

COVID-19/CORONAVIRUS – EMPLOYER CONCERNS AND QUESTIONS MARCH 17, 2020 UPDATE – UPDATE #2 LAYOFFS IN MINNESOTA

The COVID-19/Coronavirus pandemic is fluid. Guidance is changing often as developments occur. We strongly recommend continued monitoring of credible information sources such as the:

Centers for Disease Control

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Minnesota Department of Health

<https://www.health.state.mn.us/diseases/coronavirus/index.html>

There are a number of potentially applicable federal, state, and local laws and regulations that might apply to employment decisions and workplaces. While there is no one-size fits all answer for every scenario, below we've provided some guidance as to some common concerns and questions many employers and their employees may have.

Please note that the guidance sets out what restrictions or requirements might exist. Often, however, employers remain able to choose and shape what policies and practices they think are best for their organization given the circumstances and particular situations.

We welcome your inquiries to address specific questions, and will do our best to provide answers. Please remember that differing facts and situations may call for different answers, particularly as developments continue to change.

LAYOFF QUESTIONS AND CONCERNS

We have to temporarily close several parts of our business due to the outbreak. Where do I start?

The first place to start is always your handbook. Many employers have policies and procedures that lay out your organization's plans for, e.g., how employees will be selected, what benefits they might be entitled to, etc.

The next thing to keep in mind is that federal and state laws prohibiting discrimination in the workplace on the basis of a protected class would apply. Federal law prohibits discrimination on the basis race, sex, age (40 and over), color, religion, national origin, or disability; Minnesota law prohibits discrimination based on those protected classes and also prohibits discrimination based on marital status, familial status, public assistance status, sexual orientation, and local human rights commission activity.

Depending on the size of staff being laid off, you could potentially be subject to the federal requirements under the Worker Adjustment and Retraining Notification (WARN) Act.

[https://www.doleta.gov/programs/factsht/WARN Fact Sheet updated 03.06.2019.pdf](https://www.doleta.gov/programs/factsht/WARN_Fact_Sheet_updated_03.06.2019.pdf).

Minnesota has a state version, sometimes called a “mini-WARN” statute as well.

<https://mn.gov/deed/business/starting-business/basics/plant-closings.jsp>.

Normally, these would require an employer doing a large layoff to provide 60 days’ notice to affected employees. However, the WARN Act permits shortened notice for “unforeseen business circumstances.” Given the recent proclamations by the President, the Governor, the Minnesota Commissioner of Health, and the Minnesota Commissioner of the Department of Employment and Economic Development (DEED), it seems likely that the coronavirus pandemic constitutes an “unforeseen business circumstance.”

Please note that in general the need still exists to advise state and local governments (e.g., the Dislocated Worker Program) of the layoffs to facilities the government’s ability to step in and provide placement and retraining services.

Are employees who are temporarily laid off or furloughed entitled to unemployment compensation?

In Minnesota, the answer is yes. On March 16, 2020, Governor Walz signed Executive Order 20-05 that permits workers who are “not able to work directly or indirectly as a result of COVID-19.”

https://mn.gov/governor/assets/EO%2020-05%20%28Gov%20Signed%29_tcm1055-423379.pdf.

The Executive Order waives the usual waiting period, so temporarily laid off or furloughed employees can apply online. More information can be found at DEED’s website:

<https://mn.gov/deed/newscenter/covid/workers/>.

What if we just want to reduce staff hours?

For nonexempt, hourly staff, you can reduce their shifts as your needs change. You should generally follow your existing policies in terms of employees accessing and using vacation

time, and perhaps consider relaxing your requirements regarding sick time - e.g., let them access those banks even though they may not necessarily be sick.

Under the FLSA, exempt, salaried employees generally must receive their full salary in any week in which they perform any work, subject to limited exceptions. They are not required to be paid their salary in weeks in which they perform no work. One concern about exempt staff, however, is if they are put on a temporary furlough or layoff without pay and their year-end salary falls below the minimum required under the FLSA to qualify as an exempt employee, the employer may be subject to the FLSA's overtime provisions.

When employees are furloughed, an employer should set the expectation that they will not work. This includes checking email and voicemail. As noted above, exempt employees are entitled to full compensation for any work week in which they perform any work, and nonexempt hourly employees are entitled for compensation for the time they perform work. As a practical matter, however, you will want to be able to communicate general status updates to your temporarily laid off or furloughed employees. The best solution may be to make sure your written instructions to temporarily laid-off or furloughed employees are clear that they are not to perform any work but may check email or voicemail solely for updates.

OTHER EMPLOYMENT GUIDANCE AND CONCERNS

For related guidance and questions about other employment topics related to COVID-19, please see Lind Jensen Sullivan & Peterson's earlier guidance:

<http://www.lindjensen.com/news/>

WORKERS' COMPENSATION CONCERNS

For related guidance and questions about workers' compensation concerns related to COVID-19, please see Lind Jensen Sullivan & Peterson's separate guidance:

<http://www.lindjensen.com/covid-19-and-workers-compensation-in-minnesota/>

If you have any employment or other questions regarding the ongoing COVID-19 pandemic as it relates to your employees, please do not hesitate to contact our employment team at Lind Jensen Sullivan & Peterson by email or phone (612) 333-3637.

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