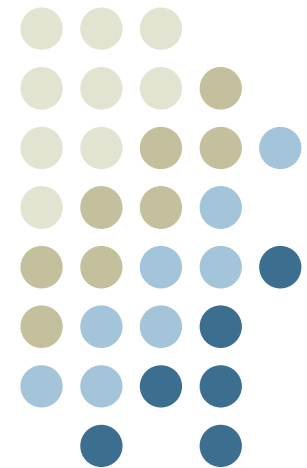
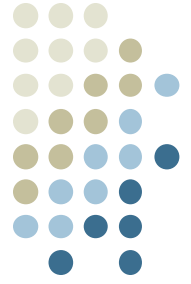


COVID-19 – the Latest Local, State and Federal Mandates Impacting the Workplace

Mike Wong
Partner
Labor & Employment Group
630.587.7972 – **24/7**
MWong@SALawUS.com



Initial Thoughts...

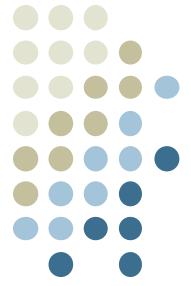


As COVID-19 spreads employers are taking precautions to protect their workplaces while still trying to conduct business.

- NO UNIFORM path - Depends on industry, location and jobs
- Situation is fluid and changes by the hour.
- DO NOT think there's a "right way" of handling this situation
- The **TWO** most important things to keep in mind from a business perspective:
 - 1) Health, welfare and safety of everyone (employees, contractors, customers, suppliers, the public, etc...) and
 - 2) Ability to operate your business as effectively as possible.

Purpose of today is to educate you regarding COVID-19 and to provide an understanding of your rights and responsibilities.

H.R.6201 – **Effective April 1, 2020** Families First Coronavirus Response Act

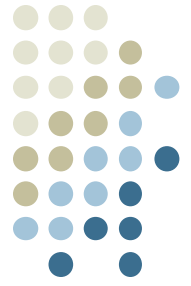


FFCRA has three (3) areas that employers must IMMEDIATELY pay close attention to:

- 1) PAID LEAVE;
- 2) EXPANSION OF FMLA LEAVE; and
- 3) EXPANSION OF UI BENEFITS (including the possible extension of UI benefits beyond 26-weeks).

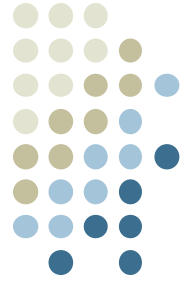
Applicable April 1, 2020 to December 31, 2020.

HR6201 - FFCRA



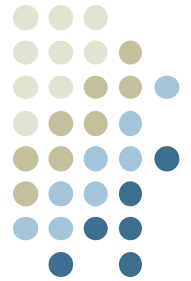
- **Employers** – All private sector employers with LESS THAN 500 employees and all government employers
 - Employers with 50 or less employees may be exempt. Regulations will be issued by DOL – exemptions triggered if “viability” of the business is in jeopardy OR if healthcare workers and emergency responders.
- **Employees** –
 - Paid Sick Leave: Employees who are not able to work or able to work remotely (“telework”) under the following circumstances
 - Paid FMLA: All Employees employed for **30 calendar days** (No 75 miles, 12 months or hours worked)
 - Days worked as Temp Worker may count towards 30 calendar days

HR6201 – FFCRA – Paid Sick Leave



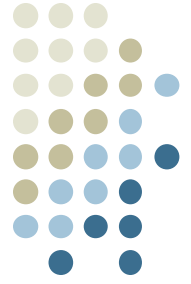
- **Amount of Leave:** 2 Weeks Paid
- **Employer's Leave Policies:** PSL is in addition to any paid sick leave offered by Employer
 - Employer may not require Employee to use other Paid leave first.
- **Notice/Call-In:** After the first day, employer may require the employee to follow reasonable notice requirements

HR6201 – FFCRA – Paid FMLA



- **Amount of Paid FMLA Leave – 12 weeks**
 - First 2 Weeks are Unpaid
 - Next 10 Weeks are Paid
- Does not expand 12 weeks provided under FMLA.
- Restoration to position requirement of FMLA does not apply if less than 25 employees, and:
 - 1) position held by EE prior to leave does not exist due to economic conditions or other changes in operating due to COVID-19,
 - 2) Employer makes reasonable efforts to restore employee to equivalent position w/ equivalent pay, benefits, etc., and
 - 3) Employer makes reasonable efforts to contact employee if an equivalent position becomes available within 1 year from the end of the leave (or 12 weeks from date leave started)

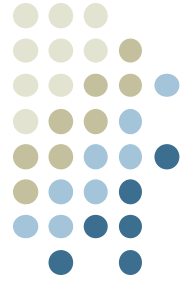
HR6201 - FFCRA



Qualifying Reasons for Paid Sick Leave (PSL) and Paid FMLA (PF):

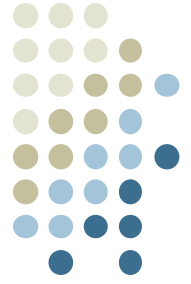
- 1) **PSL – is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;**
- 2) **PSL – has been advised by a health care provider to self-quarantine related to COVID-19;**
- 3) **PSL – is experiencing COVID-19 symptoms and is seeking a medical diagnosis;**
- 4) PSL – is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- 6) PSL – is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.
- 5) **PSL & PF – is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.**

HR6201 - FFCRA



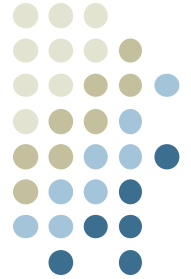
- **Reasons (1), (2), (3) – PSL** – Two weeks (up to 80 hours) of **paid sick time** at **100% employee's regular rate of pay, up to \$511 for a total of \$5,110** where the employee is unable to work because:
 - **(1)** subject to a Federal, State, or local government quarantine or isolation order related to COVID-19;
 - **(2)** has been advised by a health care provider to self-quarantine related to COVID-19; or
 - **(3)** is experiencing COVID-19 symptoms and is seeking a medical diagnosis.

HR6201 - FFCRA



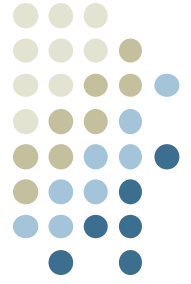
- **Reasons (4), (6) – PSL – Two weeks (up to 80 hours) of paid sick time at two-thirds (2/3) the employee’s regular rate of pay, up to \$200 for a total of \$2,000 because the employee**
 - (4) is caring for an individual subject to a quarantine order or self-quarantine;
 - (6) the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

HR6201 - FFCRA



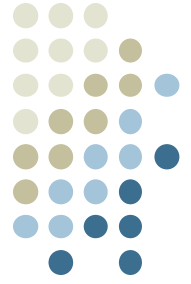
- **Reason (5) – PSL & PF** – Total twelve (12) weeks of paid leave for caring for a child (under 18 years of age) whose **school or child care provider is closed** or unavailable for reasons related to COVID-19.
 - **Two weeks (up to 80 hours) of Paid Sick Leave** at two-thirds (2/3) the employee’s regular rate of pay, up to \$200 for a sub-total of \$2,000; **AND**
 - **10 weeks of Paid FMLA** leave at two-thirds (2/3) the employee’s regular rate of pay, up to **\$200 for a sub-total of \$10,000**
- **Grand total 12 weeks at two-thirds (2/3) employee’s regular rate of pay, up to \$200 for a total of \$12,000**

HR6201 - FFCRA



- Employee may take any combination of reasons to get to 12 weeks – based on eligibility
 - First 2 weeks may be based on **Reasons (1), (2) and (3)** to get higher cap of \$511 per day under Paid Sick Leave;
 - May then use **Reason (5)** for next 10 weeks of Paid FMLA

HR6201 - FFCRA

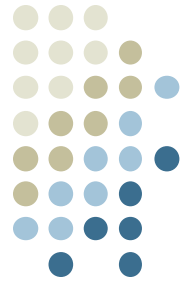


Calculation of Regular Rate / Pay:

- 100% of Regular Rate, but no more than \$511 per day:
 - To max out per day \$511 cap, the employee's wages would be approx. \$2,555 per week and \$132,860 annually.
- 2/3 of Regular Rate or 2/3 Minimum Wage, but no more than \$200 per day:
 - To max out per day \$200 cap, the employee's wages would be approx. \$37.50 per hour, \$1,500 per week and \$78,000 annually.
- You compute your Regular Rate for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.
- <https://www.dol.gov/agencies/whd/fact-sheets/56a-regular-rate>
- <https://www.dol.gov/agencies/whd/fact-sheets/56c-bonuses>

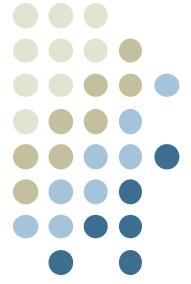
HR6201 – FFCRA

Calculation of Regular Rate / Pay:



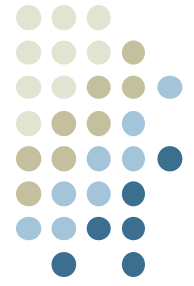
- **Calculating Hours:** Cap of 80 hours for Paid Sick Leave
 - **BUT** – Based on the number of hours the employee is normally scheduled to work.
 - If normally scheduled for Overtime i.e. regularly scheduled for 50 hours must include those hours, **BUT Paid Sick Leave is still capped at 80 hours.**
- **What if the normal hours scheduled are unknown, or if the part-time employee's schedule varies?**
 - You use a six (6) month average to calculate the average daily hours.

HR6201 - FFCRA



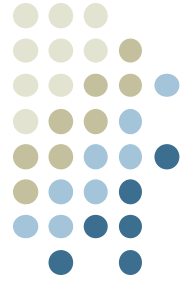
- **Notice** – Must Post in workplace, but may satisfy requirement by emailing or direct mailing notice or posting on internal/external website.
 - https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- **Prohibited from Retaliation**

HR6201 – Tax Credit



- **Tax Credit** – Each quarter, private Employers are entitled to tax credit equal to 100% of the qualified sick leave wages paid (Dollar for Dollar).
 - Health Insurance: Can also seek a tax credit to offset any costs of continuing to provide health insurance while the worker is utilizing this benefit.
- Payments made under this mandates are not considered wages for Social Security payroll tax purposes.
- Tax credit will be applied against the employer’s Payroll Taxes and Social Security taxes.
- The U.S. Treasury Secretary has broad regulatory authority to help employers meet their financial obligations while awaiting the tax credit.
 - IRS Streamlined application and refund issued in 2 weeks or less
- Self-employed can also receive the same tax credits as if they were employed by an employer under the new paid sick leave mandate.

Objectives in Formulating Response to COVID-19



- All employers need to consider how best to decrease the spread of acute respiratory illness and lower the impact of COVID-19 in their workplace, while trying to maintain operations to the greatest extent possible.

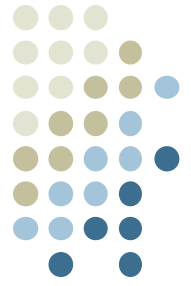
Objectives in Responding to COVID-19



- Reducing transmission
- Protecting people who are at higher risk for adverse health complications
- Maintaining business operations
- Minimizing adverse effects on other entities in supply chain

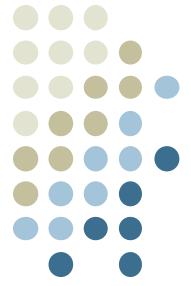
****While workplace wage/hour mandates, discrimination, termination and other traditional HR and legal regulatory requirements are secondary at this point in time... THEY ARE IMPORTANT TO STILL RECOGNIZE AND NOTE. The Plaintiff's Bar is paying attention and already advertising services related to COVID-19****

Essential vs. Non-Essential Biz...



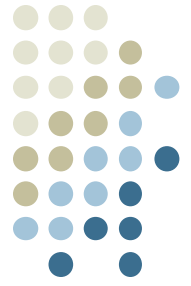
- Illinois Executive Order 2020-07 banned public and private gatherings of more than 50 people.
- Illinois Executive Order 2020-10 – Stay at Home
 - <https://www2.illinois.gov/Documents/ExecOrders/2020/ExecutiveOrder-2020-10.pdf>
 - Per CDC guidelines – Public gatherings limited to 10 more people, but essential goods/services exempted
 - Order expressly states that “all businesses and operations are encouraged to remain open” – but if non-essential try to address how to situation
 - Non-essential businesses may operate remotely

Essential vs. Non-Essential Biz...



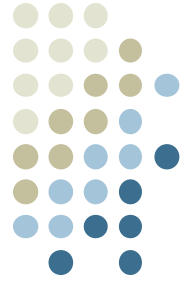
- Illinois Executive Order 2020-10 – Stay at Home
 - If possible, Businesses operating must comply with following:
 - **Designate six-foot distances:** Designating with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;
 - **Have hand sanitizer and sanitizing products readily available** for employees and customers;
 - **Separate operating hours for vulnerable populations:** Implementing separate operating hours for elderly and vulnerable customers; and
 - **Online and remote access:** Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.

Workplace Practices



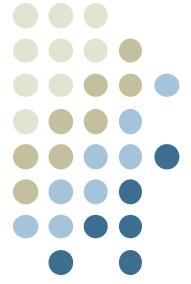
- Immediately send home employees who appear to be ill (particularly, Fever, Cough, Shortness of Breath, Body Aches) upon arrival to work or during day.
- Emphasize coughing/sneezing etiquette and hand hygiene.
- Implement a NO CONTACT policy.
- Try and implement remote working arrangements to the extent greatest possible. *****You may have no choice in coming days...**
- Try and separate workers in the office or plant with the 6-foot rule.
- Encourage private transportation to and from work.
- Close off the break room or café.
- Stagger shifts more --- less bodies using certain facilities at certain times (i.e.. Locker rooms).
- **NOTE:** Temperature Scans before shift or entry **EEOC has said its okay because it's a pandemic...but still do not necessarily recommend, it is becoming more common – alternative instruct workers to check their own temperature each day before arriving to the workplace.

Workplace Environment



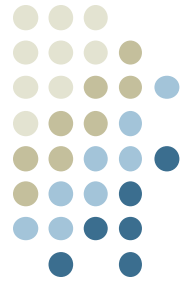
- Provide tissues, no-touch disposal receptacles, soap and water, and alcohol-based hand rubs with at least 60% alcohol.
- Perform routine environmental cleaning of all frequently touched surfaces and provide disposable wipes so that commonly used surfaces can be wiped down before use (e.g. conference tables, reception areas).
- PPE considerations --- gloves, masks, eye protection --- particularly on manufacturing, assembly lines.
 - **NOTE: Hospitals in dire need... If you have extra or do not need all of your inventory consider donating or offering to sell at cost to Hospitals....**

An employee who thinks they may have been exposed...



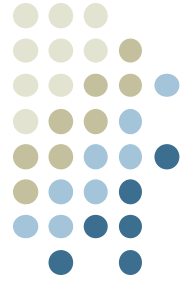
- Employees who have a sick family member at home with COVID-19 should notify HR.
 - If an employee is confirmed to have COVID-19, the employer should inform fellow employees of the possible exposure but maintain confidentiality.
 - Contact local health department for guidance --- but you do not have to shut down. For now... this can be managed. (see next slide)
- Exposed employees should refer to CDC guidance for how to conduct a risk assessment of exposure:
<https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-prevent-spread.html>

If an Employee tests positive (or, presumed to have the virus by a health care provider)...



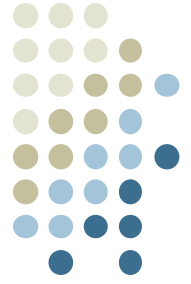
- Have employee identify anyone they worked closely with (3 to 6 feet) in the prior 14 days (including customers and vendors)
- Undertake a deep cleaning of affected workspaces – if possible wait up to 24 hours before using.
- Open doors and increase air circulation in area.
- If shared building or area, notify building management so they can take any precautions they deem necessary

If an Employee tests positive (or, presumed to have the virus by a health care provider)...



- Employees with contact to the Employee who tests positive or is presumed to have the virus may do any of the following:
 - **Recommended:** Send home for 14 day period during which they must monitor themselves for the development of any of the following symptoms: fever (temperature of 100.4 or higher), cough, aches, or difficulty breathing.
 - **NOTE:** If they develop any of these symptoms, they must contact a health care provider and stay home until (1) the doctor says they can return to work OR (2) free of fever, signs of a fever, and any other symptoms for at least 24 hours, without the use of medication, whichever is later.
 - ****May want to demand both!!!*

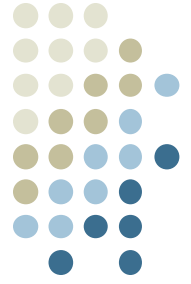
OSHA Considerations



OSHA expects ALL employers to follow “general duty clause” that **workplaces must be free of known hazards that can be corrected**

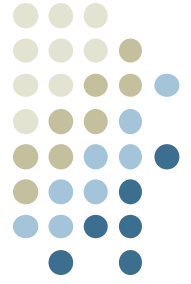
- No specific rule mandating precautions for COVID-19
- Employers with 10 more workers to keep a log of every workplace injury/illness requiring medical treatment beyond first aid or keeps a worker away from work for at least one day.
- Guidance issued in early March requires employers to track COVID-19.
 - If an employer doesn’t know whether the illness occurred at work, OSHA rules say the employer must evaluate the employee’s work duties and environment to decide whether exposures at work either caused or contributed to the illness.

OSHA Tracking Requirements (cont'd)



- Colds or flu do not need to be tracked (specific exemption).
- For workers who decide not come to work because they have cold/flu symptoms, that by itself won't require employers to track the cases.
- If a test later shows worker has COVID-19, the employer would need to consider if the infection was work-related and recordable.

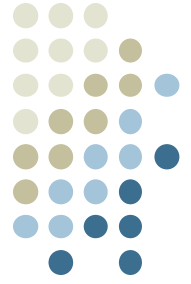
Review Paid Leave Policies



Questions to Ask:

- How does your current policy accommodate personal and family illnesses?
- How will you apply your paid leave policy in the event of a school or child care facility closing?
- In the midst of an epidemic, will you still require the same level of leave substantiation (e.g., doctor's notes) that it normally requires?
- Do you relax your “no fault” attendance policy? ***Be sure to note that this is purely for the COVID-19 outbreak/pandemic.
- Is the implementation of flexible leave policies an option—even if temporary?
- **Do you know and understand all Local, State and Federal paid mandates (existing and those in development – i.e. H.R.6201).**

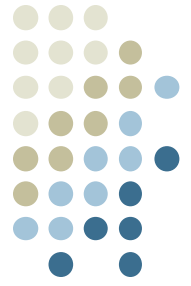
Family Medical Leave Act (FMLA)



An employee could qualify for FMLA if the employee gets COVID-19 or is caring for a family member has COVID-19 and all other FMLA eligibility requirements are met.

- Under the FMLA, a serious health condition includes:
 - inpatient care;
 - incapacity for more than three days with continuing treatment by a health care provider;
 - permanent or long-term incapacity; and
 - certain conditions requiring multiple treatments.
- **Probably Serious Health Condition... if a health care provider orders someone to self-quarantine --- then it's very likely FMLA will apply.**

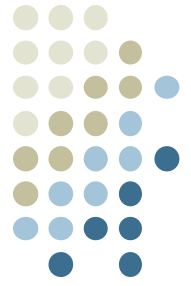
ADA Considerations...



Since it COVID-19 has been declared a Pandemic the application of ADA has been loosened.

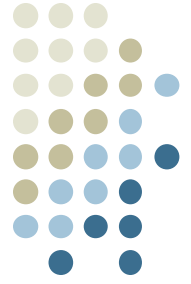
- Can ask employees if experiencing symptoms of the pandemic virus - symptoms such as fever, chills, cough, shortness of breath, or sore throat – Can require disclosure subject to discipline
- May take body temperature – since it's a symptom of COVID-19
- Can require employees to stay at home or send home if they have symptoms – should document observable symptoms
- Can require doctor's note before returning to work...be flexible

Fear of Infection



- An employer is not required to accommodate employees' fear of infection – (however, this could lead to treatment for anxiety, depression, etc... --- be careful)
- Employees do not have a right to work from home if the business does not accommodate the practice
 - Balance business needs with the decreased risk of infection to the workforce and community

Furlough vs. Layoff



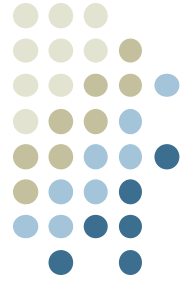
A lot of Employers considering or using temporary furloughs or temporary layoffs.

- **Layoffs** = termination event. ***eligible for UI benefits and all earned wages at time of separation (i.e. PTO)
- **Furloughs** = employment remains intact. ***eligible for UI benefits but employment relationship has not been severed

***Please check your underlying health/welfare and retirement plan documents to ensure you understand the impact of the difference here.

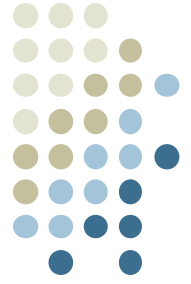
***Employers can also modify wage rates/salaries --- provided it is not a common occurrence and prospective.

Short-Term Disability Benefits



- Employees who become ill with the virus *may* be eligible for benefits under a short-term disability policy, depending on the terms of the policy (i.e. waiting period, covered illnesses).
- Typically disability policies do not provide benefits when an employee is unable to work due to quarantine.

Worker's Compensation

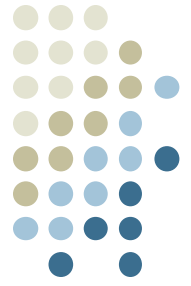


If an employee contracts COVID-19 from a coworker will he qualify for worker's compensation benefits?

- Typically not.
- Depends on whether the illness or exposure “arose out of employment” and was “in the course and scope of employment.” ***Difficult to prove.
- The type of worker and the workplace environment are critical factors in making this decision (i.e. healthcare workers may qualify).

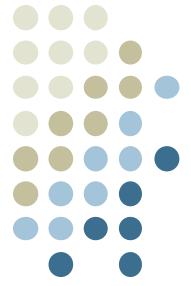
HR6201

Unemployment Benefits Expansion:



- The federal government is allowing and encouraging states to be more flexible with respect to eligibility.
- The federal government will provide states \$1 Billion in additional funding for UI benefits.
- HR6201 also authorizes states to extend unemployment benefits beyond 26 weeks should they experience higher levels of unemployment.
- CARES Act – provides States option of increasing unemployment caps by \$600.

Unemployment Benefits

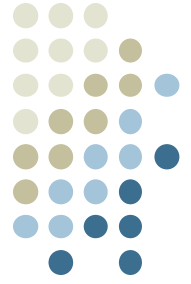


Employer-instituted quarantines, temporary shutdowns or mass layoffs could entitle workers to unemployment benefits

- Depends on the size and length of the temporary shutdown
- Other unemployment requirements must be met
 - ***NOTE: An employee refusing to work due to FEAR of catching the virus is (at this time) will likely be deemed as REFUSING SUITABLE WORK and, therefore, ineligible for UI benefits. *BUT... note Plaintiff's Bar is likely looking at this as a possible "RETALIATION" theory down the road.*

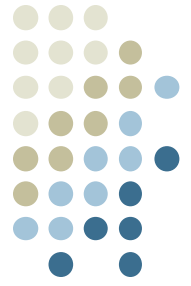
Employer Contribution Rates: Currently, no guidance if relaxed unemployment standards will still impact employer contribution rates...Currently this issue is being discussed by legislature.

Labor Relations Considerations



- Employers operating in a unionized work environment have additional concerns regarding planning.
- Unionized employers should closely review their collective bargaining agreements to determine whether special provisions have been made in the event of a disruption of business operations.
- For example, some agreements may have provisions that provide paid time off to union workers in the event of an emergency when employees are prohibited from reporting to work.

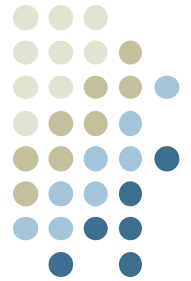
What's the Interplay with WARN?



Federal WARN requires employers with 100 or more Full Time employees (Illinois is 75 FT Employees) to 60 day Written Notice to officials and employees of a plant closing or mass layoff.

- *A plant closing* is 50 or more employment losses at a single site of employment in a 90-day period. (IL is 25 or more during 30/90 day period)
- *A mass layoff* is 50 or more employment losses at a single site of employment in a 90-day period that also involves 33% of the active workforce at the site. (IL is 33% or more FT employees of site, of at least 25 employees)
 - **NOTE: Employees with less than 6 months of service in the prior 12 months, or who work less than 20 hours per week, are not counted.**
- Temporary layoffs of less than 6 months are not counted as an employment loss under Fed WARN.
- **NOTE: Some states have their own mini-warn laws that require notice of 30, 60 or 90 days --- and some states still consider temporary/short layoffs for purposes of its mini-warn law (i.e. CA).**

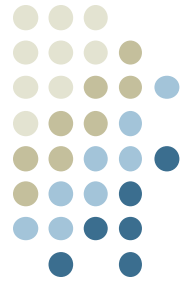
What's the Interplay with WARN?



- Under the current circumstances, the timing requirement will likely not be possible --- and, it's probable the timing requirement would not cause any legal issues for employers due to any one of the 3 general Federal WARN exceptions to the timing requirement:
 - 1) faltering company,
 - 2) unforeseen business circumstances, or
 - 3) natural disaster.

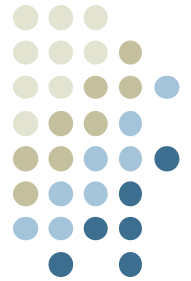
BUT... NOTICE is still required to be given!!!
 - Also, some states don't have certain exceptions in their mini-warn laws (i.e. CA does not recognize the "unforeseen business circumstances" exception...BUT has waived for COVID-19 related closures).
- ***Know the differences between layoffs/RIFs vs. furloughs. AND note, a furlough could still trigger WARN issues --- depending on the length of the furlough and/or the location of the worksite.

Additional Considerations



- Consider a review of insurance policies in regards to business interruption and third party claims.
- Evaluate technology infrastructure to determine extent of remote access that can be supported.
- Review business continuity plans to ensure situation presented by COVID-19 is addressed.
- Review borrowing needs (i.e. lines of credit) and review financial obligations carefully (i.e. bank covenants).
- Read our BLOG page for updates...
 - <https://www.salawus.com/practices-covid19-task-force.html>

THANK YOU! Questions?



Mike Wong, Esq.

SmithAmundsen LLC

Partner – Labor & Employment

Mwong@SALawUS.com

Direct: 630-587-9717

www.laborandemploymentlawupdate.com

<https://www.salawus.com/practices-covid19-task-force.html>

*Chicago, St. Charles, Rockford, Woodstock, Indianapolis, Milwaukee, St. Louis.
USLawNetwork Member.*