Other options instead of furlough: RIF (terminations); keep full force but reduce some or all to part-time; reduce compensation (e.g. everyone is cut by 25%); combination of all of those.

Ø Make certain not to furlough employees in a way that would appear to be discriminatory (all female workers; all older workers, etc.).

Ø Benefits will continue? If not, may require COBRA notices because of qualifying event.

Ø RETENTION AGREEMENT? Consider paying employees to return after furlough by providing Retention Agreement and paying them a bonus upon their return.

Ø To avoid complications under the FLSA with exempt employee pay, have full week increments for furlough.

Ø For companies that sponsor employees for immigration visa, there may be obligation to notify immigration service about change in status.

Ø Employees can't do work for competitor or anyone else that would violate non-compete, non-solicitation or confidentiality.

Ø Employees can't volunteer to do work for the employer or customers/clients.

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Ø Retrieve work phones, laptops and other devices from employees?

Ø Cut off employees from company email?

Ø Depending on length and severity of furlough, review WARN for compliance.

Ø Furlough notice:

- Inform employees of furlough and reason
- Direct them not to be on premises
- Direct them not to do any work or “volunteer” for work for employer or customers/clients
- Inform them of financial changes (unpaid, benefits continue?)
- Let them know of restrictions of obtaining substitute work
- Let them know if confiscating company cell phones, laptops and/or cutting them off from email and access
- Let them know they may be eligible for unemployment?
- Provide contact person info