Workforce Management Considerations in the COVID-19 Era

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March 24, 2020
What do I need to know about my business operations in a government shutdown?

- State and local “Essential Business” orders
  - 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

- 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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