

**Mandatory Furlough Programs Under Legal Attack**  
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One of the popular alternatives utilized by public sector employers to avoid layoffs in this economic downturn has been to furlough employees. Under these programs, employees are required to take unpaid leave on a regular schedule or for a designated duration; in essence, all employees work fewer hours in order to avoid laying off any employees. Not surprisingly, some employees and their unions have struck back under a variety of arguments and courts have found some merit with these arguments. Several courts have struck down furloughs as violating the duty to bargain with unions before unilaterally modifying collective bargaining agreements. More recently, in California, the Service Employees International Union successfully argued that the California Insurance Code foreclosed the option of furloughs.

Public and private employers who are exploring the option of furloughs as a more humane alternative to terminations or layoffs should examine applicable collective bargaining agreements as well as state laws to determine whether bargaining is required before implementing such options.