

The following has been prepared for the general information of our clients. It is not meant to provide legal advice with respect to any specific matter and should not be acted upon without professional counsel. If you have any questions or require any further information regarding these or other related matters, please contact our office.

LAYOFFS IN THE FACE OF COVID-19

Generally speaking, there are no laws which dictate how an employer selects workers for layoff. However, a layoff has a definition. A layoff is a form of separation of employment for lack of work or lack of funds. Because of that definition, your layoff can be subject to scrutiny as it affects employees who are protected from unlawful discrimination and retaliation.

Faced with layoff considerations, you should:

1. Assure the layoff is a measure taken due to lack of work or lack of funds.
2. Assure that the employees selected for layoff were determined based on neutral criteria. Those criteria include defined legitimate business reasons with objective criteria to determine which positions in your company are most appropriate. That criteria must be supported with documentation. Though many employers use seniority, there is no legal requirement to do so.
3. Assure that employees were not selected because of:
 - a. Complaints by the employee regarding employee safety, violations by the company of state laws, wages, protesting discrimination or harassment, filing claims for discrimination or harassment or testifying for any employment rights. These are called “target layoffs.” A target layoff is easy to spot because the target does not follow objective criteria for layoff.
4. Be cognizant of layoffs which disproportionately affect certain characteristics protected by law including age, gender identity, expression and status, marital status, medical condition and genetic characteristics/information; national origin and ancestry, physical or mental disability, pregnancy and related conditions, race/color, religion, sex/sex harassment, sexual orientation, union activity and military/veteran status.
5. Be cognizant of employees who have complained and be prepared to defend your objective reasons for layoff.
6. Have a well-documented file to support your decisions.

WORK SHARE IN LIEU OF LAYOFF

The EDD—Employment Development Department—has a work share program that will allow you to avoid mass layoffs by sharing available work among employees. Benefits are now available for employees whose wages or hours have been reduced. This means you can continue to provide work to employees rather than laying off groups of employees. Work share is important for the employers who have employees who are significantly trained and helps you maintain contact with those employees.

Workshare under the legislation may not reduce your employee/employer EDD account. Work sharing plans have significant requirements through the EDD found here:

https://www.edd.ca.gov/Unemployment/Work_Sharing_Program.htm.

Generally, the rules are as follows, however the employer should expect variations as HR 6201 Families First Corona Virus Response Act are implemented:

Work Sharing Program

Employers can apply for the Unemployment Insurance (UI) Work Sharing Program if reduced production, services, or other conditions cause them to seek an alternative to layoffs.

The Work Sharing Program helps employees whose hours and wages have been reduced:

- Receive UI benefits.
- Keep their current job.
- Avoid financial hardships.

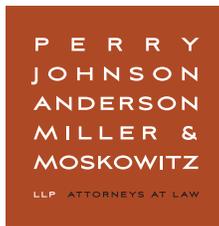
The Work Sharing Program helps employers:

- Minimize or eliminate the need for layoffs.
- Keep trained employees and quickly prepare when business conditions improve.
- Avoid the cost of recruiting, hiring, and training new employees.

Requirements:

To participate, employers must meet all of the following requirements:

- Be a legally registered business in California.
- Have an active California State Employer Account Number.
- At least 10 percent of the employer's regular workforce or a unit of the workforce, and a minimum of two employees, must be affected by a reduction in hours and wages.
- Hours and wages must be reduced by at least 10 percent and not exceed 60 percent.
- Health benefits must remain the same as before, or they must meet the same standards as other employees who are not participating in Work Sharing.
- Retirement benefits must meet the same terms and conditions as before, or they must meet the same as other employees not participating in Work Sharing.
- The collective bargaining agent of employees in a bargaining unit must agree to voluntarily participate and sign the application for Work Sharing.
- Identify the affected work units to be covered by the Work Sharing plan and identify each participating employee by their full name and Social Security number.
- Notify employees in advance of the intent to participate in the Work Sharing program.
- Identify how many layoffs will be avoided by participating in the Work Sharing program.
- Provide the EDD with any necessary reports or documents relating to the Work Sharing plan.



Restrictions

- Leased, intermittent, seasonal, or temporary service employees cannot participate in the Work Sharing Program.
- Corporate officers or major stock holders with investment in the company cannot participate in the Work Sharing Program.
- The Work Sharing Program cannot be used as a transition to a layoff.

Plan Application

Apply for a Work Sharing plan by completing and mailing the Work Sharing (WS) Unemployment Insurance Plan Application (DE 8686) (PDF) .

The earliest date for a new Work Sharing plan to become effective is the Sunday before the first date you contact the EDD. All Work Sharing plans are approved for one year.

Employers can renew a Work Sharing plan by completing and mailing the Work Sharing (WS) Unemployment Insurance Plan Application (DE 8686) (PDF). A Work Sharing plan will be renewed the day after your previous plan expires.

Note: Your plan application will only renew if it is submitted no more than 10 days after your previous plan has expired. Otherwise, your plan will become effective the Sunday before the date we receive your application.