



CONCERNS REGARDING LAYOFFS DUE TO COVID-19

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With economic conditions changing daily due to the COVID-19 (coronavirus) epidemic, some businesses may be looking at temporary or permanent layoffs. While such actions are possible, the same laws that applied before the outbreak still apply today and must be complied with.

Currently federal and state laws on disability discrimination (the Americans with Disability Act (ADA) and the Texas Labor Code), the FMLA and the anti-retaliation provisions of the Texas Workers Compensation Act are the primary ones an employer should consider before laying off employees. Courts have found that a leave of absence can be a reasonable accommodation to an employee with a disability, and leaves are at the heart of the FMLA. Likewise, an employee hurt on the job may be out of work while recovering from an injury on duty. If a layoff will include employees on leave, or who have requested a leave under any of these acts, the employer must be in a position to make a strong factual showing that it would have laid off those employees even if they were not on leave, requested a leave or otherwise invoked rights under those laws.

The federal WARN Act mandates employers with 100 or more employees provide certain notices to their workforces in specified instances of job dislocation. This act only applies if the employer is conducting a "mass layoff." This is typically defined as a plant (location) closing for six or more months or when 50 or more employees at a single site lose their employment in a 30 day period, if those employees represent at least 33% of the workforce at that site. For employers temporarily closing locations during this pandemic, pending the resumption of retail or other economic activity in the area, the WARN Act will not apply.

Additionally, the U.S. House of Representatives passed the Families First Coronavirus Response Act on March 14, to amend the FMLA to cover employers with less than 500 employees and lower the length of employment threshold for coverage (just 30 days of employment as opposed to 12 months) under the act if a leave is taken on account of public health emergency. The first 14 days of the leave can be unpaid, but the employee must be paid at 2/3 of the employee's regular rate of pay during the remainder of the leave. The U.S. Senate has not passed the bill but is expected to do so. We will keep you informed of any developments on this bill.

If you are considering instituting a layoff, we advise consulting with a knowledgeable attorney to help you navigate the myriad of rules and regulations that may affect your specific industry or jurisdiction.

If you have questions or would like to discuss further, please contact Jay Wallace or Tom Case.

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Labor and Employment

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