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Workforce Management Considerations in the COVID-19 Era

Presented by

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What do I need to know about my business operations in a government shutdown?

- State and local “Essential Business” orders
 - Ohio, Indiana, Illinois, Pennsylvania, New York, Michigan, New Jersey, Massachusetts, California, West Virginia, Connecticut, Washington, Oregon, Louisiana, Wisconsin
 - Atlanta, Nashville, Memphis, Kansas City

What do I need to know about my business operations in a government shutdown?

■ Essential Businesses

- Generally, can maintain normal business operations tied to “essential” activity
- Essential activity vs. non-essential activity at facility

■ Non-Essential Businesses

- Must cease all normal business operations
- “Minimum Basic Operations” may be permitted

How does a government shutdown affect my employees' entitlement to ...

- We are receiving many questions about how these shutdowns impact several employment-related issues

How does a government shutdown affect my employees' entitlement to PTO?

- Examine your policy
- No federal requirement outside of Families First Coronavirus Response Act
- There may be state requirements
- Consider your flexibility

How does a government shutdown affect my employees' entitlement to statutory leave?

- Does the federal Paid Sick Leave Act kick in?

How does a government shutdown affect my employees' entitlement to unemployment benefits?

- Are they eligible?
- What are the requirements?

How do I manage employee communications regarding changes in our requirements and operations?

- Transparency
 - Honest and open communication
 - Communicate often (i.e., weekly or daily updates)
 - Address common questions to reduce rumors and misinformation

How do I manage employee communications regarding changes in our requirements and operations?

- Notification about state/local requirements
 - If “Essential” – basis for the company’s determination?
 - “Permission to work” letters for employees
 - Physical/digital postings at the facility

How do I manage employee communications regarding changes in our requirements and operations?

- Information about operational changes and leaves
 - Will there be layoffs? (WARN considerations)
 - Changes in work schedules?
 - What will be operating vs. not operating?
 - Voluntary unpaid leaves? Use of accrued PTO?

What do I need to consider if I must *reduce* operations due to COVID-19?

- Keeping employees vs. termination
 - Voluntary unpaid leaves?
 - Reduction in hours/work schedules?
 - Temporary layoffs?
 - Permanent termination?
 - **Looking forward → employee retention bonuses?**

What do I need to consider if I must *reduce* operations due to COVID-19?

- Benefits/COBRA
 - Keeping employees => benefits coverage typically continues
 - How should employees pay their premiums?
 - Impact of reduced hours?
 - Layoff/termination => COBRA continuation
 - Required employee notices

What do I need to consider if I must *reduce* operations due to COVID-19?

- Final paycheck laws
 - Payment of final wages/compensation to terminated employees
 - Unused vacation?
 - Bonuses/commissions?

What do I need to consider if I must *reduce* operations due to COVID-19?

- Employment/separation agreements
 - Severance in exchange for releases (impact of severance on unemployment eligibility varies by state)
 - Existing termination pay obligations
 - Restrictive covenants
 - Repayment obligations (i.e., bonuses)

What do I need to consider if I must *reduce* operations due to COVID-19?

- Unemployment compensation
 - “Flood” of unemployment claims
 - Impact on insurance rating/premiums
 - Total unemployment vs. partial unemployment
 - State-specific notice requirements

What is a furlough and what do I need to consider?

- “Furlough” – how does it differ from “layoff”?
 - Keep employees on payroll
 - Reduction in hours or mandatory unpaid leave (vs. termination)
 - Helps retain talent
 - Reduces potential costs of separation or future hiring

What is a furlough and what do I need to consider?

- **Consider**
 - FLSA issues
 - Employment agreements
 - Notifications to employees
 - Benefits coverage
 - Unemployment eligibility

Are there other options besides furloughs or layoffs that can decrease employment-related costs?

- Reduction in hours
 - Exempt v. non-exempt employees
 - Impact on health insurance (tied to hours)
 - Impact on potential unemployment benefits

Other options ...

- Reduction in compensation/salaries
 - Consider requirements of employment agreements
 - Limitations with regard to exempt employees
 - State notice requirements
 - Morale issues
 - FLSA – salary requirements

Other options ...

- Voluntary staycation/leave
- Early retirement programs
- Changes in benefits (e.g., 401k match)

What do I need to consider if terminations or layoffs are necessary?

- **Federal WARN Act**

- Applies to any business with at least 100 employees
- Requires at least 60 days' advance written notice of any "plant closing" or "mass layoff"
- Notice is on a **location-by-location** basis
- Number of impacted employees is **key** for determining whether notice required
- Only count **full-time employees** in making determination

WARN Act

- What is an “Employment Site”?
 - **Typically** it is an individual company facility (i.e., production plant, headquarters offices)
 - Can also be:
 - Series of separate buildings on the **same campus**
 - Buildings in close proximity that share resources/employees

WARN Act

- What is a “Mass Layoff”?
 - At least 50 FT employees at a **single site** will experience an “employment loss”; **and**
 - Those impacted employees are at least 33% of FT workforce at that site

WARN Act

- What is an “Employment Loss”?
 - Employee is involuntarily terminated;
 - Employee is laid off for more than 6 months; or
 - Employee’s hours are reduced by at least 50% in each month for 6 consecutive months

WARN Act

- How to count employees?
 - FT employees impacted by current COVID-19 layoff
 - Look *behind and ahead* 90 days – any other COVID-19 layoffs that occurred or are planned?***
 - How long are layoffs **currently expected** to last?

WARN Act – common COVID-19 questions

- *I don't know how long the layoffs will last – should I still provide WARN notice?*
- *I need to conduct layoffs now – do I still need to wait 60 days?*
- *Is there anything outside of federal WARN that I need to worry about?*

State WARN/layoff notice requirements

- States have their own requirements
 - Alabama, California, Connecticut, Georgia, Hawaii, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Tennessee, Washington and Wisconsin
- Examples
 - **New York WARN** – lower threshold for triggering
 - **California WARN** – *suspended* during COVID-19 epidemic
 - **Georgia and Ohio** – layoff notifications to state agencies

What can I ask my employees about their health/exposure to minimize spread?

- EEOC guidance has just changed to increase flexibility
- Ability to monitor employees' temperatures
- Can ask about flu-like symptoms
- Can ask if employee has been exposed to COVID-19 – not if they tested positive

What can I do to limit risk with new hires?

- The EEOC has just increased an employer's flexibility
- Post-offer testing for COVID-19
- Delayed start dates

How do I handle COVID-19-related requests for reasonable accommodations?

- Accommodations based on fear of infection?
- Accommodations for high-risk employees
- Can a high-risk employee be sent home if an accommodation has not been requested?
- Impact of COVID-19 outbreak on non-virus-related accommodations



QUESTIONS?



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