



COVID-19 and Workplace Management

Things continue to move very quickly for employers struggling to develop and follow an effective response plan addressing the COVID-19 pandemic. This release will summarize our analysis of some of the more common issues we have been responding to for our clients.

The characterization of the COVID-19 situation as a “pandemic” by the World Health Organization (WHO) is not just a generically descriptive term but has certain legal significance as well. The Equal Employment Opportunity Commission (EEOC) takes a somewhat different view of permissible employer action during a pandemic than at other times. Still, certain restrictions on permissible employer actions apply.

Risk Mitigation

During a pandemic, employees may be asked to stay home if they are displaying COVID-19 symptoms. Further, should symptoms develop at work, employees may be sent home. During a pandemic, employers may take an additional step of questioning employees with respect to certain things that would otherwise be problematic. For example, employers may ask absent employees the reasons they are not at work, including if it is medically related. Employees who report not feeling well at work or who call off work because they do not feel well may be asked if they are experiencing specific symptoms, including cough, sore throat, fever, or chills. As with any other medical information, confidentiality must be respected. Any documentation of the symptoms must be maintained in a separate confidential medical file.

During a pandemic, employers may take certain steps to safeguard health and welfare in its workplace. For example, employers may, generally, take employees’ temperatures to determine if they have a fever. Employers may ask employees returning from trips questions about possible high-risk exposure. Employers may promulgate policies requiring disinfecting workstations, regular handwashing, the wearing of face masks, gloves, or other personal protective equipment; they do so, however, at their own expense and they must reasonably accommodate employees who may not be able to comply with specific requirements due to the employees’ disabilities.

Despite the above, employers may not ask employees to disclose medical conditions that may make them more susceptible or vulnerable to medical complications associated with COVID-19. Should a vaccine become available, they may not mandate that all employees receive the vaccine.

Many of you have viewed our video webinar “**Responding to the Coronavirus: An Employer’s Guide**”. We have attached the program’s handout as an additional resource and are making the program available on-demand soon.

Telework

Working remotely has become a central part of almost all our clients' response plans. There are certain basic employment issues, however, that should be kept in mind.

Remember that all State and Federal Department of Labor rules apply to telework. Employers must be sure that employees maintain accurate time records when working remotely. Your usual meal period breaks should be taken and documented. Overtime must be paid for hours worked in excess of 40 in a workweek. Salaried exempt workers remain entitled to their full pay in any week in which they perform any work, with few exceptions.

Of course, if your workforce is unionized, any aspect of your response plan dealing with terms and conditions of employment must generally be negotiated at least to some extent with your labor union. But these are unusual times and many collective bargaining agreements have provisions such as Management Rights or Force Majeure clauses which may allow for more unilateral action than under normal circumstances. Contract provisions vary from employer to employer and employers dealing with these issues in a union environment are cautioned to seek professional guidance with respect to same.

Many of our clients are using remote work as a key part of their Operation Response Plans. In light of this, we are sharing a **Telework Procedures and Details Guide** to assist you in properly managing the remote work environment.

As of this release, there is no statute or regulation that requires employers to pay employees who are unable to work, quarantined, or laid off in relation to the COVID-19 pandemic.

However, we believe that passage of the **Families First Coronavirus Response Act** is imminent. Employers must carefully track developments in this regard. Here is what we know at this point.

Families First Coronavirus Response Act - As passed by House of Representatives

Summary of Key Provisions

If passed by the Senate and signed into law as expected, the Act will be a "game-changer".

A. Job Restoration

The job restoration provisions of the bill:

1. Modify a key part of the Family and Medical Leave Act (FMLA) for COVID-19-related time off through the end of 2020.
2. Change the FMLA eligibility requirement to include anyone employed for at least 30 days (regarding COVID-19-related time off).
3. Define "parent" to include foster, adoptive and stepparents, as well as parents of a domestic partner, in-laws, guardians and in loco parentis.
4. Modify the definition of "covered employer" to those with over 50 employees to those with "fewer than 500" employees
5. Provide leave to care for minor children if their school or day care has been closed or if their childcare is no longer available due to COVID-19.
6. Modify FMLA to allow leave to care for a quarantined family member.
7. Include next of kin and grandparents in definition of "family member".
8. Require that after the first 14 days of COVID-19-related leave that employees receive pay in an amount at least 2/3 of the employee's regular pay rate OR pay for the hours the employee would have worked.

9. Require that employers with 25 or more employees return employees absent due to COVID-19 to work.

B. Pay Provisions

Provides 80 hours of paid sick time for full-time employees and prorated leave for part-timers, for the following reasons:

1. To self-quarantine following a COVID-19 diagnosis.
2. To obtain a medical diagnosis or care when an employee is experiencing symptoms of COVID-19.
3. As may be necessary to follow the recommendations of public officials or healthcare professionals precluding the employee from work as a health risk.
4. To care for a self-quarantined family member who has been diagnosed with COVID-19 or who is experiencing symptoms and requires a diagnosis or care.
5. To care for a family member under circumstances where a public official or health care provider determines that the family member must isolate from the community because of COVID-19 exposure risk.
6. For the employee to care for their children if their school or daycare has been closed or if their childcare is no longer available due to COVID-19.
7. As the bill now stands, COVID-19 paid sick leave must be in addition to existing leave policies – employers may not modify their policies to avoid the additional leave requirements.
8. The law also prohibits retaliation and discrimination. Employers with under 50 employees will have the cost of the leave reimbursed. All employers may claim a tax credit of sick leave paid under these circumstances.

We have attached the **Legislative Summary of bill** for further reference.

Layoffs

At this time, employers whose businesses are, unfortunately, considering laying off employees or even closing because of the operational impact of the Coronavirus should apply all the usual layoff protocols and with the individual protections above in mind. Protocols routinely suggested (development of a non-discriminatory layoff selection process, consideration of union and other contracts, coordination with Unemployment Insurance Division and job placement agencies, effective communication and other HR protocols).

Both the federal and state plant closing (WARN) laws apply. But the “unforeseen business circumstance” exception to the usual notice requirements likely apply. Employers facing this unfortunate circumstance are advised to involve counsel early in the process.

As we all know the COVID-19 pandemic is a fluid situation and response measures are changing almost on a daily basis. Stay tuned for updates as necessary and always feel free to contact us (using the information below) for immediate assistance.



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