**LAYOFFS**

**GUIDING PRINCIPLES**



**INFORMATION REGARDING LAYOFFS**

TheVIT has developed and updated this document with the available information from NAV, NHO and VIRKE as of March 17, 2020. In the current situation, the terms for layoffs are changing as the government comes with various stimulus packages. We are therefore encouraging you to keep yourself updated regularly. Two relevant sources of information which are updated continuously with relevant information are [NHO’s pages](https://www.nho.no/tema/arbeidsliv/artikler/koronaviruset-rad-til-bedrifter/) and [Virke’s pages](https://www.virke.no/koronaviruset/).

TheVIT wishes to assist our clients during these critical times to the full extent of our capabilities and within the level of competence we possess on this field. We are not labor law lawyers and we have only a limited possibility to give individual advice in specific layoffs cases, but we collaborate with lawyers and can ensure access to the legal expertise in individual cases if needed. We also encourage all our clients to consult employer organization and/or legal experts that they normally collaborate with.

The outbreak of COVID-19 is expected to have financial consequences for companies. In many cases it will be relevant with layoffs due to the impact of the pandemic on running operations. When a company decides to lay off employees, the company temporarily releases the employees from the obligation to work. In this period the company is partly or fully released from the employer duties. In the layoff period, the company is exempted from paying salary and the employee is entitled to unemployment benefits.

We have described the layoff process below. The steps are based on the guidelines of NHO together with recommendations from NHO, Virke, HR Norge and other sources. In accordance with these sources we have also outlined examples of protocol of discussion meeting between employee representatives and employer and an example of a notification letter. Be aware that employee unions may outline specific directives to be taken into consideration. We also want to emphasize that this information guide is addressing the general rules regarding the topic and is by no means exhaustive.

The sample templates contain information that is crucial in relation to whether the employee will be entitled to unemployment benefits. It is thus of utmost importance that you follow our example templates to "the letter" so that no critical information is removed, and / or overwritten. Use the information in the guide to apply the examples correctly when filling in information.

**Step 1: May employees be laid off due to the corona virus?**

There must be a valid cause for initiating layoffs. Conditions relevant for the company should be the justification for layoffs, such as a decline in revenue/sales, supply chain challenges, operational obstacles or other causes that leads to shortage in ability to employ. This means that the employer can initiate layoffs if it is not possible to employ employees in an economically sound manner.

The corona pandemic itself does not provide grounds for layoffs. However, if the coronavirus causes production problems in obtaining goods deliveries and raw materials from other companies / countries, there will be reasonable grounds for dismissal.

LO has communicated that it is not an objective reason for laying off an employee who must be in the home quarantine due to the risk of infection. In cases where there is a fear of infection, NAV has made it clear that employees in the home quarantine may be entitled to sick leave following a doctor's decision. However, if there are key employees or more employees in the same business that must be in the home quarantine or become ill, this may mean that employees cannot be employed in a proper manner and therefore be a reason for laying off.

Such a cause should be temporary, and the employee should be able to return within a reasonable time frame. Conditions caused by employees, such as bad performance or absence, do not form a valid cause for layoffs.

**Step 2: Selection and duration of layoffs**

In the case where not all employees are laid off, the selection should be based on objective selection criteria. This means that seniority, competence and social considerations should be considered. The selection should be done in the context of the company’s situation and should be documented based on the actual need.

When fully laid off, the employee is fully released from the obligation to work. Partial layoffs mean that the employee is working part-time and laid off the other part. In the case of partial layoff, the general rule is that employee should be laid off at least 50% of the position. It is suggested that during the outbreak period, the percentage is lowered to 40% as part of the stimulus package, however Stortinget has not yet approved this change. If the need arises to extend a partial layoff, this can be done without triggering a new employer period (the period in which employer pays salary). It is however recommended to conduct new discussions between employee representatives and the company prior to the extension, and that a new notification of layoff is sent (more about this in steps 3 and 4). Employees can be laid-off for a maximum of 26 weeks during an 18 months period. The degree to which the employee is being laid-off does not affect the maximum number of weeks.

The layoff can cease when the valid causes are no longer present. This means that if the reason for laying off is no longer considered temporary, there is no longer grounds for laying employees off, but a termination of employment should instead be considered.

Employers must cover salaries during the employer period. This period was on March 16, 2020 shortened down to 2 days (previously 15 days), as part of the stimulus package. The government will thus cover full pay (up to 6G) from day 3 to day 20 of layoffs. Payments from NAV will be executed as soon as a technical solution is in place.

**Step 3: Discussions between employee representatives and employer**

When the conditions for layoffs are present, you should confer with employee representatives before sending a notification of layoffs. It is natural to inform and discuss the grounds for layoffs, how many employees will be affected, expected duration and the selection criteria and process.

It is recommended to prepare a protocol after the meeting with the employee representatives to ensure the employees’ right to unemployment benefits. The protocol should state:

* That there is a common understanding that there are valid grounds for layoffs
* That the layoffs are due to lack of work or other circumstances beyond the company’s control
* That the company has done the reasonable actions one could expect to avoid layoffs

It is recommended to inform all employees in a general meeting (could be virtual) before the notification of layoffs is sent.

**Step 4: Notification of layoffs**

The company has a duty to inform its employees about layoffs. The general rule is 14 calendar days in advance, but when there are unforeseen events that are causing the layoffs the deadline for informing is 2 calendar days.

NAV informs that layoffs due to coronavirus may be expected or unforeseen, but that the coronavirus itself does not fall within the definition of unexpected. LO believes that an unforeseen event could be the authorities, without warning and with immediate effect, prohibiting a specific type of activity.

The notification should be sent to each employee individually, unless otherwise agreed with the employee representatives. The notification must therefore contain the following information;

* Date
* Notification period and reason for notification period
* Layoffs Cause
* Layoffs Degree
* Layoff Period
* What days the company has a statutory pay obligation

The notice period starts from the calendar day the notification has been sent, and therefore, it is not of essence when the employee receives the notification. If it is desirable to adjust the degree of layoffs later, a new layoff notice must be sent.

If the layoff notification includes ten or more employees, the company shall inform the local NAV office simultaneously.

**Step 5: The duty of informing NAV, waiting days and unemployment benefits**

The company must as soon as possible inform the local NAV office about the layoffs. This is done by sending «[bekreftelse på arbeidsforhold og permittering](https://www.nav.no/soknader/nb/bedrift/permitteringer-oppsigelser-og-konkurs/permitteringsaarsak)» (Confirmation of the employment and layoff). NAV is working on simplification of the reporting requirements. TheVIT has been in contact with NAV and got a confirmation that the information provided in the attached template is sufficient when applying for unemployment benefits.

NAV recommends that the company informs affected employees about their right to apply for unemployment benefits. For employees to be able to apply for unemployment benefits, the above form must be sent by the employer. The employee must send the notification of layoff together with the employment contract when applying.

As part of the proposed stimulus package, the employer’s period is reduced to 2 days (as mentioned above), and the following 3 “waiting days” that are normally imposed before employees get paid unemployment benefits, are removed. This means that the employee receives unemployment benefits from the first day after the employer’s period is over and regular salary ceases to be paid.

Finally, we also refer to the Norwegian Labor Inspection Authority at

www.[arbeidstilsynet.no](https://www.arbeidstilsynet.no/arbeidsforhold/permittering/) as an important source of information regarding layoffs.

Appendix 1: Guidance to protocol of discussion meeting with employee’s representatives and Discussion Meeting, template

Appendix 2: Layoff notice, template

Appendix 3: Employer’s confirmation, template

**Appendix 1: Guidance to protocol of discussion meeting with employee’s representatives**

Protocol should be set up from a conference with the employee representative / representative of the employees in advance of layoffs. The following template may form basis for such protocol; however, it needs to be adjusted to reflect the realities of the particular company.

When the laid-off ones are to apply for unemployment benefits from NAV during the layoff-period, some information is particularly important. Regulations on Unemployment Benefits during unemployment states that, generally, one is entitled to unemployment benefits if they can provide documentation that the employee and the employer agreed that:

* There is an objective reason for the layoff.
* The layoff is due to a lack of work or other conditions that the employer cannot influence.
* The employer has done what may reasonably be required to avoid layoffs.

It is therefore essential that the minutes from the discussion meeting explicitly state that there is agreement on these points (if there is in fact agreement on them).

See protocol template on the following page.

**Appendix 1: Protocol - Discussion meeting, template**

**Protocol**

On [mm.dd.yy], meeting was held between [company name] and [employee representative].

Present:

From the company: [...]

Employee representative: [...]

The reason for the meeting is that the company is considering layoffs.

The company explained the reason why layoffs are being considered:

[Give a brief description of the background for the need for layoffs, and the extent of this, with justification, and if possible whether there is a basis for a shorter notice period (2 days). Refer to the process / discussions in the management group and any other measures taken.]

Employee representative noted:

[...]

The parties discussed the extent of the layoffs, the length of the notice period and the criteria for selection. [If it is possible to limit the extent of layoffs to parts of the company, this should be included in the discussions.]

The parties agreed that there are reasonable grounds for layoffs as the employees cannot expect to be employed in a reasonable manner. Other measures have been considered, including competence-raising measures, without remedying the situation. [If other measures are also implemented, these are described.] It was also agreed that the employer has done what can reasonably be expected to avoid layoffs.

The parties agreed that there is a need for layoffs to such extent… [scope specified], within [defined group].

*[The parties agreed that there are unforeseen incidents as mentioned in Working Environment Act § 15-3 (10), and that the terms for a shorter 2-day notice period were in place.]*

The parties agreed that the following criteria will be used in the selection: [Criteria stated]

[If agreement is not reached, the main points of the parties' views are stated.]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For the company Employee Representative

**Appendix 2: Notice of layoff, example template**

Employee’s Name

 Place, Date

**Notice of Layoff**

Reference is made to [meeting with the employee representatives / representative of the employees and / or briefing meeting], held on the date where we explained the company's situation. It is hereby being notified that due to lack of work, you will be XX% laid off from your position as Title with effect from the end of working hours in 14/2 days from today's date. [Part-time redundancy: You hold a [job percentage]% position with us, with weekly working hours [x number of] hours. The layoff means that weekly working hours are reduced to [x the number of] hours during the layoff period.]

The reason for the layoffs is as follows [Rationale for the need for layoffs must be concretely assessed and quality assured. Examples of situations that form the basis of a rationale: sudden and unforeseen failure in sales, delivery challenges, production barriers, customer failure and / or similar causes that cause labor shortages / employment challenges as a result of the corona pandemic cause / that we must shut down the business / parts of the business. In addition, the fact that some are infected and / or quarantined can justify the mentioned challenges].

The Corona pandemic is out of [company name] control and means that in the future, the company will not be able to maintain regular operations and staffing. We consider us to be in a force majeure situation, with the notification deadline being 2 calendar days.

[Length of layoff, choose option 1 or 2]

Alternative 1: It is not possible for us today to say anything about how long the layoffs will last, as this is a completely extraordinary situation. However, we will keep you updated on the situation.

Alternative 2: This difficult situation is thought to be of a temporary nature, and the company aims to resume work by the end of month 2020. The basis for any further layoffs will be discussed with you, at least one week before the layoff period expires.

The layoff means [as mentioned in the information meeting] that the working relationship is terminated temporarily. However, you are still employed by the company and have the right and duty to return to the company when the termination ends.

After the layoff has come into effect, you will receive salary during the employer-covered period, which is currently 15/2 working days. We recommend that you contact your local NAV office to apply for unemployment benefits during termination, and that you include this termination notice, which also serves as a termination certificate.

If you have any questions, please contact Name.

Best regards

Name of the company

Name, Title

**Appendix 3: Employer’s confirmation, template**

Name of the Employee

 Place, Date

**EMPLOYER’S CONFIRMATION BY LAYOFFS**

We refer to the layoff notification sent date with effect from date.

The reason for the layoffs is as stated [Rationale for the need for layoffs must be concretely assessed and quality assured. Examples of situations that form the basis of a rationale: sudden and unforeseen failure in sales, delivery challenges, production barriers, customer failure and / or similar causes that cause labor shortages / employment challenges, closure of the business / parts of the business.]. On this basis, there is agreement between employer and employee that the work is discontinued until further notice.

The probable duration of the layoff is up to 00 days / weeks / months.

Layoff Degree: 0 %

Workload Percentage (FTE): 0 %

Starting Date of Employment: date of employment

Kind regards

Company Name

Name

Title