Responding to Coronavirus: Illinois Specific Considerations For Employers

Monday, March 23, 2020

The State of Illinois has taken strong measures to mitigate the spread of the coronavirus. Recognizing the impact of the coronavirus on the State of Illinois, on March 20, 2020, the Governor issued Executive Order 2020-10 directing Illinois citizens to stay at home. Executive Order 2020-10 is effective beginning at 5:00 p.m. on March 21, 2020 through April 8, 2020.

Executive Order 2020-10 also directs non-essential businesses to cease all activities in the state, except for “basic minimum operation.” “Basic minimum operation” is defined to include the minimum necessary activities to: (i) maintain the value of a business’s inventory; (ii) preserve the condition of a business’s physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions; and (iii) facilitate employees of a business being able to continue to work remotely from their residences. Executive Order 2020-10 also encourages “essential businesses,” to remain open, but to practice social distancing to ensure employees and the public observe a distance of at least six feet.[1]

In addition, Executive Order 2020-10 prohibits gatherings of more than ten people, and prohibits all travel except for “essential activities” or to maintain “essential
businesses or operations.” The Order permits Illinoisans to leave their homes to engage in “essential activities” related to their health and safety, obtaining health care, to obtain necessary food and supplies, to engage in hiking, running, or biking, and to care for others.

These measures, coupled with social distancing practices, have impacted businesses in Illinois. Recent reports indicate that nearly 41,000 Illinois residents filed for unemployment benefits on March 17th and 18th alone. This post addresses certain practical considerations Illinois employers should bear in mind as they navigate and respond to the implications of the coronavirus.

**Changes in Employee Pay**

In response to the business disruptions caused by the spread of the coronavirus, some employers have considered making changes to employees’ compensation, such as reducing pay rates. Employers that are considering such changes should be aware of requirements imposed by the Illinois Wage Payment and Collection Act ("IWPCA"). First, any changes in an employee’s rate of pay cannot be retroactive. 56 Ill. Admin. Code. § 300.630(d). This means that compensation for hours an employee has already worked must be paid at the employee’s regular hourly rate. Second, if an employer wishes to change an employee’s pay going forward, it must provide the employee a written notice of the change in pay. 820 ILCS § 115/10; 56 Ill. Admin Code. § 300.630(d). It is a best practice to secure an employee’s acknowledgment of the change in the rate of pay before it is implemented.

**Expense Reimbursement**

Many employers are now strongly encouraging or requiring employees to work remotely. Thus, employers should be mindful of the fact that as of January 1, 2020, the IWPCA requires employers to reimburse employees “for all necessary expenditures or losses incurred by the employee within the employee’s scope of employment and directly related to services performed for the employer.” 820 ILCS § 115/9.5. “Necessary expenditures” is defined to mean “all reasonable expenditures or losses required of the employee in the discharge of employment duties and that inure to the primary benefit of the employer.” Id. Consequently, employers should determine whether and to what extent they need to reimburse employees for work-from-home-related expenditures.

**Sick Leave**

As the number of individuals in Illinois who are exposed to the coronavirus increases, employers should recognize that both the Chicago Minimum Wage & Paid Sick Leave Ordinance (Mun. Code of Chicago, Ch. 1-24-045(b)) and the Cook County Earned Sick Leave Ordinance (Cook Cty. Code of Ordinances § 42.3(b)) require employers to provide eligible employees with at least one hour of paid sick leave for every 40 hours worked (accrual is capped at 40 hours within any 12-month period, unless the employer’s policy allows for a greater accrual). Eligible employees may use paid sick leave not only for illnesses suffered by the employee or his or her family member, but also if the employee’s workplace is closed by “order of a public
official due to a public health emergency” or if the employee must care for a child whose school or place of care has been closed by such an order. Cook Cty. Code of Ordinances § 42.3(c)(2)(d). The Cook County ordinance defines a “public health emergency” as “an event that is defined as such by a Federal, State or Local government, including a school district.” Id.

**Anti-Harassment Policy for Remote Workers**

Effective January 1, 2020, the Illinois Human Rights Act (“IHRA”) now defines “harassment” as “unwelcome conduct” on the basis of a person’s “actual or perceived race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, unfavorable discharge from the military service, or citizenship status” that “has the purpose or effect of substantially interfering with the individual’s work performance or creating an intimidating, hostile, or offensive working environment.” 775 ILCS § 5/2-101(E-1) (emphasis added). The IHRA now notes that “working environment” is “not limited to a physical location an employee is assigned to perform his or her duties.” Id. Thus, as employees are increasingly allowed or required to work remotely in response to the spread of coronavirus, employers should review their anti-harassment policies to confirm that their prohibitions on harassing behavior extends to the remote or virtual workplace.

**Emergency Response Workers**

Companies that employ individuals who volunteer as emergency services workers should be aware of their obligations under Illinois’ Volunteer Emergency Worker Job Protection Act, 50 ILCS § 748/1, et seq. Covered employees include individuals who are volunteer Emergency Medical Services workers and persons who act as a “volunteer member of a county or municipal emergency services and disaster agency pursuant to the Illinois Emergency Management Agency Act.” Id. at § 748/3. Employers are prohibited from disciplining or terminating employees who miss work or respond during work hours to phone calls or text messages requesting that they perform volunteer emergency services. Id. at § 748/5. However, employers need not compensate such employees for work hours missed as a result of their volunteer service, and employers may request that the employee obtain written verification from the agency at which he or she volunteers. Id.

**Employee Separations/Layoffs**

**Final Pay**

The IWPCA requires employer to pay the final compensation due to separated employees in full, at the time of separation, if possible, but no later than the next regularly scheduled payday for such employee. 820 ILCS § 115/5. Moreover, unless otherwise provided in a collective bargaining agreement, whenever an employment agreement or employment policy provides for paid vacations, and an employee resigns or is terminated without having taken all earned vacation time, the employee must be paid for all accrued, unused earned vacation time as part of the employee’s final compensation at his or her final rate of pay. Id.
Compliance with the Illinois WARN Act

If an Illinois employer conducts a layoff affecting at least 33% of its full-time employees, or closes a facility that impacts at least 50 employees for a period of time that exceeds six months, it must comply with the Illinois’ Worker Adjustment and Retraining Act (“Illinois WARN Act”). 820 ILCS § 65/1, et seq. The Illinois WARN Act generally requires that employers provide 60 days advance notice to the Illinois Department of Commerce and Economic Opportunity, to all employees, and to any employee representatives (if applicable where employees are represented by a union). 820 ILCS § 65/10.

The notice must include all elements required by the federal WARN Act. 29 U.S.C. § 2101, et seq. This includes notice of: (a) whether the shutdown/layoff is expected to be permanent or temporary; (b) if the entire facility is closed; (c) when the closing or mass layoff will commence; (d) the expected date an individual employee will be separated; (e) whether “bumping rights” exist upon a return to work; and (f) contact information for a company point of contact. Similar information must be provided to state officials. If the Illinois Department of Labor determines that the mass layoff or closure was the result of an unforeseeable business circumstance such that 60 days’ notice could not be provided, the Illinois Department of Labor may excuse a shorter notice period, however, employers are still expected to comply with notice requirements. 820 ILCS § 65/15.

Unemployment Benefits for Separated or Employees Subject to Temporary Layoff

The Illinois Unemployment Act generally entitles employees who have separated from employment by no fault of their own to receive unemployment benefits if they apply for such benefits and are eligible. This includes employees who remain employed, but are subject to a reduction in hours or pay relative to their normal hours, to the extent they now earn less than they would as a weekly unemployment benefit. 820 ILCS § 405/239. Though generally out-of-work individuals must wait seven-days before being considered eligible for unemployment benefits, Governor Pritzker’s March 16, 2020 Executive Order suspended this provision of the Illinois Unemployment Act for the duration of the “disaster” proclamation. (Executive Order 2020-07).

[1] Essential businesses are defined to include: (a) stores that sell groceries and medicine; (b) food, beverage, and cannabis production and agriculture; (c) organizations that provide charitable and social services; (d) newspapers, television, radio, and other media services; (e) gas stations and businesses needed for transportation; (f) financial institutions; (g) hardware and supply stores; (h) building, construction, and other trades that provide services necessary to maintain the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses and Operations; (i) mail, post, shipping, logistics, delivery, and pick-up services; (j) educational institutions; (k) laundry services; (l) restaurants for consumption off-premises; (m) businesses that sell, manufacture, or supply products needed for people to work from home; (n) businesses that sell, manufacture, or supply other Essential Businesses and Operations with the support
or materials necessary to operate; (o) transportation, including airlines, taxis, transportation network providers (such as Uber and Lyft), vehicle rental services; (p) home-based care and services; (q) residential facilities and shelters; (r) professional services, such as legal services, accounting services, insurance services, real estate services (including appraisal and title services); (s) day care centers for employees exempted by the order; (t) manufacture, distribution, and supply chain for critical products and industries; (u) critical labor union functions; (v) hotels and motels; and (w) funeral services.

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