COVID-19: Employment, Legal and Tax Concerns for Businesses

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Today’s Topics

Employment Issues

Employer Challenges & Obligations
  Governor’s Stay Home Order

New Federal Paid Leave Law

Business Slowdown/Closure Options

Breach of Contract Implications

Tax Filing and Payment Deadlines

Federal and State Assistance for Businesses

Questions
“The Fine Print”

Although the information in this presentation is deemed accurate as of the date of the presentation, we are providing general information and not legal advice. For advice as to your situation, please contact our office or your own legal counsel.
Employment Issues
COVID-19 Basics – *Per CDC Guidance*

**Symptoms**
- Fever / Cough / Shortness of Breath
- Typically symptomatic, within 2-14 days of exposure

**How is it Spread?**
- Between people who are in close contact with one another (within about 6 feet).
- Through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs.

**When is a person contagious?**
- Probably the most contagious when they are most symptomatic. But it may spread before symptoms are shown.

**Can I be infected by touching a surface or object?**
- It may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads.
COVID-19 Basics

High Risk Individuals

- 65 years and older
- People who live in nursing home or long-term care facility
- Pregnant women
- People with:
  - Chronic lung disease or moderate to severe asthma
  - Heart disease with complications
  - Who are immunocompromised, including cancer treatment
  - Severe obesity (body mass index [(BMI)]≥40)
  - Poorly controlled underlying medical conditions, such as those with diabetes, renal failure, or liver disease
How Long Should an Employee Stay Away?

CDC requests that employers don’t ask for a doctor’s note to return.

No fever for at least 72 hours (without taking fever reducers), AND

Other symptoms have improved (cough, shortness of breath), AND

At least seven days have passed since first symptoms

CDC does not require isolation. Only social distancing.

Potential workers’ compensation claim for Coronavirus exposure

Potential employer liability for requiring work if employee feels safety is an issue, and can argue employer had deliberate intent to harm

What about asymptomatic employees who may have been exposed?
Employer Challenges & Obligations
Statewide Stay-Home Order

To the maximum extent possible, individuals stay home

- Outdoor non-contact recreational activities allowed
- Work in offices is prohibited if telework options are available
- Closed:

  Amusement parks; aquariums; arcades; art galleries; barber shops & hair salons; bowling alleys; cosmetic stores; dance studios; esthetician practices; fraternal organization facilities; furniture stores; gyms & fitness studios (including climbing gyms); hookah bars; indoor & outdoor malls; indoor party places (including jumping gyms & laser tag); jewelry shops & boutiques (unless they provide goods exclusively through pick-up or delivery service); medical spas, facial spas, day spas, & non-medical massage therapy services; museums; nail & tanning salons; non-tribal card rooms; skating rinks; senior activity centers; ski resorts; social & private clubs; tattoo/piercing parlors; tennis clubs; theaters; yoga studios; & youth clubs

- Open:

  Everything else. Retail, Construction, Healthcare, Grocery, Manufacturing, Office . . .

  Childcare if stable groups of 10 or fewer. Healthcare providers get priority for care services
Designation of “Social Distancing Officer” - SDA

- “If work-from-home options not available, businesses must designate an employee or officer to establish, implement, and enforce social distancing policies, consistent with guidance from the Oregon Health Authority. Such policies also must address how the business or non-profit will maintain social distancing protocols for business-critical visitors.”

- Identify a particular person. Inform employees who that person is. Will serve as liaison.

- Limit in-person interactions. By appointment whenever possible

Violations:

- Class C misdemeanor - punishable by up to 30 days in jail, a fine of up to $1,250, or both

- Businesses will be closed if they fail to comply with order
**Families First Coronavirus Response Act - FFCRA**

**Federal Paid Leave Law - Effective April 2**

**Scope**
- Goal is to incentivize employers to retain workers
- Tax credit for 100% of wages paid out
- Applies only to COVID-19 pandemic reasons
- Applies to all employers of 500 or fewer employees
- Leave provided is probably in addition to Oregon Sick Leave (& any other leave employer provides)

**Two Types of Paid Leave**
- **80 Hours of Leave for Coronavirus Reasons**
  - Sick or caring for sick person
  - Advised by medical provider to self-quarantine
  - Care for school age children
- Up to 10 additional weeks of paid leave to care for school age children

**Potential hardship exception:**
- Healthcare Employers
- Employers under 50 employees
  (if paid leave threatens viability of the business)
FFCRA - Emergency Paid Leave - 80 Hours

Eligibility

▪ Employee has symptoms or must self-quarantine
▪ Employee caring for individual with symptoms or who must self-quarantine
▪ Employee caring for school age kids and school/day care is closed

Paid at regular rate up to $511 per day ($5,100 total) for symptomatic or quarantine reasons. Paid at 2/3 regular rate up to $200 per day ($2,000 total) for school / daycare reasons

Does not apply in the event of a layoff, especially before April 2

Hardship exemption for employers of 50 or fewer if providing leave would threaten viability of business.
FFCRA - 12 Weeks of Leave for School / Daycare

Up to 12 weeks of leave
- 1st 10 days are unpaid. May use other paid leave (incl. 80 hours of paid leave)
- Paid at 2/3 regular rate up to $200 per day (up to $10,000 total)

For 25+ employers, even if position eliminated, employee has right to reinstatement to other positions that may exist. All employers must make reasonable effort to return employee to work

This leave also qualifies as OFLA Sick Child Leave for 25+ employers

Does not apply in the event of a layoff, especially before April 2

Hardship exemption for employers of 50 or fewer if providing leave would threaten viability of business.
Business Slowdown / Closure Options

Reduction in Hours

**Non-Exempt Employees:**
- May be moved to part time.
- UI available through workshare program. Employer must sign up:
  - Helps employers prevent layoffs by reducing a worker’s schedule
  - Instead of laying employee off, UI helps offset employee’s lost wages

**Salaried Exempt Employees - Options to preserve status:**
- Alternating Work Weeks (UI available)
- Reduce Salary (but not less than $684/wk) (UI not available)
- Convert employee to hourly during pandemic and reduce hours (UI available)
- BUT: Is there an employment contract, what does it allow?
Business Slowdown / Closure Options
Temporary & Permanent Layoffs

UI available for both permanent & temporary layoff

If Temporary Layoff:
- Employee should be told estimated return date
- Employee won’t be expected to job hunt
- Employee should still be eligible for health insurance coverage
- No final paycheck due. Employee may use or save PTO

If Permanent Layoff:
- Make sure final paycheck is paid plus any accrued leave (if policies provide for payout).
  Employee is considered discharged.

Be able to substantiate business reasons. Why did you select some and keep others?
WARN Act

Applies to employers with more than 100 employees

Requires 60 days notice prior to layoff if layoff of 50+ employees

Probably Not Applicable for COVID-19 Layoffs:

- Layoff must be for longer than 6 months to trigger WARN notice requirement
- Exception for “Unforeseeable Business Circumstances”
  - Sudden, dramatic and unexpected action or conditions outside employer’s control
- Exception for “Natural Disaster”
  - Closing is the direct result of a natural disaster such as a flood, earthquake, drought, storm tidal wave, or similar effects of nature
Current and Pending Government Assistance for Businesses
Federal Assistance

SBA Emergency Impact Disaster Loans:

- Small Business Administration Loans of up to $2 million with very favorable interest rates (3.75% for small businesses; 2.75% for non-profits). Proceeds may be used to pay fixed debts, payroll, accounts payable and other bills that cannot be paid because of the impact of coronavirus on your business.
- Available to small businesses unable to obtain credit elsewhere.
- See Disasterloan.sba.gov/ela/information/index

Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

- Under debate in Congress, not final until passed and signed by President Trump
- Direct payments to individuals through additional tax refund
- Bridge loans made available to small businesses and nonprofits substantially impacted by COVID-19.
  - Must have fewer than 500 employees
  - Up to $10,000,000 loan
  - May use to pay payroll, sick leave, health care costs, mortgage payments, rent, other existing debt payments
  - Loan payments deferred for up to one year
  - Loan proceeds used to pay eligible payroll from March 1 through June 30 may be forgiven
Additional Changes under CARES

Emergency EIDL Grants
- Establishes emergency grant of up to $10,000 to businesses that have applied for EIDL loan. To be distributed within three days of request.

Retirement Plans
- Waive the 10% early distribution penalty tax on withdrawals from retirement plans for individuals who have a principal residence in a declared health emergency area and who have suffered economic loss;
- Permit individuals three years to repay plan distributions;
- Increase retirement plan loan limits to the lesser of $100,000 or 100% of the participant’s vested account balance (doubling current loan limits);
- Allow individuals who borrowed from their plan and have a repayment due to delay their loan repayment for up to a year;
- Provide a wage credit for employee retention for employers impacted by the virus outbreak; and
- Provide a temporary waiver for 2020 required minimum distributions from DC plans and IRAs.

Questions? Contact Randy Cook or Christine Moehl at Saalfeld Griggs
Breach of Contract Implications

*Force majeure* - Specific contractual provision addressing inability to perform due to unforeseen circumstances. Provision must be in the written contract.


Practical steps to avoid having to implement these defenses.
Tax Relief in Response to COVID-19

Delayed Deadlines, Deferred Payments, and Tax Credits
Deadline Adjustments

2019 filings due April 15 are now due July 15

All types of taxpayers

No extension needed

Quick refund option for corporations - IRS Form 4466
Deferring Payments Until July 15, 2020

Payments Due April 15, 2020

- 2019 tax payments
- 2020 estimated tax payments (income and self-employment taxes)
- Exception: Transition tax installment payments
Tax Credit for Sick Leave Pay

For businesses with less than 500 employees

Types of Sick Leave:

▪ For employee: 100% of pay, up to $511 per day

▪ For employee to care for someone else: 2/3 of pay, up to $200 per day
Response From State Departments of Revenue

- Oregon’s Response
- Other States:
  - Or search: AICPA State Response
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Questions?