LEGAL CONSIDERATIONS FOR EMPLOYEE RELATIONS IN THE COVID-19 ERA

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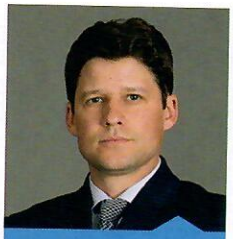

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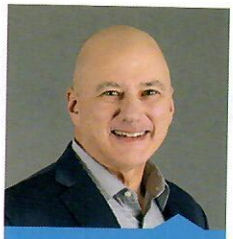

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Coronavirus ("COVID-19") and its threat to the world population has controlled debate in both the print, broadcast, cable and Internet media for as long as many of us can remember. Although the disease reportedly originated in Wuhan, Hubei Province, China, COVID-19 is now present in all 50 states and hundreds of countries. While COVID-19 has had a negative effect on businesses for over a month, major additional complications have arisen as many states began entering "shelter in place" or "stay at home" orders, which have increasingly affected the business community, especially those deemed "non-essential."

With this in mind, the following information is intended as a general guide to employers in dealing with the COVID-19 "new reality," however long it may last.

LEARN ABOUT THE DISEASE, HOW IT SPREAD AND ITS EFFECT ON HUMANS

By now, most people are aware that COVID-19 is spread primarily "person-to-person" from those in close contact with others (within about six feet). We strongly recommend that employers regularly monitor the CDC's and World Health Organization's websites for the latest scientific information on the disease, its transmission and its effect on humans.

SPECIFIC EMPLOYEE-RELATED CONSIDERATIONS

Actively Encourage Sick Employees to Stay Home. Employers should advise employees who have symptoms of acute respiratory illness to stay home until they are free of fever for at least three days without the use of fever-reducing medications, their respiratory symptoms (cough and shortness of breath) are improving and at least seven days have passed since their symptoms began. Employers should ensure that their sick leave policies are flexible and consistent with the newest, ever-changing public health guidance and state and federal law, including the recently-passed Families First Coronavirus Response Act and the many "shelter in place," "stay at home," or other orders passed at state or local government levels. Finally, employers should not require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or their ability to return to work as long as the proper questions are asked.

Separate Sick Employees. Employers should separate and send home employees who appear to have acute respiratory illness symptoms (i.e. cough, shortness of breath) upon arrival to work or who become sick during the day. Many states are encouraging employers to take the temperatures of employees daily, prior to permitting them to work.

Emphasize Respiratory Etiquette and Hand Hygiene by All Employees. Employers should consider the following: (1) placing posters that encourage their employees to stay home when sick and to use proper cough and sneeze etiquette; (2) providing additional hand hygiene stations in their workplaces; providing tissues and no-touch disposal receptacles throughout their workplaces; and (3) encouraging employees to wash their hands with soap and water for at least 20 seconds or apply a hand sanitizer that contains at least 60-95% alcohol.

Environmental Cleaning. Employers should perform enhanced environmental cleaning of commonly touched surfaces in the workplace, such as workstations, countertops, railings, door handles and doorknobs.

Business Travel Considerations. Employers should monitor the CDC's Traveler's Health Notices for the latest guidance and recommendations for each country to which their employees must travel.

Employers should advise employees who become sick while traveling to notify their supervisors and to promptly call a healthcare provider for medical advice.

Employers must consult state and federal travel restrictions for "non-essential businesses," as many employees are currently prohibited from going to the

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workplace, let alone traveling outside of the office for business purposes.

MAJOR CONSTRUCTION INDUSTRY-RELATED LEGAL CONSIDERATIONS

OSHA. OSHA has no particular standard dealing with COVID-19 in the workplace. However, employers should consider that COVID-19 in their workplaces would, at the minimum, be covered by the general duty clause of the Occupational Health and Safety Act. Employers knowing that an employee is contagious with COVID-19 or any other infections disease should consider how best to abate the situation. OSHA published its guidance to employers at https://www.osha.gov/Publications/OSHA3990.pdf.

Employers should be cautious when dealing with employees who raise concerns about COVID-19. Employees generally have the right to complain to OSHA or their employers about the safety conditions in their workplaces and not to perform duties in conditions that they consider dangerous. OSHA could consider an employer's taking an adverse employment action against an employee who complains about his or her concern about COVID-19 in the workplace as unlawful retaliation. The adverse action could be nearly anything that would make the employee unhappy, from being fired to being isolated in a room by himself or herself.

FMLA/Families First Coronavirus Response Act. Congress recently passed the Families First Coronavirus Response Act. The Act requires employers with fewer than 500 employees to provide two weeks' paid sick leave if employees are unable to work because they are subject to quarantine or isolation, are experiencing symptoms of COVID–19, are caring for someone who is in quarantine or isolation, or have children in schools that have closed or whose child care providers are unavailable. In addition, the Act expands the Family and Medical Leave Act by requiring employers with fewer than 500 employees to provide as many as 12 weeks of job-protected leave to employees to care for a child whose school or place of care is closed or whose child care provider is unavailable. The first 10 days could be unpaid, although a worker could choose to use other accrued leave. Employers would be required to pay employees two-thirds of their wages, not to exceed $200 per day and $10,000 in the aggregate. The Act went into effect on April 2, and the Department of Labor intends to issue regulations before then, and they may exclude certain health care providers and exempt small businesses with fewer than 50 employees from the Act's obligations.

Importantly, employers may claim a 100% refundable payroll tax credit on wages associated with paid sick and medical leave outlined in the Act as well as expenditures associated with additional health benefit contributions.

WARN Act. Generally, the federal WARN Act imposes a notice obligation on covered employers who implement a plant closing or mass layoff in certain situations, even when they are forced to do so for economic or health concern reasons. Under the Act, employers must provide 60 calendar days' notice prior to any covered plant closing or mass layoff.

A COVID-19 specific "plant closure" or "mass layoff" may or may not implicate the WARN Act, and many states have enacted their own "mini-WARN" acts. Whether an employer's decision to temporarily cease operations at a specific "plant" is a fact-specific inquiry, and before doing so, we recommend working with employment counsel to ensure compliance with any relevant laws.

Labor Relations. The National Labor Relations Act ("NLRA") imposes on employers the duty to bargain in good faith over mandatory subjects of bargaining such as wages, hours, and terms and other conditions of employment. This duty obviously impacts a union-employer's decision to change employees' work schedules or duties, among other employment-related matters, in response to a COVID-19 concern. Employers should take care to review their collective bargaining agreement with legal counsel before making unilateral changes over a mandatory subject of employment in response to a COVID-19-related concerns. They may have a duty to notify and bargain with their union, even if only regarding the effects of their decision.

In addition, Section 7 of the NLRA provides employees, even non-union employees, the right to act collectively. Therefore, employers should pay attention to whether employee complaints concern just a single employee or a group of employees. An employee who yells at a supervisor that the company is not doing enough to protect "us" could be engaged in protected activity under the NLRA, as well as the Occupational and Safety Health Act, as previously noted.

In summary, employers in all sectors of the economy will be best served by remaining diligent in ensuring that their workplaces and workforces are in the best position possible to handle the uncertain future that lies ahead. Keeping abreast of the ever-changing legal landscape and educating workforces is of paramount concern, and the major theme of any educational efforts on the part of employers should be to remind their employees not to panic, maintain proper hand-washing and other personal hygiene techniques and to be forthright with management about any risks of potential exposure to the disease.

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