

# COVID-19 CLIENT ALERT

## COVID-19 Employment Challenges

With the COVID-19 outbreak, employers are facing many questions related to managing their workforces, protecting their employees, and navigating the effect of government efforts to contain the spread of the virus. This situation evolves daily, and employers' legal obligations continue to change as the pandemic grows. The flood of information can be overwhelming, but knowing what questions to ask can make it more manageable. Rather than further bombarding you with information that may be outdated by the time you read it, we wanted to provide you with a list of topics for which you need to make sure you have current information. As employers continue to deal with COVID-19, they should be cognizant of the following employment issues that may arise:

1. Protecting Your Workforce. The Occupational Safety and Health Administration generally requires employers to provide a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm. Legal obligations aside, many employers want to do their part to limit the spread of COVID-19 among their workforces. Employers should know how to protect their workforce with preventative instructions, as well as when an employee becomes ill or receives a positive COVID-19 test. For example, employers should know when they can send an employee home from work.
2. Employee Leave. As schools close and the rate of infection increases, employees may seek leave. Congress has just passed legislation providing paid sick leave and expanding Family and Medical Leave to accommodate employees facing issues related to COVID-19. Employers should know what those provisions require, as well as whether they apply to their organizations. In particular, employers should know how these new leave provisions interact with other paid sick leave laws, the Family and Medical Leave Act, and their own leave policies. Further, to the extent that the current pandemic forces employers to deviate from their policies, employers should know how best to manage changes to their own policies.
3. Medical Examinations. The EEOC has just provided guidance suggesting that employers may take employee's temperatures, even though such medical examinations are usually prohibited, and Governor DeWine has suggested that Ohio employers should take employees' temperatures daily. Employers should know the limits on medical examinations of employees and how to deal with situations when employees may refuse their preventative measures.
4. Returning to Work After Absence. Many employers require employees to provide a physician's certification of their need for leave and their ability to return to work without restrictions. Employers may consider expanding their medical certification requirements to include a certification regarding employees' possible infection with or exposure to COVID-19. The Americans with Disabilities Act limits employers' abilities to ask certain medical questions, and, according to

the CDC, the current demands on the healthcare system may interfere with employees' abilities to obtain required certifications. Employers should know what they can ask and how they should deal with current challenges to the healthcare system without setting bad precedent with regard to their current policies.

5. Unemployment Benefits. Ohio and many other states have modified their unemployment laws to provide employees with benefits more easily and more quickly. Employees may ask employers about their potential unemployment benefits. Employers should know how changes in unemployment laws will affect them, as well as how best to respond to employee questions.
6. Layoffs. With mandatory business closures, employers may face the difficult decision of whether to layoff some or all of their workforces. Both the federal WARN Act and state law impose requirements on certain employers implementing layoffs. Employers should know how to navigate these laws so that legal challenges do not further complicate their operations.

Hahn Loeser's Labor and Employment group is available to work with employers as part of their COVID-19 response team. Please reach out to any of our attorneys as questions arise regarding how to manage your workforce in these unique times.

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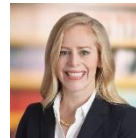
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