

Anne G. Scheer: 'Legally reducing employee costs . . . Number of employees, hours, pay and benefits'

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Friday, Oct. 30, 2009

CONCORD – Employers faced with a slowdown in business often must look at ways they can reduce employee costs in order to make ends meet. Before eliminating staff or making any reductions to their wages or benefits an employer should carefully consider federal and state laws in this area or the employer may end up paying more in liability and fines after the cuts are made than it initially saves by the cuts.

One way some employers try to reduce employee costs without laying anyone off is to send employees home on days when business is slow. Federal and state wage hour laws generally only require that an employee paid by the hour be paid for all time worked or a minimum of two hours reporting pay, whichever is more. But, with very limited exceptions salaried employees must be paid their full salary for any pay period in which they perform any work.



So, a salaried employee must be paid their full salary even if they are sent home on a given day because work is light. In addition, if the employer and the employee have a contract of employment or the employee is covered by a union agreement the contract/agreement may not allow the employer to ad hoc send an employee home and not pay them for their usual work hours.

Since an employer has to pay salaried employees their full salary for a pay period in which they perform any work the employer will not realize any economic gain by sending a salaried employee home on a day-to-day basis. In this situation, instead of sending the employee home, the employer should consider assigning the employee other work to perform during slow times such as marketing or long term projects that never get done in busy times. Or, consider a prospective salary reduction, layoff or benefit reduction for the position.

But even where an employer can save money on wages by sending hourly employees home without prior notice on a day-to-day basis when business is slow, that is generally not the best way for an employer to reduce its employee costs. While student employees not relying on their wages for housing, food or other necessities may welcome their employer sending them home early on a given day even if they won't be paid, most other employees generally need to be able to rely on receiving expected hours/wages in order to pay their own bills.

It is very hard for an employer to retain employees if its employees are worried that on any given day they may be sent home and only be paid for the amount of time they were allowed to work or two-hour minimum reporting pay, whichever is more.

In almost all cases when an employer needs to reduce payroll costs, it's better to plan ahead and prospectively reduce its total number of employees, reduce salaries and hourly wages, reduce benefits, reduce employees hours and/or schedule mandatory unpaid furloughs.

If laying off employees, an employer needs to be careful to give affected employees any advanced notice required by federal and state laws.

In reducing benefits an employer needs to be very careful that it doesn't take away benefits that have already been earned. Generally, earned benefits are treated like wages and cannot be reduced after they are earned. And, furloughs for salaried employees in order to be unpaid will usually have to be for an entire pay period. Whereas, hourly employees can usually be given unpaid furloughs of any length.

Whatever employee payroll/benefit reductions an employer ultimately decides to make it should give employees as much notice and information about them as possible so employees can plan and adjust their own lives and finances to handle their loss of wages, hours and/or benefits. If making prospective reductions to employees' salary, hourly rate, hours worked and/or benefits New Hampshire law requires that each affected employee be given written notice of each and every change being made to their wages, hours or benefits.

In addition, it is critical for moving forward with employees to give them the reasons the employer is making the change. If true emphasize that the reductions are being made to cut costs without any one losing their job, or so that the fewest possible number of employees are being laid off. Make employees part of the solution by engaging them in the problem and in offering possible solutions. If there is any hope of good news on the horizon without being overly optimistic give employees that news as well.

Reductions of staff or their pay or benefits can be legally tricky. Employers are well advised to consult with an employment attorney or the New Hampshire Department of Labor on the legality of any specific reduction being considered before it is made.

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