

Employers Council

Employment Law • HR • Training • Surveys

# Public Sector

Cutting Employees Costs in Tough Times  
within Legal Limits

Lorrie Ray & Tina Harkness / March 2021

1

---

---

---

---

---


---

---

---

## Options and Limits

- Broad considerations
- Reductions and separations
- Pay exemptions and exceptions



2

---

---

---

---

---

---

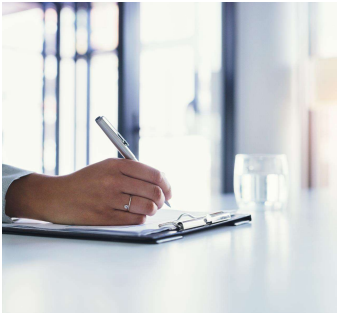
---

---

## Options and Limits

Only follow the laws that you must

Leverage the laws that allow cost savings for public sector employers



3

---

---

---

---

---

---

---

---

## Who Can Effectively Work from Home

### Reduced Operating Costs:

- Office space
- Utilities

### Reduced Personnel Costs:

- Expenses
- Mileage
- Time out of the office

4

---

---

---

---

---

---

---

## Innovation

Moving  
services  
online

Employee  
ideas in  
structured  
conversations

State grants  
to help with  
infrastructure  
improvements

5

---

---

---

---

---

---

---

## Structured Conversations

### Start with Why in Mind

License Plates:

- Identify Owners
- Public Safety
- Road Maintenance
- Taxes for Maintenance
- License Plates show who paid taxes

6

---

---

---

---

---

---

---

## Structured Conversations

### Eliminate Waste

Different Types of Waste:

- Transport
- Inventory
- Waiting
- Over-Production
- Defects

---

---

---

---

---

---

---

7

## Structured Conversations

### Examples of Employee Ideas

- Shopping Carts returned to stores for a fee
- Public Works Truck designed to have tools in designated areas so those most used easiest to offload
- Fire trucks with a place for every item – ambulances copy this for first responder items

---

---

---

---

---

---

---

8

## Reduced Pay

Meet  
required legal  
minimums

Pay cuts  
can be  
prospective  
only

Contractual  
obligations

---

---

---

---

---

---

---

9

## Reduced Hours

Must be regular, ongoing for exempt employees to avoid furlough rules

Can be daily/weekly business needs for non-exempts

Partial unemployment

10

---

---

---

---

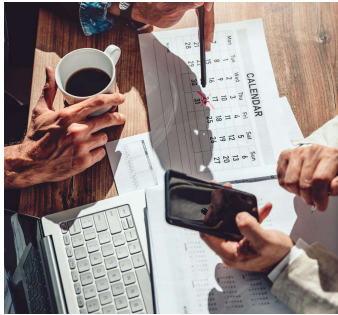
---

---

---

## Voluntary Separations

- Early retirement
- Buyouts
- Who is eligible?
- Beware of age claims



11

---

---

---

---

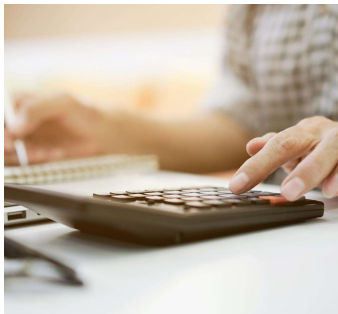
---

---

---

## Furloughs

- Temporary unpaid leave
- Keep PTO
- Plan determines if benefits are maintained
- Unemployment eligible
- Exempt Employees follow 29 CFR section 541.710 (b)



12

---

---

---

---

---

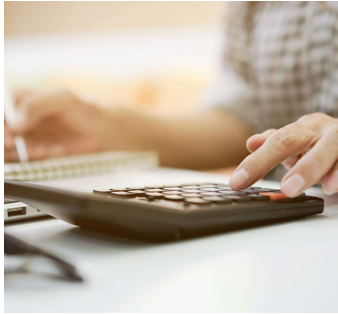
---

---

## Furloughs

29 CFR section 541.710 (b)

- Deductions from pay due to budgetary furlough for exempt employees do not destroy the exemption, generally.
- Any workweek where salary is reduced, the employer must pay overtime if employee works more than 40 hours.



---

---

---

---

---

---

---

13

## Selecting Employees for Layoff

- Clearly defined reason
- Related to business objectives
- As objective as possible



---

---

---

---

---

---

---

14

## Selecting Employees for Layoff

Seniority

*Safe Harbor:  
Use when possible*

Skills /  
Knowledge

*Required for  
the job*

Performance

*Measured and  
backed by data  
or docs*

---

---

---

---

---

---

---

15

## Other Layoff Considerations

- One person in a job
- Contractual obligations
- Collective bargaining agreements
- Public sector due process requirements



---

---

---

---

---

---

---

16

## Layoffs

- Employment separation
- Cash out PTO
- State continuation, COBRA, or marketplace
- Unemployment eligible



---

---

---

---

---

---

---

17

## OT Exemption 7(k)

Law enforcement/fire protection  
employees may be paid OT based on 7 to  
28 day “work period”

*29 USC 207(k)*

---

---

---

---

---

---

---

18

Maximum Hours Worked (Rounded) Before Overtime		
CONSECUTIVE DAYS WORK PERIOD	HOURS OF FIRE PROTECTION	HOURS OF LAW ENFORCEMENT
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

19

---

---

---

---

---

---

---

---

---

---

**OT Exemption 13(b)(20)**

**Exemption for law enforcement/fire protection employees who work for public agency with fewer than 5 employees**

*29 USC 213(b)(20)*

20

---

---

---

---

---

---

---

---

---

---

**Comp Time**  
*29 USC 207(o)*

1 ½ time off instead of paying OT

Law enforcement/fire protection/emergency response personnel may accrue up to 480 hours (can be less to control liability)

At termination, comp time paid at higher of final rate or pay or avg. rate during last 3 yrs.

21

---

---

---

---

---

---

---

---

---

---

## Occasional and Sporadic Work

29 USC 207(p)(2)

OT exemption if done voluntarily for same public agency in different capacity from that which they are employed

Occasional and sporadic does NOT equal a set schedule

Consider offering to several outside the department

22

---

---

---

---

---

---

---

## Shift Swapping

29 USC 207(p)(3)

Employees are credited as if they worked their normal schedule for that shift if all are met:

- approve the substitution
- Substitution must be voluntary
- Individuals substituting must be employed by the same agency and in the same capacity

23

---

---

---

---

---

---

---

## Volunteers

29 USC 203(e)(4)

Public sector employees may volunteer to do different kinds of work in the jurisdiction in which they are employed

Outside of their job duties and outside of their department

Public sector employees may volunteer to do similar work in different jurisdictions

24

---

---

---

---

---

---

---



## Exempt Employee Partial-Day Absences

29 CFR 541.710

Public sector exempt employees may be docked for partial-day absences where they accrue personal and sick leave and leave is not used because:

- Permission for its use has not been sought or has been sought and denied;
- Leave has been exhausted; or
- The employee chooses to use leave without pay (and the employer agrees).

---

---

---

---

---

---

---

25

## Areas That Are Above and Beyond

**Public sector employers are not required by federal or CO to pay**

Exempt or non-exempt employees:

- Accrued and unused PTO, vacation, sick leave, etc. upon separation

Exempt employees:

- Comp time

---

---

---

---

---

---

---

26

## Areas That Are Above and Beyond

**Public sector employers are not required by federal or CO to pay**

Non-exempt employees:

- Guaranteed minimums
- Daily overtime or 1 ½ time for hours that are not actual overtime
- Double time
- Unrestricted on-call time
- Jury duty beyond 3 days

---

---

---

---

---

---

---

27

## A Word About Paid Time Off

### How much is enough?

- Meet legal requirements
- Look at all paid leaves together
- Coordinate with leaves of absence
- Coordinate with insured benefit plans
- Consider potential areas of overlap
- What's is a realistic amount?

---

---

---

---

---

---

---

28

## Conclusion

Create a broad  
legal and  
organizational  
view

Fully  
consider  
cuts

Use pay  
exemptions  
and exceptions

---

---

---

---

---

---

---

29