

Managing the Coronavirus Pandemic from a Business Perspective

“Stay Home, Save Lives,” New Federal Laws and Other Coronavirus Developments

Eugene Chamber Webinar Series
March 25, 2020

Governor Brown’s Stay-At-Home Order (Executive Order 20-12)

- **Closure of Certain Businesses**

Effective at 12:01 a.m. on March 24, the following businesses must close:

- Amusement parks;
- Aquariums;
- Arcades;
- Art galleries (to the extent that they are open without appointment);
- Barber shops and hair salons;
- Bowling alleys;
- Cosmetic stores;
- Dance studios;
- Esthetician practices;
- Fraternal organization facilities;
- Furniture stores;
- Gyms and fitness studios (including climbing gyms);
- Hookah bars;
- Indoor and outdoor malls (i.e., all portions of a retail complex containing stores and restaurants in a single area) (NOTE: such businesses are not prohibited from operating to provide food, grocery, health care, medical, pharmacy or pet store services);
- Indoor party places (including jumping gyms and laser tag)
- Jewelry shops and boutiques (unless they provide goods exclusively through pick-up or delivery service);
- Medical spas, facial spas, day spas, and non-medical massage therapy services;
- Museums;
- Nail and tanning salons;
- Non-tribal card rooms;
- Skating rinks;
- Senior activity centers;
- Ski resorts;
- Social and private clubs;
- Tattoo/piercing parlors;
- Tennis clubs;
- Theaters;
- Yoga studios; and
- Youth clubs.

Subject to approval by the Governor, the Oregon Health Authority can determine if additional business closures are necessary to slow the spread of COVID-19.

The Order does not apply to restaurants, bars, cafes and similar establishments that offer food or drink, which remain subject to Governor Brown's Executive Order No. 20-07 (prohibiting on-premises consumption of food or drink, but allowing take-out or delivery service).

- **Social Distancing Required for Other Retail Businesses**
 - Other retail businesses cannot operate unless they designate an employee or officer to establish, implement, and enforce social distancing policies, consistent with guidance from the Oregon Health Authority ([see Additional Resources](#), below).
 - The social distancing requirements do not apply to grocery, health care, medical or pharmacy services, which are nevertheless encouraged to comply with social distancing guidelines.
 - Retail businesses that fail to comply with requirements will be closed until they demonstrate compliance.
- **Workspace Restrictions (applies to all businesses and non-profits)**

Effective today (March 25, 2020):

- All businesses and non-profit entities with offices in Oregon must facilitate telework and work-from-home by employees, to the maximum extent possible.
 - Work in offices is prohibited whenever telework and work-at-home options are available, in light of position duties, availability of teleworking equipment, and network adequacy.
 - When telework and work-from-home options are not available, businesses and non-profits must designate an employee or officer to establish, implement, and enforce social distancing policies, consistent with guidance from the Oregon Health Authority.
 - Businesses and non-profits that fail to comply with these workspace restrictions will be closed until they demonstrate compliance.
- **Enforcement**

Any violation of the Order is a class C misdemeanor (punishable by up to 30 days in jail and/or a \$1,250 fine).

Families First Coronavirus Response Act (FFCRA)

- **Emergency Family and Medical Leave Expansion Act (EFMLA)**
 - Applies to leave requested between April 1 and December 31, 2020
 - Expands application of FMLA to include coronavirus-related child care
 - So all aspects of FMLA apply
 - Applies to employers with between 1 – 499 employees
 - Any employee who has worked for 30 days is eligible
 - Employers must provide up to 12 weeks of family leave to an eligible employee who is unable to work or telework and must care for the employee's minor son or daughter because the child's school or place of care has been closed or the child's regular paid care provider is unavailable due to an emergency with respect to COVID-19 declared by a Federal, State or local authority.
 - The first ten days are unpaid, but the employee can use any available paid leave (employer cannot force employee to use paid leave).

- Remaining ten weeks are paid
 - Rate is rate not less than two-thirds the employee's regular rate of pay
 - Capped at \$200 per day and \$10,000 in the aggregate
- Job restoration is required after leave ends unless employer has less than 25 employees and meets other requirements
- Employers with less than 50 employees may seek a hardship exemption from the Secretary of Labor
- Employers of "health care providers" and "emergency responders" can exclude those types of employees
- Employers are eligible for tax credits and refunds for wages they pay under this law.

- **Emergency Paid Sick Leave Act (EPSLA)**
 - Applies to leave requested between April 1 and December 31, 2020
 - Applies to employers with between 1 – 499 employees
 - No waiting period for employees
 - Employers must provide paid sick leave to employees who are unable to work or telework because the employee:
 - a) Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - b) Is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
 - c) Is subject to a Federal, State or local quarantine or isolation order related to COVID-19;
 - d) Is caring for an individual who (i) is subject to a Federal, State or local quarantine or isolation order related to COVID-19; or (ii) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - e) Is caring for a son or daughter if the child's school or place of care has been closed, or the child's child-care provider is unavailable, due to COVID-19 precautions.
 - f) Is experiencing any other substantially similar condition specified by the HHS Secretary, Secretary of the Treasury and Secretary of Labor.
 - Full-time employees get 80 hours; part-time employees get the average number of hours that they work in a two-week period.
 - For leave associated with reasons (a) through (c) above, sick leave is paid at the employee's regular rate and may not exceed \$511 per day and \$5,110 in the aggregate.
 - For leaves associated with reasons (d) through (f) above, sick leave is paid at two-thirds of the employee's regular rate and may not exceed \$200 per day and \$2,000 in the aggregate.
 - Paid sick leave under this law takes priority over any other available paid leave; employees get to choose.
 - Employers with less than 50 employees may seek a hardship exemption from the Secretary of Labor, but only for leave under subsection (e) above.
 - Employers of "health care providers" and "emergency responders" can exclude those types of employees
 - Employers are eligible for tax credits and refunds for wages they pay under this law.
 - Employers must post a notice created by the Department of Labor notifying employees of their right to paid sick leave under this law.

Expansion of Oregon Family Leave Act (OFLA)

From March 18 through September 13, 2020, OFLA has been expanded to cover absences from work in order to care for an employee's child whose school or place of care has been closed due to a statewide public health emergency (it is an additional form of "sick child" leave). This leave would run concurrent with the federal paid leaves discussed above.

Layoff Considerations for Employers

- "Layoff" is termination:
 - Final paycheck
 - Obligation to pay out accrued leave (assuming your policies require it)
 - Triggers COBRA (20 or more EEs)/small business continuation (<20 EEs).
- "Furlough" is essentially an unpaid leave of absence:
 - Employees remain on payroll so no need for final paycheck
 - Employees free to use accrued leave
 - Might trigger COBRA/small business continuation, depending on insurer
- Unemployment benefits may be available to affected employees regardless of layoff or furlough
- Employees who receive compensation (e.g., severance pay, stand-by pay, vacation benefits, sick leave benefits) while not working may not be eligible for unemployment benefits, or those benefits could be delayed.
- Self-employed individuals who do not pay unemployment insurance taxes are usually not eligible for unemployment compensation benefits. However, there is discussion to temporarily waive this exclusion in Oregon.
- Workshare Oregon enables employers to subsidize the wages of employees whose hours are reduced through unemployment insurance. This program is intended as an alternative to layoffs, and more information can be found here:
<https://www.oregon.gov/EMPLOY/Businesses/WorkShare/Pages/Work%20Share%20Home%20Page.aspx>

COBRA/Small Business Continuation Coverage

- Applies to employers offering group health plan benefits
- Eligibility is based on whether the employee is:
 - Actively working; and
 - Meeting the minimum hour requirements under the employer's plan.
 - Absences for use of protected leave is excluded.
- Layoff – Employee no longer employed
- Furlough – Still employed but will fall below minimum hour requirements
- If employee is no longer eligible for group health plan benefits:
 - COBRA (for employers with 20 or more employees) or
 - Oregon's continuation program (for employers with less than 20 employees).
- Considerations:
 - Notice requirements – there are time frames and deadlines
 - Will your insurer allow you to keep furloughed employees on the group health plan even if employees not meeting minimum hours
 - Are you willing/able to continue paying for at least some of the premiums
 - Self-insured plans have different rules

The WARN Act

- Federal law that requires large employers to provide notice to public official of a massive layoff or plant closure to allow the state to try to help affected employees
- Applies to any employer who has either:
 - At least 100 FT employees (including temporary employees) or
 - At least 100 employees working a total of < 4000 hours per week.
 - For purposes of this law, an employee is not “full time” if the employee averaged less than 20 hours per week or worked less than six months in the past year.
- Subject employer must provide a WARN Act notice if takes any of the following actions that results in loss of employment for at least six months:
 - Closes a plant or facility that results in at least 50 employees losing work for at least six months; or
 - Conducts a mass layoff:
 - At least 33% of the workforce where at least 50 employees are affected, or
 - Affects at least 500 employees.
 - For employers with multiple locations or those who reduce employees’ hours rather than conduct a layoff, there are additional factors to consider.

There is no required form of WARN Act notice, but the notice must include at least the following information (keep in mind that all WARN Act notices are public records and are published on the State’s website):

- Company name and address;
- Company official who can provide more information;
- Whether you intend for the layoffs/plant closure to be permanent or temporary;
- Dates of closure/layoffs. If you do a staggered layoff/closure, state the different dates if known;
- State that the reason for the layoff/plant closure is “because of a natural disaster and/or unforeseeable business circumstances;”
- State that there are no bumping rights (this is required because some employers have unions); and
- For notices to State and local officials, the job titles and names of affected employees.

Additional Resources

- Oregon Health Authority Guidance for Employers: <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le2266.pdf>
- Financial Resources for Businesses: <http://www.oregon4biz.com/Coronavirus-Information/COVID19-Resources.php>
- EEOC Guidance on COVID-19: <https://content.govdelivery.com/accounts/USEEOC/bulletins/281e1ee>
- WHO Information on Coronavirus: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>
- CDC Information on Coronavirus: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>
- https://www.eeoc.gov/facts/pandemic_flu.html
- Wage and Hour Issues: <https://www.dol.gov/agencies/whd/flsa/pandemic>
- OSHA Guidance on COVID-19: <https://www.osha.gov/Publications/OSHA3990.pdf>