



March 31, 2020: Managing Your Workforce During COVID-19

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Notes:

David Tauster:

- First Issue for Employers: Emergency Leave Law
 - NYS passed a statewide leave law (new sick leave) - NYS is one of the few states that passed their own law
 - Only available to employees that are subject to a mandatory or precautionary order of quarantine or isolation and unable to work or telework during this period
 - Mandatory or precautionary order is a specific thing. This is not the same thing as Cuomo ordering people in NYS to stay home. Rather it is something issued in limited circumstances issued by the local department of health.
 - Local dept's of health are overwhelmed so some employees are unable to obtain the order immediately. Thus, employers may need to accept documentation from an employee such as a notice or attestation from a doctor stating the employee would qualify for the order.
- Second Issue: What are employees eligible for under this law?
 - Employer with 10 or less employees **AND** earned less than or equal to \$1 Million in net income (not defined in statute itself) in the past year --> you are required to provide unpaid job protected leave
 - Employer with 11-99 employees or 10 or less employees **BUT** you earned more than \$1 Million in net income --> you are required to provide 5 days of paid sick leave.
 - FOR BOTH OF THE ABOVE CATEGORIES: once this paid leave runs out, or if it never kicks in in the first place, employees are able to claim NYS disability and FMLA with a certain cap
 - Employees will have to submit applicable insurance paperwork for any of the above
 - Employer with 100 or more employees --> at least 14 days of paid sick leave. Logic: quarantine runs for 14 days. There is no provision under the law for employees to immediately take PFL or DBL for this purpose.
 - Consideration: if the quarantine continues past 14 days
 - This is available starting April 1 through December 31, 2020. You do not have to start backtracking leave given that it is only available starting April 1st.

- The notice of rights has been issued by the Federal Government. It's available on the Department of Labor's website.
- Third Issue: What does this law provide?
 - Emergency Paid Sick Leave Provision
 - Provides up to 80 hours of paid sick leave for 6 reasons:
 1. Employee is subject to quarantine or isolation order
 2. Employee has been advised by a healthcare provider to self-quarantine
 3. Employee is experiencing symptoms of COVID-19 and seeking a diagnosis
 4. Employee is caring for an individual subject to or advised to quarantine or isolate
 5. Employee is caring for a child whose school or place of care is closed or their childcare provider is unavailable because of COVID-19
 6. Employee is experiencing a substantially similar condition as specified by the secretary of health and human services
 - a. David Tauster has not seen anything specifying what is a substantially similar condition as defined by the state

*How is this leave paid?

- For the first 3 criteria listed above, it is paid at a max of \$511/day up to a total of \$5,110
 - For the second 3 criteria listed, it is paid at 2/3 of the employee's wages, up to a maximum of \$200.
2. Emergency FMLA Expansion
- i. Affords up to 12 weeks of job protected leave if you are unable to work or telework due to:
 1. The need to care for a minor or child if their school or place of care is closed due to COVID-19
 - Technically the first two weeks is unpaid but this is where the emergency paid sick leave provision kicks in. After the first two weeks, it is paid at the same rate of \$200/day or a total of \$10,000 in the aggregate (this would combine with the EPSL to total \$12,000).
 - How employers recoup this expense: Payroll Tax Credits. The tax credits available are only available up to the maximum thresholds under the FEDERAL law.
 - For example, if an employee who is subject to quarantine or isolation order, they take their NYS leave at the same time they would take their federal leave but you're only eligible to claim a payroll tax credit up to up to the maximum amount of pay the employee would be entitled to under the federal law, e.g. up to \$511 or \$200 per week (up to the statutory maximums).
 - Keep in mind: these emergency leaves are in addition to what the employee is eligible to receive under your company's policies
 - Difference between a furlough and layoff
 - There is no difference between a technical furlough and a technical layoff other than semantics and assumptions
 - A furlough sounds nicer and has the assumption that the employee will have something tying them to the employer to encourage return to work at a later point in time
 - Considerations when reducing pay or guaranteed hours of work: any employment agreements or similar documents that bind employers and how to negotiate around those.

- Fourth Issue: Under NYS law, if you are reducing pay, you must provide a new notice of payment and pay day.
 - For hourly employees, there is no real restriction other than you cannot dip below the minimum wage.
 - For salary exempt employees:
 - First: be sure you are satisfying the applicable exemption threshold which is significantly higher in NY than under federal law.
 - Second: you cannot reduce an exempt employee's salary for a partial work week (example: you are looking to start furlough on a Tuesday, but you continue to pay out the exempt employee until the end of the week).
- Fifth Issue: what concerns an employer should have when considering a furlough:
 - Keep in mind salary reductions for exempt employees
 - If you are terminating someone, you can reduce salary in the employee's terminal week of employment
 - What do you want to do in terms of employee benefits?
 - Do you want to require your employees to use an available PTO in relation to the furlough or layoff?
- Unemployment benefits: do **not** tell your employees if they will or will not be eligible for benefits. This is up to the Department of Labor. Your employee should be able to receive the \$600 federal stipend if they are eligible for benefits. Check NYS restrictions if you are helping any employee get unemployment benefits based on reduced hours of work.

Christine Ippolito:

- HR is now acting as part of the leadership team with weekly/bi-weekly updates, strategizing with cashflow, drop in business, complying with government mandates, and more
- Executive orders: March 17th commenced NYS mandates in employee workforce reduction
 - Determine who is an essential employee and remote workforce capabilities
- Now is a great time to have a scalable HR Team with senior level strategists and other HR partners that focus on administrative support, generalists, and payroll specialists
- Scenario 1: Textile Manufacturing Company based in NYC (subject to NYS & NYC), warehouse in NJ and an office in CA
 - First step: Review your workforce for the following: "low-hanging fruit" (someone who is underperforming that you can terminate), essential employees and employees capable of remote work
 - Second step: Salary cuts based on earning levels (\$50k or less take a 20% cut, \$50-\$75k takes a 25% cut, and so on)
 - Be cognizant of salary exemptions as per the state and the city
 - Third step: Employee retention given low or no work
 - Furlough employees with an estimated return to work date
 - Critical actions the company can do to make employees feel noticed and cared for
 - Maintain vacation balances and allow employees to accrue vacation time and sick leave as if they were actively working
 - Contact your Group Health Benefits Provider to confirm employees can continue to receive insurance benefits as per usual without activating COBRA, continue to receive short-term & long-term disability, etc
- Best practice #1: provide employees with written record or guidelines of what they should expect over the next 90 days or however long their employment is affected so they feel taken care of.
 - Communicate effectively while not overpromising or creating a new contract for employees.
- Best Practice #2: allow employees, even those on furlough, the ability to contact HR at any time and for an indefinite period of time
 - They need another outlet aside from the Department of Labor
- Best Practice #3: Do not contradict policies without clearly communicating to employees how this will impact their employment (for example, vacation freezes)

Aoifa O'Donnell:

- Family safety & dynamics: Employee safety & security has been removed due to a global virus (America is still experiencing just the tip of the iceberg)
 - This is very scary for some, impacting their psychological safety
 - Keep in consideration that the impact is different for everyone because each individual's scenario/situation is different
 - Pre-existing mental health issue (PTSD, depression, etc) could cause a stronger response to effect of COVID
- How do we normalize in the next two weeks while still working remotely or in a limited capacity and with great caution for those on site?
 - Offer support management and counseling to employees
 - There are a lot of free services being offered since this has a global impact
 - Staying emotionally connected while social distancing
 - Consider impacts to lifestyle due to limited or reduced working conditions for those working remotely
- How can we increase productivity for your workforce during this crisis?
 - If you are making changes to an employee's working conditions/hours/benefits/employment, etc, be transparent and communicate as quickly as possible. It's important to communicate clearly and constantly.
 - Be the person your employees can trust and count on. You are the leader.
 - It's ok to show worry or concern, but also be able to be a cheerleader and your work force's support
 - For those continuing to work on site, communicate what you've done to provide a clean and safe environment
 - Understand you will not get 100% from employees right now because of their psychological state (do not assume you know what's going on in their lives).
 - Ask your employees what they need from you to be effective?
 - Potentially adjust work hours to the evening or early morning to support productivity if an employee is taking care of a sick one, dependent, or other.
 - Finally, be clear in your expectations of employees. It is okay to implement normal performance managements tactics to promote accountability amongst your workforce.
- Promote mental health amongst your workforce
 - Understand that there will be a mix of good days and bad days, but communicate to your workforce that you are in it for the long haul.
 - Balance the messages to your workforce between hard/inspirational and soft/supportive
 - Let them know what principles you are operating off of (for example: employee handbook, company vision)
- Do not underestimate the power of compassion, seeing people for who they are (humans with real feelings) and mental resiliency
 - Empathetic leadership, accountability & compassion are the most important right now