

Employer Obligations to Notify Employees of Wage Reductions

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As wage reductions become a common solution to the uncertain environment resulting from the COVID-19 pandemic, U.S. employers have had to make some difficult decisions. Many have laid off or furloughed employees, while others have been forced to reduce wages to stay afloat.

On March 27, 2020, President Donald Trump signed into [law](#) a \$2-trillion relief package that, among other things, provides loan and tax incentives for businesses to retain their employees. As a result of this, employers who were considering laying off or furloughing their employees may consider retaining them at reduced wages instead. Employers must ensure they comply with the laws governing notice of pay reductions. In other words, it matters not only what employers say, but how they say it.

No federal law requires employers to give employees notice of a change in their pay. Yet, a majority of states, the District of Columbia, and several localities require employers to provide notice (often in writing) to an employee whose wages will be changed. Most of these require *advance* notice, while others permit notice within a specified time after the change is made. Some require that the notice be signed by the employee, while others do not.

Significant jurisdictional variations in these laws exist, and a discussion of each is beyond the scope of this publication. Nevertheless, a few examples highlight this variation and show how important it is that employers understand the requirements in the locations in which they operate.

New York Labor Law, for example, requires employers to provide written notice of any changes in an employee's wage rate at least seven days prior to the effective date of the changes, unless the changes are reflected in a wage statement that otherwise complies with applicable law.

Michigan requires employers to notify an employee of a change in wage rate before the effective date of the change or before the employee works any hours at the new rate. And, like Michigan, Illinois requires advance notice of changes to employee pay. But, unlike Michigan, Illinois requires that the notice be in writing. However, Illinois has an exception to the writing requirement for "extraordinary circumstances," provided the employer "immediately" rectifies its inability to put the change in writing.

As a final example, Pinellas County, Florida, requires employers to notify employees in writing within seven days *after* making a change to the rate of pay.

As these examples suggest, there is considerable variation in what employers must do depending on the jurisdiction.

Many of the laws, regulations, and ordinances that govern notice of changes to pay are enforceable through an administrative action, and, ultimately, in court. Employers who fail to comply can face damages, fines, and attorneys' fees and costs.

Employers considering keeping employees on the payroll at reduced wages should consult with legal counsel to ensure they comply with all applicable notice requirements. Employers operating in multiple states may face significantly different (or no) notice obligations, depending on the jurisdictions in which they operate. Finally, employers who are not otherwise obligated to provide notice of wage changes should consider whether to do so voluntarily. Recent trends suggest that more jurisdictions will make notice requirements mandatory.

Jackson Lewis attorneys are available to help employers navigate these issues and any other challenges they face during this uncertain time.

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