

# Coping with the coronavirus in the workplace

By Eli Kantor

**W**ith the global pandemic of the Corona Virus, President Trump has declared a national state of emergency. Employers may have to reduce their workforce temporarily in order to cut costs as the virus continues to spread, impacting their bottom line. However, before taking any action, employers need to consult with their legal counsel to make sure that they are compliant with state and federal regulations. Below are some options to consider:

## Mass Layoffs

Specifically, employers who employ more than 100 employees must be mindful of the Federal WARN act before engaging in any mass layoffs. Federal WARN requires that employers give 60 days notice to impacted employees if at least 50 individuals are going to be laid off during a 30 day period due to lack of work or lack of funds. However, in California the CAL WARN act is triggered under California Labor Code Section 1400 et seq., if a company employs at least 75 employees.

Note, employers cannot preemptively

fire employees to get under the 75 or 100 employee threshold. This law is triggered if employers had that number of employees at any time for at least six months during the previous 12-month period. If employers fail to provide the requisite 60 days notice, employers have to pay those workers their wages for 60 days.

Employers may be excused from the notice requirement under Labor Code Section 1401 (c), which states that notice is excused where the lay-off, relocation or termination is necessitated by a "physical calamity or act of war." While arguably corona virus could be considered a "physical calamity," there is no binding case law interpreting what qualifies as a "physical calamity." Thus, in an abundance of caution, employers who are covered by CAL-WARN should comply with the notice requirement.

## Alternatives

Employers could lay off less than 50 individuals. However note California Labor Code Section 1400 will be triggered over a 30-day period. So if an employer lays off 40 employees today and ten in 29 days, they will have to comply with California Labor Code Section 1400.

## Reduction in Hours in Connection with California's Work Sharing Program

Employers can apply for the Employment Development Department's Unemployment Insurance Work Sharing Program if reduced production, services, or other conditions cause them to seek an alternative to layoffs. To participate, employers must meet the following:

- Be a legally registered business in California.
- Have an active California State Employer Account Number.
- At least 10% of an Employer's work force and a minimum of two employees must be affected by a reduction in hours and wages.
- Hours and wages must be reduced by at least 10% but cannot exceed 60%.
- Health benefits must remain the same as before.
- Identify the affected work units to be covered by the work sharing plan and identify each participating employee by their full name and social security number.
- Notify employees in advance of the intent to participate in the Work Sharing Program.
- Identify how many layoffs will be avoided by participating in the Work Sharing Program.
- Provide the EDD with any necessary reports or documents relating to the Work Sharing Program.

## Procedure

- Fill out and mail Work Sharing



Unemployment Insurance Plan Application from the EDD website.

- The earliest date for Work Sharing Plan to become effective is the Sunday before an employer contacts the EDD. The plan will be effective for one year.

- Employers can renew a work sharing plan, if necessary.

#### Temporary Reduction of Hours for Employees

If employers reduce the number of hours employees are working because of the coronavirus, those employees can receive partial wage replacement benefit payments. They must file an unemployment insurance claim from the EDD Website. These employees are not required to actively seek work each week. However, they must remain ready to work during their unemployment for each week of benefits claimed and meet all other eligibility criteria. Eligible individuals can receive benefits that range from \$40-45 per week. The Governor's Executive Order waives the one-week waiting period, so employees can collect UI benefits for the first week they are out of work. If employees are eligible, the EDD processes and issues payments within a few weeks of receiving a claim.

If employees are working 30 hours or more per week, employers must continue health insurance coverage under the same terms and conditions as if they were working full time. However, if employees are working less than 30 hours, employer sponsored health insurance may end, in which case employees

may be eligible for health benefits through COBRA.

#### Through Work Furlough

With this option, employees are off work for a period of time. These employees will be eligible for unemployment insurance benefits. If the expected duration is only a few weeks in connection with the coronavirus, employees are not required to actively seek out other jobs to receive unemployment benefits.

#### Reduction in Pay for All Employees Including Exempt and Non-Exempt

If employers reduce wages, employers must provide reasonable advance notice (at least seven days before the pay period begins) in writing.

#### Exempt Employees

If employers reduce their exempt employees' annual salary below \$54,080 annually, then employers

will need to transition them to a non-exempt hourly status. Employees will have to sign in and out to record their times.

#### Paid Time Off

Employees can use any form of paid time off that they have available and may want to use them to bridge the time until wage replacement benefits begin, and to provide for any shortfall between their benefits entitlement and their usual wages. However, the California Labor Commissioner has held employers cannot make employees use their paid sick leave for quarantine purposes.

#### Conclusion

In light of the fast changing regulatory environment employers should contact experienced legal counsel to help them navigate through these uncharted waters before conducting mass layoffs and or other cost cutting measures. ■

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