Arizona Employers and the Coronavirus: How to Prepare if COVID-19 Is Declared a Public Health Emergency

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Since February 2020, the spread of COVID-19 (commonly referred to as the coronavirus) has morphed into an expanding health emergency in the United States. While efforts to sufficiently stem the adverse effects of the virus to escape the mass disruptions and quarantines experienced in China and other countries are still possible, prudent and responsible Arizona employers may want to prepare in the event the virus dramatically increases its presence here.

Besides the obvious economic consequences, the question on many Arizona employers’ minds is whether the difficult decision to require employees to stay home from work, or even to temporarily close a facility, will spawn legal consequences. The answer is “yes,” even for employers that are not bound by collective bargaining
agreements or contracts spelling out what to do in these situations.

It turns out that Arizona’s Earned Paid Sick Time law, A.R.S. §23-371, et seq. applies under certain circumstances involving a “public health emergency.” Where an employer closes a facility because it is ordered to do so by a public health official due to a “public health emergency,” all affected employees would be entitled to use their earned paid sick time while they are not working because of the closure. According to A.R.S. § 23-373, earned paid sick time “shall be provided to an employee by an employer for”:

Closure of the employee’s place of business by order of a public official due to a public health emergency or an employee’s need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee’s or family member’s presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease.

According to the Industrial Commission of Arizona’s published frequently asked questions (FAQs) and state regulation A.A.C. R20-5-1202(24):

A “public health emergency” means a state of emergency declared by the governor in which there is an occurrence or imminent threat of an illness or health condition caused by bioterrorism, an epidemic or pandemic disease or a highly fatal infectious agent or biological toxin and that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. [Emphasis added.]

As reflected above, not only would a forced closure of the workplace trigger obligations on employers to pay earned sick leave benefits, but the closure of your employee’s children’s schools also would require employers to offer paid sick leave to employees who need to stay home to care for those children. Also, employers must provide mandatory sick leave benefits to employees who need to care for a family member who has been declared by a health care provider to “jeopardize the health of others because of his or her exposure to a communicable disease” (A.R.S. § 23-373), even if neither the employee nor the family member actually has the disease.

Finally, even if a business is not ordered closed because of a “public health emergency,” there may be legal consequences for employers who voluntarily furlough employees in order to avoid exposure and transmission of the COVID-19 virus. While there are no specific Arizona laws or regulations requiring non-governmental employers to pay employees who have been furloughed under these circumstances, if such compulsory time off exceeds the minimum one-week waiting period, employees may become eligible for unemployment compensation benefits.
