

COVID-19 STRATEGIES AND ISSUES FOR EMPLOYERS TO CONSIDER

In an effort to help our employer clients deal with the constantly changing workplace circumstances caused by the COVID-19 pandemic, Whiteman Osterman & Hanna LLP is providing the following checklist of strategies and issues for employers to consider:

Can you reduce employee work schedules or employee pay rates? You should consider:

- Is the employee non-exempt under the Fair Labor Standards Act (“FLSA”) (i.e., entitled to overtime if he or she works more than 40 hours in a week)?
- Or is the employee exempt (i.e., paid on a salary basis and meets one of the FLSA duties tests, and therefore is exempt from the requirement to pay overtime)?
- Should you file a Shared Work Plan with the NYS Department of Labor to enable employees to file for partial unemployment insurance benefits?
- What limits are there on your ability to reduce employee pay rates?
- What notice must you provide to employees if you reduce their pay?

Must you provide employees with leave? This complicated area has grown in complexity over the past days, because employers now must consider employee rights and employer responsibilities under:

- New York State’s Paid Sick Leave Law
- U. S. Emergency and Medical Leave Expansion Act, enacted on March 19, 2020
- U. S. Emergency Paid Sick Leave Act signed into law on March 19, 2020
- The employer’s own sick leave or vacation policy
- New York State Paid Family Leave Act
- Family and Medical Leave Act
- Americans with Disabilities Act and NYS Human Rights Law

Should you temporarily furlough employees? Before you decide, find out:

- Must you pay furloughed employees the value of their accrued vacation or paid time off?
- Must you continue their health insurance benefits? Provide notice of COBRA rights?
- Will the furlough or temporary layoff constitute an employment loss sufficient to trigger notice obligations under the NY WARN Act or federal WARN Act?
- Will employees be entitled to unemployment insurance benefits?

Should you lay off employees? Before you take action, find out:

- What are the key issues you should consider before laying off employees?
- Will enough employees lose employment that there will be notice obligations under the NY WARN Act or federal WARN Act?
- What benefits will you owe to employees?

Whiteman Osterman & Hanna LLP can assist with these issues and more, as you and your business work to navigate the novel and difficult decisions arising from the COVID-19 pandemic. For assistance with employment issues, please contact one of our labor and employment attorneys:

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