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Furloughs Raise Questions about Worker Rights

Effects on morale, productivity and adherence to labor laws uncertain

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By Eve Tahmincioglu, MSNBC contributor

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There's been a furlough frenzy in corporate America lately, and employee rights may be getting lost in the shuffle.

Major companies such as Dell Inc., Gannett Co., American Airlines Inc. and DuPont Co. already have announced plans to send workers home for a few days or a few weeks without pay as a way to cut costs, and a growing number of employers are jumping on the furlough bandwagon.

But many labor experts say it's created a "Wild, Wild West" in the workplace, with many employees and employers unclear on what such furloughs will mean to morale, productivity and adherence to the nation's labor laws.

"The stakes are high," says Barbara Poole, president of EmployAid, an online resource for employees and [HR executives](#). "The entire dynamic between workers and employers has been turned upside down, and the rules are being made up as we go along."

In a scramble to deal with a sputtering economy, some companies have opted to use furloughs instead of, or as a supplement to, layoffs.

According to a survey of 141 human resource executives by [consulting](#) firm Watson Wyatt, 17 percent of employers surveyed in April said they had initiated mandatory furloughs, up from 11 percent in the previous month. Another recent survey by human resource company Hewitt Associates survey of 518 U.S. firms found that 70 percent had implemented or were considering implementing furloughs.

Even though it's better than the alternative -- getting laid off -- it still can cause economic hardship for employees, and it could come back to haunt employers.

"As this happens more and more, there are sure to be issues, and speculatively, there could be a wave of suits or charges," says Loree Griffith, a senior consultant with consulting firm Mercer, about workers who may come to believe they were furloughed illegally. Maybe an employee was out on furlough, he explains, and felt they had to answer an e-mail from the boss or do work at home. That's a no-no under labor laws.

And some mass, extended furloughs could be layoffs in disguise, says Rene Roupinian, an [attorney](#) with Outten & Golden, a [law firm](#) representing employees. This would allow some employers to thwart layoff notification under the federal Worker Adjustment and Retraining Notification Act, she says. If a worker is laid off after a furlough, the Act would kick in on the first day of that furlough, and workers could be eligible for 60 days pay if their employer has more than 100 employees.

Many questions, few clear answers

Clearly furloughs are anything but simple alternatives to layoffs. As a result of the recent

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furlough-mania, I've been getting many questions from readers about their rights:

- Can I be furloughed if I'm salaried?
- Can I file for unemployment insurance when I'm on furlough?
- What if I work a bit while on furlough?

Unfortunately, the answers to these questions are not clear-cut, and some vary by state. Even getting guidance from the U.S. Department of Labor on furloughs has not been easy.

I repeatedly asked Labor Department officials, via telephone and e-mail, specific questions on furloughs and employee rights, and it took nearly a month to get a straight answer.

The agency recently came under fire for its lack of responsiveness to workers in a Government Accountability Office report, and new Secretary of Labor Hilda Solis has vowed to deal with the problem by adding more employees and field investigators.

While her comments are promising, the difficulty I had in getting basic information on labor laws points to how difficult things are right now for employees who are seeing so many changes at their place of employment.

To help out, here's an overview on what your rights are when it comes to furloughs based on my discussions with labor lawyers, my reading of the labor laws and finally, some concrete information from officials at the Labor Department's wage and hour division.

Furloughs and exempt employees

[Administrative](#) and professional employees who are exempt from overtime and paid a yearly salary can be furloughed, but there are restrictions on how furloughs can be conducted. (There are few, if any, restrictions on furloughing hourly workers.)

The way the nation's labor laws are written, an employee who is exempt from overtime and covered under the Fair Labor Standards Act must be paid for a full week of work even if they do not work one or two days during that week.

So, if your employer asks you to work on Monday and Tuesday, but sends you home without pay for the rest of the week, under labor laws the employee could lose his or her exempt status, meaning, the worker would now be eligible for overtime.

Many employers have gotten around this by making their salaried work force take a full week off at a time.

These restrictions apply only if an employer makes the furloughs mandatory. If your managers ask you to voluntarily take off one day during a week, then the overtime exemption is not jeopardized.

That raises the question of what is "voluntary" in a corporate environment where almost every worker fears being laid off?

"If I can be fired at any time, I suppose that if my employer suggests that I take a break for a month, I am likely to do that, as a job preservation strategy, so as not to force the employer's hand and make her terminate me," says Mark Risk, an [employment attorney](#).

"There have to be no adverse consequences to you if you decide to keep working," adds Brian Dixon, an attorney with employment firm Littler Mendelson.

Furloughs and unemployment benefits

It may sound counterintuitive, but even though you haven't actually lost your job and you're just on furlough, there's a good chance you're eligible for unemployment.

"The general rule is if you're laid off for more than one week you can obtain unemployment," Dixon says.

But almost every state has its own rules on this.

In [California](#), "unemployment insurance benefits are not paid for the first week after a worker

loses a job. If the 'furlough' lasts more than one week, benefits would kick in," says Patrick Joyce, a [spokesman](#) for the state's Employment Development Department.

You should file for unemployment benefits immediately, advises Joyce. "If they delay, they will still face an unpaid week -- called a 'waiting period' in the business -- before they receive benefits."

In [Connecticut](#) there is no waiting period, says George Wentworth, director of program policy for that state's Department of Labor. So, if you're furloughed for a week, you can get a full week of benefits. If you're furloughed for three days, you probably can get partial benefits. Anything less than that, you're likely ineligible, he adds.

You should contact the state agency that oversees unemployment insurance where you live to find out what you're entitled to.

Furloughs and doing work

When you are furloughed, that means you do not work. It's as simple as that. If your manager expects you to work when you're out on furlough, whether you are salaried or hourly, you must be paid for your work.

"Even if you just check your BlackBerry," say Griffith.

And there should be strict policies in place, advises Michael Elkins, a labor and employment attorney with Fowler White Burnett. "Bold, all-cap letters to employees that say they are not to check work e-mail, voice mail, not anything related to work," he says.

Bottom line: Furloughs shouldn't be an excuse for not paying workers what they're owed. However, they may continue to be a necessary evil.

"Furloughs are an unfortunate consequence of a lot of bad decisions, greed and poor judgment that are hurting a lot of people," says Myrtle Bell, associate [professor](#) of management at the University of [Texas](#) at [Arlington](#). "Some people really live paycheck to paycheck, and these furloughs are very difficult for them. However, the bottom line is that if furloughs help employers weather the storm and help employees avoid being laid off, I think they are useful."

Eve Tahmincioglu writes the weekly "Your Career" column for [msnbc.com](#) and chronicles workplace issues in her blog, [CareerDiva.net](#).

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