



Stoel Rives^{LLP}

Taming the COVID-19 Chaos: What Employers Need to Know PART 5

Webinar Attendees:

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Taming the COVID-19 Chaos: What Employers Need to Know PART 5

Presented by
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Labor & Employment Practice Group
April 21, 2020

Brief Recap

- We previously covered:
 - Families First Coronavirus Response Act (“FFCRA”);
 - CARES Act;
 - Strategies for layoffs and furloughs; and
 - Stay-at-Home Orders.

Current Considerations

- FFCRA Leave Issues
- Unemployment Guidance
- Preparing to Return to Work
 - EEOC Issues
 - OSHA Issues

FFCRA Leave Issues

- Updated DOL Guidance
 - Small business exemption
 - Use of employer-provided paid time off
 - Documentation
- How is FFCRA leave playing out?
 - Overlapping leave complexity
 - Intermittent leave

New Washington Order

- “High-risk employees”
 - age 65 or older; or
 - serious underlying health conditions (asthma, heart/lung/liver/kidney disease, diabetes, dialysis, severe obesity or immunocompromised).
- Until June 12, at employee’s request:
 - Prevent exposure;
 - Allow leave and/or unemployment;
 - Fully maintain health benefits after leave is exhausted(?);
 - No permanent replacements.

CARES Act Expands Unemployment

- CARES Expansion
 - Additional 13 weeks
 - Additional \$600/wk
 - Coverage for gig and self-employed
- Oregon WorkShare Program
- Washington SharedWork Program
 - “standby” status option
- Current issues/roadblocks

Preparing to Return to Work -- EEOC

- EEOC guidance
 - Take employee's temperature
 - Ask about symptoms
 - Exclude employees from work
 - Require a dr.'s note to return
 - CONFIDENTIAL but may disclose to public health agency

Preparing to Return to Work – EEOC continued . . .

- EEOC guidance
 - Staffing agency may notify ER of sick EE
 - ER may screen candidates after conditional offer
 - ER may withdraw offer if EE is sick and must start immediately
 - ER may not withdraw offer for “high risk” EEs

Preparing to Return to Work – EEOC continued . . .

- Reasonable Accommodations
 - Reducing exposure
 - Pre-existing conditions exacerbated
 - EEs refusing to wear masks
 - EEs requesting modified PPE
 - Work from home issues
- Undue hardship analysis is impacted

Preparing to Return to Work -- OSHA

- OSHA Guidance
 - Infectious disease preparedness and response plan
 - Reducing exposure
 - PPE
- Potential liability for failing to protect employees.
 - *Evans v. Walmart, Inc.*, (April 6, 2020)

Preparing to Return to Work – Other Logistics

- Reinstatement of paid sick leave
- New hire paperwork
- Temporary layoffs that are no longer temporary

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Wage and Hour Issues

- Time spent waiting for temperature checks
- Time spent donning and doffing PPE/getting fitted for PPE
- Furloughs over 35 days — BOLI
 - Final paycheck obligation
- Employee request for PTO?

Antitrust Issues

- DOJ and FTC are “on alert”
- Watching for employers, staffing companies, and recruiters who engage in anti-competitive conduct
- E.g., agreements to lower wages, no-poach agreements, etc.

Questions?



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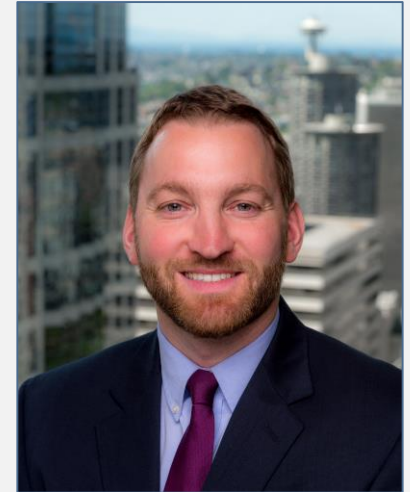
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