What is the difference between a furlough, a layoff and a termination of employment?

There is no defined term in the ADP plan document for a layoff or furlough and whether it should be considered a termination of employment or a leave of absence. If there is an expectation that the employee will resume working, or the employee is still getting paid, or is still receiving other benefits, then you may determine that the employee has not terminated from employment for plan purposes. (Note, you should consult your legal advisor if you have questions regarding applicable employment status for your employees, especially if your state has specific laws defining leaves.) Many employers are treating a furlough as a leave of absence, as they expect to resume hours for employees in the future. Employees who are on a leave of absence because of COVID-19 reasons will continue to accrue service for vesting and eligibility in accordance with the rules for your Plan’s particular method of crediting service. Service crediting rules are described in Chapter 5 of the Plan Administration Manual.

If an employee’s employment has ended, and there is no expectation of returning to work, then the employee is generally treated as laid off or terminated from employment. Terminated employees no longer accrue benefits under the Plan and will not accrue additional vesting service under the Plan after their termination date.

However, you should review your Plan to determine if a “partial plan termination” has occurred. This is a facts and circumstances test that applies when a group of participants are involuntarily terminated from the Plan. If you have terminated a significant number of your Plan’s participants (a general rule of thumb is more than 20%), your Plan may have experienced a partial plan termination, which requires you to fully vest the account balances of affected participants. Chapter 4 of your Plan Administration Manual provides additional information regarding partial plan terminations.

So, the important issue is not what you call it, but how you are treating employees during this time, and all employees in a similar situation should be handled consistently.

How do I code participants who are furloughed?

Most payroll products do not have a defined Furlough status code. If you are treating the furlough as a leave of absence, you will need to code these employees with a “Leave of Absence” status. Employees under this status will have the option to take

THE CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY (C.A.R.E.S.) ACT OF 2020, includes several provisions designed to provide financial relief to employees who have been terminated, furloughed or who have their wages and/or hours reduced. How you code impacted employees in your payroll system will have an impact on your retirement plan, including compliance testing. This document contains further guidance on payroll coding as well as answers to other frequently asked questions.
COVID-19 distributions, will be able to suspend any active loan payments for the remainder of 2020, will continue to be eligible for the Plan and will resume participation when their leave ends.

What happens when I rehire a terminated employee?

If a previously terminated employee is rehired, you will need to change the employee status in payroll to active and remove the term date from his or her payroll record. Depending on your payroll product, you may also need to add a rehire date. The updated employee status will be sent to ADP 401k with the next payroll file transmission. You may also need to complete the Adjusted Service Date form for rehired employees to update vesting service. Please refer to chapter 4 of the Plan Administration Manual for details on rehired employees under the "Plan Sponsor Website, Changes, Special Circumstances" for more information and detailed instructions. Special action may be needed if your Plan has a Qualified Automatic Contribution Arrangement (QACA) or Eligible Automatic Contribution Arrangement (EACA) feature. Refer to chapter 5, "Eligibility and Enrollment" and chapter 9, "Qualified Automatic Contribution Arrangement (QACA)" in your Plan Administration Manual for more information.

How are loans treated during a leave of absence versus a termination of employment?

General rules state that a participant on a leave of absence may suspend plan loans for up to one year. When the participant returns to work, the loan is re-amortized over the remaining period of the loan and loan repayments resume at a higher rate.

The C.A.R.E.S. Act provides special loan suspension ability for participants who are adversely affected by COVID-19. ADP is operationally supporting this suspension by allowing all participants who are considered "Qualified Individuals" (other than terminated participants) to request a suspension of their loan repayments for the remainder of 2020. (See the Frequently Asked Questions recently provided to you from ADP for more information on who is considered a Qualified Individual.) Participants can go into their account online to certify they are a Qualified Individual and make an election to suspend loan payments until January 2021. At the end of the suspension period, ADP will re-amortize the balance of the loan plus the interest that accrued during the suspension period and the participant’s new loan repayment amount will become payable at that time. For operational reasons, these suspended loan repayments cannot begin earlier than January 1, 2021.

A terminated participant must repay the entire balance of his or her loan by the earlier of the date he or she takes a distribution or the deemed distribution date (the last day of the calendar quarter following the quarter in which the participant first misses a payment due to termination of employment). Loans that are not repaid by such time will be defaulted and treated as taxable as of that date. Termination distributions with defaulted loans will be offset (subtracted) from the termination distribution. If the terminated participant is a "Qualified Individual", he or she may be able to treat the amount of any loan offset as a Coronavirus Related Distribution.

How can I stop my Safe Harbor Contributions?

A Plan may stop making safe harbor contributions (matching or non-elective) during the year as long as employees have been given prior notice that the Plan may suspend or reduce contributions.
For Plans on ADP’s prototype plan document, this language is included in your safe harbor notice for the year. When stopping safe harbor contributions, guidance available at this time, requires you to give employees 30 days advance notice of the suspension or reduction. You must make the full safe harbor contributions to the Plan up until the date the contribution is suspended or reduced.

In addition, the Plan will be subject to the non-discrimination requirements of the ADP and ACP test for the Plan year of the suspension or reduction and, if considered Top-Heavy, will be subject to the Top Heavy minimum contribution requirement for the year. If you wish to suspend or reduce your safe harbor contribution for the 2020 plan year, please first check your 2019 year end testing package to determine if the Plan is top heavy and requires a 2020 top heavy minimum contribution.

Another option may be to postpone any per pay period safe harbor contributions and make them as annual contributions after the end of the year. This may allow you to conserve cash flow now, but still provide a benefit to employees and still qualify for the benefit of meeting the top heavy requirements. You will need to request a plan document amendment in order to change from a per pay period contribution to an annual contribution.

How can I stop my Employer Contributions if my Plan is not considered Safe Harbor?

A Plan may stop making non-safe harbor Employer Contributions during the year without any IRS required advance notice to participants. If the matching contribution is written into your document as a fixed contribution, you must prospectively amend the Plan to stop it. If the contribution is discretionary, you may stop it with a board resolution, or similar corporate action. Note that any fixed contributions will be required through the date of amendment.

Another option may be to postpone any per pay period contributions and make them as annual contributions after the end of the year. This may allow you to conserve cash flow now, but still provide a benefit to employees.
Can I take a Hardship Withdrawal because I have been quarantined or furloughed?

There has been no specific relief provided for a general hardship distribution under the C.A.R.E.S. Act, but participants may qualify for a Coronavirus Related Distribution instead (up to $100,000). Participants can call the ADP Participant Service Center to request a Coronavirus Related Distribution.

I have employees being paid under the Families First Coronavirus Response Act for sick time. Should I be including this pay for plan purposes?

Yes, this pay is considered wages and unless your Plan specifically excludes it, it should be considered Compensation for plan purposes.

I have an employee who contributed more than $19,000 in 2019. Normally, these excess deferrals need to be distributed before 4/15. Do employers have more time this year to distribute these amounts?

Yes, the IRS issued notice 2020-23 that extended the due date for many obligations that fall between April 1 and July 15, until July 15th. One of the obligations that is extended until July 15 is the deadline for employers to distribute any 2019 excess deferrals.

Additional resources

As always, ADP is here to support you and your employees during times of uncertainty. Navigate to our Employer Preparedness Toolkit at https://explore.adp.com/covid-19-resources-web to find helpful resources and tips for meeting the challenges you and your employees may be facing. Be sure to subscribe to Eye on Washington to stay current on the latest legislative updates, including The C.A.R.E.S. Act.