

1) What options do I have with my employees to save cash flow and be fair to my employees?

2) What loans are available to help fund some cash flow shortfalls?

The below is some basic information regarding options you have with regards to employees. This is not legal advice and cannot be relied upon for employee matters but is meant to provide some basic information.

Layoff vs. furlough

Layoff – permanently separating the employee from the business. Employees are required to receive an official notice, they are no longer eligible for employer benefits (i.e. health insurance coverage) and must be paid out any accrued PTO. People can be rehired as a new employee at a later date.

Furlough – individuals are still employed and tethered to the business, but there is a temporary period of time that there is no work available. Employees are still eligible for employer benefits. Employers can require employees to exhaust their existing PTO before being furloughed.

Mass Layoffs

- If employers are issuing a mass layoff (generally more than 50 employees), they are subject to Federal and state WARN laws, which require a 60 day written notice be provided to employees and various government agencies. Employees must generally be paid and kept on benefits during this 60 day period.
- States have various different thresholds, so it is important to take the location into consideration.
- There is an exemption based on an unforeseeable business circumstance test, which COVID-19 related reasons will probably qualify. However, they must give as much notice to their employees as possible.
- If a layoff falls under the WARN thresholds, businesses can institute a layoff immediately, but it is still recommended that they provide written and oral notice as soon as possible.
- Employers must be careful not to structure layoffs in segments to circumvent the rules. The law will look at total layoffs in aggregate up to a 90 day period when determining if the WARN thresholds were triggered.
- Furloughs do not trigger WARN requirements unless they become long-term (6+ months), but it is still recommended that employees be given written and oral notices that outline the terms.

Employees are eligible for unemployment for both layoffs and furloughs.

Employees could be eligible for partial unemployment and part time work. Most states are making this available due to COVID-19. See below for a COVID-19 FAQ sheet from the Delaware Division of Unemployment. <https://laborfiles.delaware.gov/c19/UI-FAQ.pdf>

- Exempt employees (ie salaried) are eligible for a full week of pay if the furlough is effective in the middle of the week.
- Many states have waived the general 7 day waiting period before applying for unemployment due to COVID-19.
- You can reduce an employee's compensation in response to COVID-19, but can't do it in the middle of a pay period and some states require a 7 day notice be given to employees. Generally if the reduction is less than 30% there are no issues. Over 50% reduction may be seen as an effective discharge.
- FFCRA and Paid Sick Leave
 - As previously mentioned, employers aren't generally required to offer the paid leave benefits under the FFCRA if employees are furloughed.

- However, there are potential provisions in the current coronavirus stimulus bill that would change this and require it be offered to furloughed employees as a result of a government mandated shutdown. As a result, employers may want to rethink their decisions of instituting furloughs vs. layoffs.

Loans – this is still all not final and being worked out in the pending legislation, but here is some information on the possible SBA Loans

- **SBA Loans** – These are currently the best relief options for business that are struggling due to COVID 19. The SBA is offering designated states low-interest federal disaster loans for working capital to small business suffering the impacts of COVID-19. Loans can be taken up to \$2 million and can be used to cover payroll, fixed debts, accounts payable and other bills. Interest rates for small businesses is 3.65% and 2.75% for non-profits. Terms can be up to 30 years, but are determined on a case by case basis. These started out just for certain states, but it looks like as of this morning almost all 50 qualify. You can apply directly through the SBA website (link below for more info). States and local jurisdictions are also passing legislation for similar low-interest rate loans in response to the public health emergency as well. For example, the Pennsylvania DCED is offering assistance to effected businesses.

https://www.sba.gov/disaster-assistance/coronavirus-covid-19?fbclid=IwAR0rOzq1OQ_tjNrpELwsIC1GxHYMxtPVYiMSUV--hOOetD-mk8ZEEdgsnHZz8

- **Small Business Relief Loans** – The Senate bill extends SBA loans up to \$10 million for any business with fewer than 500 employees (much broader than normal SBA requirements). Part of the loans could be forgiven if used to keep employees on payroll. The House bill would provide loans to qualifying small businesses (including independent contractors) at zero percent interest if the small business doesn't terminate employees during the pandemic. Forgiveness would be available for some companies that meet specific hiring criteria.

As always, if you have questions on how this impacts your business please feel free to call me directly. As more information comes available I will pass it along.

Jeffrey W. Mitchell, Jr, CPA, MT | Senior Vice President

Siegfried Advisory, LLC

Office 302.472.6131 | Fax 302.504.5444 | Cell 302.438.0742 | jmitchell@siegfriedgroup.com

1201 N. Market Street | Suite 1406 | Wilmington, DE 19801

One Commerce Square | 2005 Market Street | Suite 3550 | Philadelphia, PA 19103