



COVID-19

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**Coronavirus / COVID-19
Response Team**

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**Labor And Employment
Workforce Roundtable:
COVID-19 And Layoffs**

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Common Layoff Issues

- WARN Act
- Unemployment
- Employee Benefit Issues



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WARN Act

- Employers with 100 or more full-time employees must provide notice when they implement a “plant closing” or “mass layoff”
 - Plant Closing: permanent or temporary shutdown of a single site of employment if the shutdown results in an employment loss during any 30 day period of 50 or more employees
 - Mass Layoff: reduction in force that is not a plant closing that results in employment loss in any 30 day period of:
 1. At least 33% of active full-time employees; and
 2. At least 50 full-time employees; or 500 total
 - Employment Loss:
 1. Employment termination, other than discharge for cause, voluntary departure, or retirement;
 2. Layoff exceeding 6 months; or
 3. Reduction in hours of more than 50%

WARN Act

- There is little doubt that the “unforeseen business exception” to the 60 day advance notice requirement will be met in many cases. But this exception requires giving as much notice as practicable if relied on.
- Once triggered, WARN requires 60 days’ notice or as much notice as practicable under legal exceptions, such as “unforeseen business circumstances.”



WARN Act

- Common client issues to consider:
 - Do our planned closings or layoffs trigger WARN Notice requirements now?
 - If current layoffs are not expected to be more than six months such that there are no employment losses yet, can we monitor and given WARN notice later if things change? What's the standard and risk?
 - Given the fluid and unpredictable nature of current circumstances, can or should we just give WARN notices now to eliminate risk?

Unemployment Issues

- Expansion Under Michigan Executive Order 2020-10
 - Benefits extended for COVID-19 related reasons
 - Changes to voluntary quit rule
 - Benefits increased from 20-26 weeks
 - Application period expanded
 - No charge to employer if layoffs cause by EO requiring closure or limit on operations
- Layoff /Termination vs. Temporary Leave
 - State of Michigan Position
 - Families First Coronavirus Response Act
 - Why the Distinction matters

Employee Benefit Issues

- Are employees eligible to continue health and welfare benefits if they are furloughed, laid-off or placed on leave of absence?

Depends on:

- An employer's desire to continue health and welfare benefits during these periods;
- How the employer classifies these employees during these periods; and
- The eligibility terms under the employer's health and welfare benefit plans

Employee Benefit Issues

- Supplemental Unemployment Benefit Plans
 - Employers may be able to supplement state-paid unemployment benefits of employees who have been laid-off or terminated on a tax-favored basis
 - As long as the receipt of benefits under these plans is linked to eligibility for state unemployment benefits, these payments are exempt from the employer and employee portions of payroll taxes (FICA and FUTA).





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