

FURLOUGHS, LAYOFFS & REDUCTIONS IN FORCE: THE DISTINCTIONS IMPACTING EMPLOYEE BENEFITS AND EMPLOYMENT LAWS

The chart below illustrates the impact of furloughs, layoffs and reductions in force on retirement plans, welfare benefit plans and employment law rights and responsibilities. For purposes of the chart, a “**furlough**” is a temporary, unpaid leave of absence during which an employee remains on the employer’s “W-2” roster with no separation of the employment relationship; a “**layoff**” is a complete termination of employment where there may (or may not) be an expectation that the employee will be rehired when economic conditions improve; and a “**reduction in force**” is similar to a layoff (with respect to the employment termination) but a RIF carries a connotation of permanency, or a lowered expectation of future rehire.

EMPLOYEE BENEFIT PLANS		
TYPE OF PLAN	FURLOUGH	REDUCTION IN FORCE OR LAYOFF
401(k) Plans	<p>Distributions</p> <ul style="list-style-type: none"> > A furlough is not a severance from employment, and therefore, the participant cannot take a distribution. > In-service withdrawals (post age 59½, hardship, coronavirus-related distributions) and plan loans would be permitted to the extent allowed by the terms of the plan. > In general, existing plan loan repayments made by payroll deduction would be suspended during a period of non-payment. The CARES Act provides repayment relief for affected participants with respect to loan repayments.¹ 	<p>Distributions</p> <ul style="list-style-type: none"> > A reduction in force or layoff is a severance from employment that would allow participants to take distributions. > Plan loans that are repaid via payroll deduction are frequently due when an employee has a severance from employment. If such loans are not paid off in full, they are deemed to be in default, and the participant’s account balance is offset by the outstanding loan balance. The CARES Act provides repayment relief for affected participants with respect to loan repayments.¹
	<p>Elective Deferrals</p> <ul style="list-style-type: none"> > Elective deferrals may continue if employees are being paid during the furlough. 	<p>Elective Deferrals</p> <ul style="list-style-type: none"> > Elective deferrals will end because employment has terminated. > If permitted by the plan’s terms, elective deferrals may be made from compensation paid to an employee up to 2½ months after severance from employment if the compensation would have been paid to the employee if the employee had continued in employment.

¹ The CARES Act provides a one-year delay for loan repayments of plan loans outstanding on and after March 27, 2020, through December 31, 2020, of affected participants. When the one-year period ends, the remaining loan payments, plus interest, will be re-amortized. “Affected participants” include employees who have been diagnosed with COVID-19 and/or have experienced adverse financial consequences due to quarantine, furlough, layoff or reduced work hours due to COVID-19.

FURLOUGHS, LAYOFFS & REDUCTIONS IN FORCE: THE DISTINCTIONS IMPACTING EMPLOYEE BENEFITS AND EMPLOYMENT LAWS

EMPLOYEE BENEFIT PLANS		
TYPE OF PLAN	FURLOUGH	REDUCTION IN FORCE OR LAYOFF
401(k) Plans	<p>Employer Contributions</p> <ul style="list-style-type: none"> > Matching contributions are based on employee elective deferrals. If elective deferrals end, matching contributions will also cease. > Allocations of nonelective employer contributions for the current plan year will depend on the terms of the plan (e.g., whether contributions are made each payroll, or whether there is a requirement to be employed on the last day of the year to be eligible for an allocation). 	<p>Employer Contributions</p> <ul style="list-style-type: none"> > Matching contributions will end because terminated employees do not make elective deferrals. > Allocations of nonelective employer contributions for the current plan year depend on the terms of the plan (e.g., whether contributions are made each payroll, or whether there is a requirement to be employed on the last day of the year to be eligible for an allocation).
	<p>Vesting</p> <ul style="list-style-type: none"> > Continued vesting depends on the terms of the plan. If the plan uses the elapsed time method of measuring vesting service, vesting may continue if the furloughed employee returns to work before the end of the plan year. If vesting is based on counting actual hours of service, the furlough may impact vesting. > A partial plan termination may occur as a result of a long-term furlough of a significant percentage of plan participants. If a partial plan termination occurs, affected participants become 100% vested in their plan accounts. Whether a partial plan termination occurs is a facts and circumstances determination. The IRS generally considers a workforce reduction of 20% to result in a partial plan termination. 	<p>Vesting</p> <ul style="list-style-type: none"> > Continued vesting generally will end as of severance from employment. If a participant is rehired, vesting service will depend on the terms of the plan. For example, if the plan uses the elapsed time method of measuring vesting service, a rehired employee may still earn a year of service despite a period of severance, if the employee is rehired prior to the end of the year. > A partial plan termination may occur as a result of the termination of employment of a significant percentage of plan participants. If a partial plan termination occurs, affected participants become 100% vested in their plan accounts. Whether a partial plan termination occurs is a facts and circumstances determination. The IRS generally considers a workforce reduction of 20% to result in a partial plan termination.

FURLOUGHS, LAYOFFS & REDUCTIONS IN FORCE: THE DISTINCTIONS IMPACTING EMPLOYEE BENEFITS AND EMPLOYMENT LAWS

EMPLOYEE BENEFIT PLANS		
TYPE OF PLAN	FURLOUGH	REDUCTION IN FORCE OR LAYOFF
Defined Benefit Pension Plans	Distributions <ul style="list-style-type: none"> > A furlough is not a termination of employment or retirement and does not trigger a commencement of benefits. > Under the SECURE Act, a defined benefit pension plan may allow in-service distributions at age 59½. Whether such in-service distributions would be allowed depends on the terms of the plan. The plan can be amended retroactively to permit such in-service distributions under the SECURE Act. > Suspension of benefits provisions may no longer apply to participants who have attained the plan's normal retirement age and are working fewer than 40 hours per week. 	Distributions <ul style="list-style-type: none"> > A reduction in force is a termination of employment. Commencement of benefits will depend on the terms of the plan and whether the participant has attained the plan's early or normal retirement age.
	Benefit Accrual <ul style="list-style-type: none"> > Continued benefit accrual would depend on the terms of the plan. 	Benefit Accrual <ul style="list-style-type: none"> > Benefit accrual would end upon termination of employment.

FURLOUGHS, LAYOFFS & REDUCTIONS IN FORCE: THE DISTINCTIONS IMPACTING EMPLOYEE BENEFITS AND EMPLOYMENT LAWS

EMPLOYEE BENEFIT PLANS		
TYPE OF PLAN	FURLOUGH	REDUCTION IN FORCE OR LAYOFF
Defined Benefit Pension Plans	<p>Vesting</p> <ul style="list-style-type: none"> > Continued vesting depends on the terms of the plan. If the plan uses the elapsed time method of measuring vesting service, vesting may continue if the furloughed employee returns to work before the end of the plan year. If vesting is based on counting actual hours of service, the furlough may impact vesting. > A partial plan termination may occur as a result of a long-term furlough of a significant percentage of plan participants. If a partial plan termination occurs, affected participants become 100% vested in their plan accounts. 	<p>Vesting</p> <ul style="list-style-type: none"> > Continued vesting generally will end as of severance from employment. If a participant is rehired, vesting service will depend on the terms of the plan. For example, if the plan uses the elapsed time method of measuring vesting service, a rehired employee may still earn a year of service despite a period of severance, if the employee is rehired prior to the end of the year. > A partial plan termination may occur as a result of the termination of employment of a significant percentage of plan participants. If a partial plan termination occurs, affected participants become 100% vested in their plan accounts.
	<p>PBGC Reportable Event (Form 10)</p> <ul style="list-style-type: none"> > A PBGC “reportable event” occurs when the number of active participants under a defined benefit plan is reduced below 80% of the number of active participants at the beginning of the plan year due to a “single event” or an “attrition event.” > Reporting waivers apply to this event. > If required, PBGC Form 10 must be filed no later than 30 days after the event. Form 10 instructions, including descriptions of reportable events and waivers, are found here: https://www.pbgc.gov/documents/Form-10-Instructions.pdf 	<p>PBGC Reportable Event (Form 10)</p> <ul style="list-style-type: none"> > A PBGC “reportable event” occurs when the number of active participants under a defined benefit plan is reduced below 80% of the number of active participants at the beginning of the plan year due to a “single event” or an “attrition event.” > Reporting waivers apply to this event. > If required, PBGC Form 10 must be filed no later than 30 days after the event. Form 10 instructions, including descriptions of reportable events and waivers, are found here: https://www.pbgc.gov/documents/Form-10-Instructions.pdf

FURLOUGHS, LAYOFFS & REDUCTIONS IN FORCE: THE DISTINCTIONS IMPACTING EMPLOYEE BENEFITS AND EMPLOYMENT LAWS

EMPLOYEE BENEFIT PLANS		
TYPE OF PLAN	FURLOUGH	REDUCTION IN FORCE OR LAYOFF
Group Health Plans	<p>Continued Eligibility for Coverage</p> <ul style="list-style-type: none"> > Whether an employee remains eligible for coverage depends on the terms of the plan. <ul style="list-style-type: none"> • If the plan uses the Affordable Care Act (ACA) look-back measurement method for identifying “full-time employees” to whom coverage must be offered, a reduction in hours or furlough will not affect the eligible status of employees who worked at least 30 hours per week during the look-back measurement period. The ACA requirement to offer “affordable” coverage will continue to apply to such employees who remain eligible. An employer should review its method of determining whether coverage is affordable (Form W-2 safe harbor, rate of pay safe harbor, or federal poverty line safe harbor). • If the plan uses the ACA monthly measurement method for identifying “full-time employees” to whom coverage must be offered, a reduction in hours or furlough will impact eligibility for group health plan coverage. > If an employee loses eligibility for coverage due to a furlough or reduction in hours, federal COBRA continuation coverage or state law “mini-COBRA” continuation coverage rights will apply. Although a plan may require COBRA qualified beneficiaries to pay up to 102% of the cost of coverage, an employer may choose to subsidize COBRA premiums. 	<p>Continued Eligibility for Coverage</p> <ul style="list-style-type: none"> > Covered employees and dependents who lose active employee group health plan coverage due to the termination of employment are entitled to federal COBRA continuation coverage or state “mini-COBRA” continuation coverage. > Although a plan may require COBRA qualified beneficiaries to pay up to 102% of the cost of coverage, an employer may choose to subsidize COBRA premiums.
Other Welfare Benefits	Continued eligibility for welfare benefits not subject to the ACA (such as short- and long-term disability) depends on the terms of the plan. Employees and dependents who lose dental and/or vision coverage are entitled to COBRA continuation coverage.	Coverage will end upon termination of employment. Employees and dependents who lose dental and/or vision coverage are entitled to COBRA continuation coverage.

FURLOUGHS, LAYOFFS & REDUCTIONS IN FORCE: THE DISTINCTIONS IMPACTING EMPLOYEE BENEFITS AND EMPLOYMENT LAWS

EMPLOYEE BENEFIT PLANS		
TYPE OF PLAN	FURLOUGH	REDUCTION IN FORCE OR LAYOFF
Section 125 Cafeteria Plans, Including Flexible Spending Arrangements	<p>Continued Pre-Tax Contributions</p> <ul style="list-style-type: none"> > Employees who are paid during the furlough may continue to purchase benefits (for which they remain eligible) on a pre-tax basis through a cafeteria plan. <p>Flexible Spending Arrangements (FSAs)</p> <ul style="list-style-type: none"> > Employees remain eligible for FSA benefits. The full amount of health FSA elections, to the extent unused, remains available. Dependent care FSA funds are available to the extent of contributions. <p>Mid-Year Election Changes</p> <ul style="list-style-type: none"> > Mid-year election changes are allowed to the extent permitted by the Internal Revenue Code section 125 regulations and the terms of the cafeteria plan. > A reduction in hours is a “change in status event” permitting a mid-year election to the extent that (i) the reduction in hours affects the participant’s eligibility for the benefit, and (ii) the election change is consistent with the event. > A participant may make a mid-year election change if the cost of a benefit during furlough significantly increases. > A participant may drop group health plan coverage if his or her hours of employment are reduced below 30 per week, and he or she intends to enroll in other minimum essential coverage. 	<p>Continued Pre-Tax Contributions</p> <ul style="list-style-type: none"> > Contributions generally end because former employees do not have compensation from which cafeteria plan contributions may continue to be made. <p>Flexible Spending Arrangements (FSAs)</p> <ul style="list-style-type: none"> > Employees may submit claims for reimbursement for eligible expense incurred before termination of employment.

Brydon M. DeWitt

Employee Benefits & Executive Compensation
804.420.6917 | bdewitt@williamsmullen.com

Marc Purintun

Employee Benefits & Executive Compensation
804.420.6310 | mpurintun@williamsmullen.com

FURLOUGHS, LAYOFFS & REDUCTIONS IN FORCE: THE DISTINCTIONS IMPACTING EMPLOYEE BENEFITS AND EMPLOYMENT LAWS

EMPLOYMENT LAW CONSIDERATIONS		
ISSUE	FURLOUGH	REDUCTION IN FORCE OR LAYOFF
Identifying Affected Employees	<p>Making the Selections</p> <ul style="list-style-type: none"> > In both furloughs and layoffs, employers should use legitimate, non-discriminatory business reasons for selecting the employees who will be affected. > Using objectively neutral criteria minimizes risk (i.e., selecting entire departments or shifts, relying on seniority-based decisions - “last in, first out”, etc.). > Consider relying upon recently documented performance and disciplinary history. > Analyze the proposed class of affected workers to confirm there is not a statistically significant adverse impact on members of protected classes (i.e., minorities, women, older workers, disabled workers). > Also, identify workers who may have recently engaged in legally protected activity at work (i.e., filed internal or external grievances, reported workplace safety concerns, recently returned from job-protected medical leave, etc.). > Are any of the affected employees subject to employment contracts that promise employment for a certain time period? What are the exceptions? 	<p>Making the Selections</p> <ul style="list-style-type: none"> > Same considerations as furloughs.
Communicating the Message	<p>Furlough Notice (See WARN-Act below)</p> <ul style="list-style-type: none"> > Identify reason for furlough (i.e., COVID-related). > In-person if possible, followed by written notice. > What is their work expectation? No work? Reduced hours? Staggered shifts? > Notify employees of next/final paycheck date prior to furlough. > For hourly nonexempt employees, provide a clear statement prohibiting work to avoid state and federal wage liability. > Information regarding benefits eligibility and continuation. 	<p>Layoff Notice (See WARN-Act below)</p> <ul style="list-style-type: none"> > In-person if possible, followed by written notice. > Identify reason for layoff/termination (i.e., COVID-related). > Clear statement that employment relationship has ended > State last day of employment and date of final pay (i.e., next regular payday following termination date). > Identify payment of accrued, unused leave and other wage equivalents as required by state and federal wage and hour law (i.e., PTO).

FURLOUGHS, LAYOFFS & REDUCTIONS IN FORCE: THE DISTINCTIONS IMPACTING EMPLOYEE BENEFITS AND EMPLOYMENT LAWS

EMPLOYMENT LAW CONSIDERATIONS		
ISSUE	FURLOUGH	REDUCTION IN FORCE OR LAYOFF
	<ul style="list-style-type: none"> > Will PTO be available for use? Frozen, but not forfeited? > Will benefits such as PTO, sick leave, etc. that are tied to a “service requirement” continue to accrue? > Advise about benefits eligibility and continuation (as described in the benefits section of the chart). > Employees may, or may not, be called back to work. > Remind and restate the “at-will” nature of their employment, as applicable (i.e., they can be subject to separation while on furlough). > Employees remain subject to certain company policies and agreements regarding confidentiality, non-disclosure, non-solicitation and non-competition, as applicable. > Comply with state-specific laws governing notification obligations for unemployment eligibility (furloughed employees typically qualify). > Notice not to access company networks or electronic storage spaces (unless authorized). > Provide point of contact for employment and benefits questions. 	<ul style="list-style-type: none"> > Identify payment (or forfeiture) of commissions, bonuses and incentive compensation in accordance with plan documents and state and federal law. > Address outstanding expense reimbursement(s). > Identify termination dates of health, dental, vision and other insurances. > Consider reminders regarding rights and responsibilities under FSAs, 401(k) plans, employer-sponsored life insurance, STD, LTD, EAPs and other similar plans and programs. > Consider providing job-placement references and resources. > Clear statement that employment relationship has ended. > Comply with state-specific laws governing notification obligations for unemployment eligibility (laid off employees typically qualify). Remind employees of any post-employment obligations under noncompetes, nonsolicits, nondisclosure and similar agreements, if any. > Notice not to access company networks or electronic storage locations. > Termination triggers post-employment restrictive covenants, non-competes, non-solicits, etc. > Provide point of contact for employment and benefits questions. > Consider invitation to reapply when conditions improve and to monitor job-postings and career pages.

FURLOUGHS, LAYOFFS & REDUCTIONS IN FORCE: THE DISTINCTIONS IMPACTING EMPLOYEE BENEFITS AND EMPLOYMENT LAWS

EMPLOYMENT LAW CONSIDERATIONS

ISSUE	FURLOUGH	REDUCTION IN FORCE OR LAYOFF
Offboarding	Furlough Offboarding <ul style="list-style-type: none"> > Unless needed while on furlough, collect company items: <ul style="list-style-type: none"> • Vehicle • Vehicle keys • Gas/credit cards (or deactivate) • Facility keys and security cards/fobs • Electronic devices (phones, computers, tablets) • Other IT accessories (cords, chargers, thumb-drives) • All company-owned tools and equipment • Uniforms • Other property issued to employee during employment • Confidential company information (hard and electronic copies) > Terminate access to company networks, electronic storage locations, etc. (can be done selectively as business needs require). > Follow other normal exit and offboarding protocols if they apply. 	Layoff Offboarding <ul style="list-style-type: none"> > Exit interview (if feasible and desirable) > Collect company items: <ul style="list-style-type: none"> • Vehicle • Vehicle keys • Gas/credit cards (or deactivate) • Facility keys and security cards/fobs • Electronic devices (phones, computers, tablets) • Other IT accessories (cords, chargers, thumb-drives) • All company-owned tools and equipment • Uniforms • Other property issued to employee during employment • Confidential company information (hard and electronic copies) > Terminate access to company networks, electronic storage locations, etc. > Consider severance payment in exchange for a general release document/separation agreement. > Stock rights, equity grants, profits units, etc. controlled by governing plan documents and separate agreements. > Follow all other normal exit and offboarding protocols.

FURLOUGHS, LAYOFFS & REDUCTIONS IN FORCE: THE DISTINCTIONS IMPACTING EMPLOYEE BENEFITS AND EMPLOYMENT LAWS

EMPLOYMENT LAW CONSIDERATIONS		
ISSUE	FURLOUGH	REDUCTION IN FORCE OR LAYOFF
WARN-Act Issues	<p>Notification Requirements (if any)</p> <ul style="list-style-type: none"> > The WARN Act only applies to those employers with 100 or more employees (not including those employees who have worked less than six months in the last 12 months or who work on average less than 20 hours a week). > In order for the WARN Act to apply, the furloughs/layoffs/reduction in force must cause at a “Single Site of Employment” either a “Plant Closing” or a “Mass Layoff” that results in an “Employment Loss.” <ul style="list-style-type: none"> • A “Single Site of Employment” is generally a single location for an employer, even if the employer has multiple locations, as long as the location does not include contiguous locations – think of a production plant with a production facility with a separate warehouse on the site. The two buildings together will constitute a Single Site of Employment. • “Mass Layoff” means that within a 30 day period the employer at a single site of employment furloughs or lays off either (a) 500 or more employees or (b) if between 50 and 499 employees, the furloughed or laid off employees must make up at least 1/3 of the employer’s active work force at the location. However, there is a 90-day window for reviewing the layoff/furlough numbers if, during a 90-day rolling period, the employer engages in two or more layoffs that individually would not meet the definition of a mass-layoff, but in the aggregate will. 	<p>Notification Requirements (if any)</p> <ul style="list-style-type: none"> > Same considerations as furloughs.

FURLOUGHS, LAYOFFS & REDUCTIONS IN FORCE: THE DISTINCTIONS IMPACTING EMPLOYEE BENEFITS AND EMPLOYMENT LAWS

EMPLOYMENT LAW CONSIDERATIONS		
ISSUE	FURLOUGH	REDUCTION IN FORCE OR LAYOFF
WARN-Act Issues	<ul style="list-style-type: none"> • “Plant Closing” means that there is a shutdown of the business that will result in the employment loss of at least 50 employees in a 30-day period. • “Employment Loss” is either (a) an employment termination other than a discharge for cause, a voluntary resignation or a retirement, (b) a layoff (or furlough) exceeding six months , (c) a reduction in employees’ hours of work by more than 50% in each month in any six month period. <p>> If these criteria are met, then the employer has the obligation to provide 60 days in advance of the Mass Layoff or Plant Closing statutorily compliant notices to (a) each affected employee, or if any of those affected employees are represented by a union, the bargaining agent of the affected employees, (b) the state dislocated worker unit (generally the unemployment office), and (c) the chief elected official for the locality where the Plant Closing or Mass Layoff will occur.</p> <p>> The only exceptions to the notice requirement are for the following:</p> <p>a) Faltering Company – applies only to Plant Closings. The employer must show that it is seeking new capital or business to stay open and providing a WARN notice would ruin its opportunity to obtain new capital</p>	

FURLOUGHS, LAYOFFS & REDUCTIONS IN FORCE: THE DISTINCTIONS IMPACTING EMPLOYEE BENEFITS AND EMPLOYMENT LAWS

EMPLOYMENT LAW CONSIDERATIONS		
ISSUE	FURLOUGH	REDUCTION IN FORCE OR LAYOFF
WARN-Act Issues	<p>or business. The employer must still give as much notice as practicable, and the notice must explain why full notice could not have been provided.</p> <p>b) Unforeseeable Business Circumstances – applies to both Plant Closings and Mass Layoffs where business circumstances caused a Plant Closing or Mass Layoff, and those circumstances were not reasonably foreseen at the time that notice would have been required. You are still required to give as much notice as practicable, and the notice must explain why full notice could not have been provided. This will likely be the most applicable exception during the COVID-19 crisis.</p> <p>c) Natural Disaster – Self-explanatory, applies to both Plant Closings and Mass Layoffs. The employer is still required to give as much notice as practicable, and the notice must explain why full notice could not have been provided. It is not clear if COVID-19 will meet this definition.</p>	

FURLOUGHS, LAYOFFS & REDUCTIONS IN FORCE: THE DISTINCTIONS IMPACTING EMPLOYEE BENEFITS AND EMPLOYMENT LAWS

EMPLOYMENT LAW CONSIDERATIONS		
ISSUE	FURLOUGH	REDUCTION IN FORCE OR LAYOFF
<p>Recalls and Rehires</p>	<p>Recalling Employees:</p> <ul style="list-style-type: none"> > No need for traditional “new hire” or “rehire” paperwork or processes. > Can be done at any time, based on business needs. > Can be done individually or in groups. > Can ask COVID-related health and safety questions (so long as done to all recalled employees, in accordance with ADA requirements and EEOC, CDC and OSHA guidance). > Selections for recall (as with layoff recalls) should be based on defensible, non-discriminatory business needs – be prepared to defend the decision. > Employees who refuse recall may be terminated (absent legal justification for refusing). > Absent unique circumstances, furlough leave is not “job protected” or “position protected” leave; therefore, recalled employees can be placed in alternate positions, shifts, etc. based on business needs of company. > Unless governed by contract, pay can be adjusted upon recall in accordance with state and federal wage and hour law. > Be prepared to address employee safety questions and concerns. 	<p>Rehiring Employees:</p> <ul style="list-style-type: none"> > Follow traditional policies and procedures for new hires or rehires (i.e., offer letter, paperwork, benefits notifications, enrollment, explanation and acceptance of terms and conditions of employment). > Can be done at any time, based on business needs. > Can be done individually or in groups. > Selections for rehire (as with furlough recalls) should be based on defensible, non-discriminatory business needs – be prepared to defend the decisions. > Follow traditional EEO policies and practices in selection process. > Can ask COVID-related health and safety questions (so long as done to all recalled employees), but <i>only after</i> a conditional offer of employment is made; follow EEOC guidance and ADA regulations. > Flexibility for certain aspects like drug testing, post-offer, pre-employment background checks, orientation and training, etc. These may be relaxed at company’s discretion but should be equally applied to all similarly situated rehires.

FURLOUGHS, LAYOFFS & REDUCTIONS IN FORCE: THE DISTINCTIONS IMPACTING EMPLOYEE BENEFITS AND EMPLOYMENT LAWS

EMPLOYMENT LAW CONSIDERATIONS		
ISSUE	FURLOUGH	REDUCTION IN FORCE OR LAYOFF
Recalls and Rehires	<ul style="list-style-type: none"> > Reinstate access to resources, benefits, and privileges, as appropriate. > If affected employees are subject to a collective bargaining agreement, the employer should consult the agreement for layoff/furlough and recall/rehire protocol. Often this will be based on seniority so that the last hired is the first to be laid off and last to be recalled. 	<ul style="list-style-type: none"> > Rehired employees can be placed in alternate positions, shifts, etc. based on business needs of company. > Pay can be adjusted upon rehire in accordance with state and federal wage and hour law. > Be prepared to address employee safety questions and concerns. > If the employee is rehired within 3 years of the date the Form I-9 was originally executed, employer may complete Section 3 of Form I-9 or treat as a new hire and complete a new Form I-9. If treated as a new hire, employer should create a new case in E-Verify. If the employer completes Section 3 of the Form I-9 and previously created a case in E-Verify, there are specific rules to follow to determine if a new E-Verify case needs to be created. > Should sign new agreements (i.e., confidentiality, non-disclosure, non-solicitation, non-competition and intellectual property assignment agreements). > Again, if the affected employees are subject to a collective bargaining agreement, check the rehire provisions.

David C. Burton
 Labor, Employment & Immigration
 757.473.5354 | dburton@williamsmullen.com

Edward S. Schenk III
 Labor, Employment & Immigration
 919.981.4303 | eschenk@williamsmullen.com