

Apocalypse Averted Again: Preliminary Thoughts on Welcoming Workers Back From the Government Shutdown

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As my colleague Jill Collins [discussed](#) a few weeks ago, the government shutdown had a broad impact on a number of workers in the public and private sectors. Now that the federal government has reopened, employers welcoming back furloughed employees should stand ready to answer worker questions and assuage employee concerns. Below we offer some preliminary thoughts for private employers managing this delicate process.

- **Back Pay and Unemployment.** Employers should be prepared to answer employee questions about their eligibility for back pay and unemployment benefits for their time out of work. If employers provide back pay and employees have already received unemployment benefits, employers should notify employees that they may be required to pay back any unemployment benefits received. Generally, employees can either collect unemployment from the respective state unemployment agencies for the time missed or they can accept the backpay if offered by the employer, but they cannot double collect. At least three state unemployment agencies (PA, VA, MD) have explicitly stated that they will expect reimbursement if employers provide back pay.
- **Guard Against Liability.** Efforts by employers to return workplaces to pre-shut down normalcy, including by providing back pay and other benefits to workers for the furloughed time, should be implemented in an even-handed, non-discriminatory manner to guard against liability. For example, if employers decide to bring employees back from a furlough on a rolling basis, they must be sure to have neutral business-justified criteria for who is brought back to the workplace and when they are brought back to the workplace.
- **Manage the Message.** Hundreds of thousands of workers have been temporarily out of work for up to three weeks because of the government shutdown. Employers should emphasize that these temporary furloughs were the outgrowth of the Congressional stalemate. Accordingly the message to employees should be clear: extraordinary circumstances and not poor job performance, forced employers' hands and required them to temporarily furlough employees.
- **Ease Their Pain.** Employers need to be sensitive to the plight of their returning workers, many of whom have been suffering severe economic hardship during this time period. Economic *esprit-de corps* measures like jeans days or pizza lunches represent cost-effective ways to remind returning employees that they are highly-valued and welcomed back into the corporate fold.

When in doubt about prospective measures in the wake of the government shutdown, employers should contact employment counsel.

Authors