

Q&A – Coronavirus and Business Disruptions: An Employer’s Next Move

We received multiple questions about the effects of the Coronavirus on business and potential layoffs. The following Q&A may help with issues you may be facing as you consider your next move.

Question: Why should we consider Michigan’s Work Share Program?

Answer: On March 18, 2020, the State of Michigan’s Department of Labor and Economic Opportunity (“LEO”) provided guidance to Michigan employers considering layoffs because of COVID-19.

Michigan’s [Work Share Program](#) through the Unemployment Insurance Agency allows employers to avoid terminating employees while reducing staff hours. Employees whose hours have been cut may collect a portion of unemployment benefits to make up the difference in hours.

Keep in mind that employers must meet eligibility requirements including, but not limited to, the following:

- Employers may only cut their workforce’s hours by 45% (the range is 15% - 45%) and have to prepare a plan explaining the cuts;
- Employers cannot reduce the hours of work below the number they specify in their submitted plan concerning affected business units;
- Employers cannot hire new employees into an affected work unit nor transfer employees into an affected unit; and
- Employers must agree to not lay off their workforce – long term.

Question: How do temporary layoffs work?

Answer: LEO will allow employers to temporarily lay off workers for up to 120 days so that employees can receive unemployment benefits and employers do not incur additional costs. Employers are advised to include a formal Unemployment Compensation Notice in the temporary lay-off notification and to communicate to affected employees about their rights to receive unemployment benefits in light of Governor Whitmer’s [Executive Order](#).

Question: We can't guarantee that leave will be temporary and we need to make significant cuts today. Is there anything else we must consider?

Answer: Decisions about workforce changes now, during this uncertain time, should be made according to a business's reasonable certainty - not guarantees. Also, depending on the size of your workforce (100 or more employees), you may be subject to the Worker Adjustment and Retraining Notification ("WARN") Act. This law requires employers, under certain circumstances, to provide 60-days' notice of a layoff when a covered employer closes a plant or conducts a mass layoff. The notice must contain specific information outlined in corresponding federal regulations. In situations where the employer expects the lay-off to be for less than six months, no WARN notice is required. There are other exceptions, as well.

The WARN Act has exceptions for businesses who fail to provide timely notice. If the failure is due to an unforeseeable business circumstance, an employer may be excused. However, any termination notice to affected employees must include an explanation for the delay.

While your failure to provide 60-days' notice may be excusable now due to an unforeseeable business circumstance (the Coronavirus), as the pandemic progresses, loss of business may become more foreseeable, making this exception to providing timely notice less applicable. There are other exceptions which may apply, as well.

The WARN Act has specific requirements for termination notice letters depending on your workforce. Be sure to consult with an employment attorney to determine whether your termination letters must include WARN language and whether other parties (e.g., unions, state and local governments) must also receive notice.

A myriad of situations may arise regarding the Coronavirus. Please contact any member of **Bodman's Workplace Law Group** if you need assistance. We will be providing frequent updates and additional FAQs as the situation develops.

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