



Coronavirus Webinar: The Employment Perspective

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Presenters Information

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Introduction

- Today's Goal: Analyze three real-life employment situations to address some of the issues that employers are currently facing and try to answer as many of your questions as time permits.
- Understand that the laws are changing almost daily and may impact future advice.
- Recognize that our advice is based upon Michigan law (check with your applicable state law).
- Remember we are lawyers and not medical professionals.
- Finally, we are only one piece of the puzzle – please refer to the Butzel Long **Coronavirus (COVID-19) Resource Center** on Butzel.com for the impact of COVID-19 on other areas of your business:





Hypothetical 1: Hourly Employee in Office

Hourly employee coughing, sneezing, sounds congested. The co-worker in next cubicle complains to Human Resources.

- Don't overreact—prevent panic among the workforce
- These symptoms are not always associated with influenza or COVID-19
- Err on the side of caution

Hypothetical 1: Hourly Employee in Office

- Sending employees home is permissible if done in a non-discriminatory manner.
- Various factors to review to determine if you have to pay any of your employees:
 - whether there is a collective bargaining agreement in place;
 - the employee's classification of exempt or non-exempt;
 - the Company's Paid Leave Policies (Sick Leave, PTO or Vacation Time);
 - the required 40 hours of paid leave under Michigan's Paid Medical Leave Act (if not already included in the above paid leave policies);
 - the employee's previous use of any paid time off;
 - the possible application for Short-Term Disability (depending on the reason and length of the illness); and
 - possible application of The Families First Coronavirus Response Act (if passed)
- Employers need to consider adding increased flexibility.
- In some cases, employers may need to consider increased time off.

Hypothetical 1: Hourly Employee in Office

- Length of Time That The Employee Remains Out
- Return-to-Work Requirements
- Travel Restrictions by Businesses
- Personal Travel Inquiries are Permissible
- Exposure to Others Testing Positive for COVID-19
- Confidentiality Concerns

Hypothetical 1: Hourly Employee in Office

Factors to Analyze if Considering Taking Temperatures

- ADA restricts employers from conducting medical examinations.
- EEOC considers taking temperature to be a medical exam.
- Under ADA, employers may only conduct medical exams (and make disability related inquiries) if:
 - (1) the employer can show that the inquiry or exam is job-related and consistent with business necessity, OR
 - (2) the employer has a reasonable belief that the employee poses a “direct threat” to the health or safety of the individual or others that cannot otherwise be eliminated or reduced by reasonable accommodation.
- EEOC’s position during a pandemic: Employers should rely on the latest assessments of the CDC and state or local public health departments regarding the severity of the virus.

Hypothetical 1: Hourly Employee in Office

The employee now informs HR that s/he has been diagnosed with COVID-19, what steps should you take?

- Inform workplace of COVID diagnosis but do NOT identify by name the infected employee.
- Perform risk assessment of employees who had contact with the individual.
- Tell employees who worked closely with the employee to stay home for 14 days and monitor themselves for symptoms.
- Disinfect affected workspaces and common area through a deep cleaning.
- Work with CDC or local health officials in their investigation and comply with any directives.

Is there any difference if it is not employee who is sick but the employee reports that their spouse or child was diagnosed with COVID-19?

Hypothetical 2: Hourly Employee in Manufacturing Facility - School Closing

Hourly employee at a manufacturing facility is unable to come to work because employee's children's schools are closed and employee has no other child care options.

Schools are closed until April 6th. What are your options?

- Business operation alternatives, examples include:
 - Changing schedules or building hours (including weekend hours)
 - Temporarily allow liberal shift swapping
 - Rotating workforce
 - Reduce workforce (skeleton shifts)
 - Involve employees in the process
- PMLA (Michigan) covers school quarantines like this, provides 40 hours of paid leave.

Does FMLA (unpaid) cover this?

- Not as originally enacted, but possibly extended by Families First Coronavirus Response Act if ultimately passed.

Hypothetical 2: Hourly Employee in Manufacturing Facility—School Closing

What if the employee uses up all available paid time off and schools are closed past April 6th?

- Continue with business operation alternatives (see prior slide).
- Executive Order 2020-10 (March 16): Effective now through April 14, 2020. Unemployment will be covered for unpaid leave or layoff because of self-quarantine if immunocompromised, displaying COVID-19 symptoms, contact within 14 days with person diagnosed with COVID-19, need to care for someone with diagnosis, or family care as a result of government directive (school closure).
 - Employer must seek a registration and work search waiver from UIA for laid off employee.

Hypothetical 2: Hourly Employee in Manufacturing Service Industry—Business Impacted

Do you have an obligation to provide notice under the WARN Act if forced to suspend operations because of COVID-19?

- WARN Act general applies to an employer with 100 or more employees
- Covered Employer must provide written notice at least 60 days in advance of:
 - (1) a plant closing; or
 - (2) mass layoff affecting 50 or more employees at a single employment site.
- Length of Layoff: 6 months or more
- Exceptions to provide advance notice (such as unforeseeable circumstances).
- Advance notice does not excuse failure to provide notice.
- Very Fact Specific – seek input from your legal counsel.

Hypothetical 2: Hourly Employee in Manufacturing Service Industry—Business Impacted

Can we prohibit employee from traveling on her/his personal time?

- Educate about the health risk of travel (referring them to CDC recommendations).
- Advise employee of the risk of quarantine when employee returns.
- Advise employee of risk that employee may not be able to return because of cancelled flights or restricted travel abroad.
- Be sure to set expectations.
- Be consistent!

Hypothetical 2: Hourly Employee in Service Industry—Business Closed

Assume that instead of a manufacturing facility, this is an employee in the service industry that is impacted by Executive Order.

- Executive Order 2020-9 (March 16): effective now through March 30—closing restaurants, cafes, bars, clubs, hookah bars and the like, theaters and cinemas, libraries and museums, gyms, fitness centers, spas, casinos, and public amusement.
- Executive Order 2020-10 (March 16): effective now through April 14—an employer will not be charged unemployment benefits if employees are unemployed because of an executive order requiring them to close or limit operations.

Hypothetical 3: Employee refuses to travel and wants to work from home

An employee is afraid of contracting the virus, refuses to travel or see customers in-person, and wants to work from home.

Factors to consider:

- Employees generally cannot refuse to come to work—OSHA requires imminent danger
- National Labor Relations Act
- Flexibility is key

Hypothetical 3: Employee refuses to travel and wants to work from home

Does the analysis change if the employee has a disability?

- Engage in interactive process if accommodations are requested.
- Leave of Absence may be considered an accommodation but not necessarily always - - dependent on the circumstances of the job.

Can you give preferential treatment?

- Avoid imposing ADA-restrictions not requested.
- Avoid treating employees as “regarded as” disabled.

Hypothetical 3: Employee refuses to travel and wants to work from home

Employer decides to implement a temporary work from home policy for all or part of the workforce.

What are some factors which should be taken into consideration?

- Anticipate “tech hiccups”.
- Security and privacy protocols.
- Timekeeping and reporting.

QUESTIONS???

THANK YOU...

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