# LEGAL ISSUES CONFRONTING THE LABOR MOVEMENT DUE TO THE COVID-19 PANDEMIC AS OF MARCH 23, 2020

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## Introduction

The COVID-19 pandemic has created a crisis in this country that few Americans have experienced in their lifetimes. If nothing else, the COVID-19 pandemic has demonstrated that the need for greater legal protections and a social safety net are critical to dealing with this crisis and protecting workers.

At this juncture, as everyone knows, the issues confronting the Labor Movement are changing on a daily, if not, hourly basis. Please allow this COVID-19 Legal Report to serve a starting point for evaluating issues important to Local Unions and their members during this difficult time. Local Unions should consult with their Legal Counsel to make sure circumstances have not changed after receipt of this Report, and this COVID-19 Legal Report is not intended to offer any legal advice.

## IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

PERB issued an Order on March 17, 2020 that dealt with the operations of the Agency during this time. Please be cognizant of the following:

- All hearings and oral arguments scheduled between March 16 and April 15 are continued.
- Electronic Filing is available during this time.
- All filing deadlines apply to pending and new case proceedings. However, the COVID-19 outbreak constitutes good cause for any extension of time requests.
- Case processing and service of newly filed state employee merit appeals cases and state employee whistleblower action cases are suspended until further notice.
- Case processing and service of newly filed unit or certification related petition cases are suspended until further notice.
- PERB and FMCS will not conduct in person mediation until further notice.
- Requests for impasse services will only be accepted by email.
- The Board and ALJs may conduct case conference and hearings using video or phone conferencing.

Please also note that the May 15 deadline for the completion of bargain for school districts has not been extended.

Finally, if a Local Union has not completed negotiations or has reached a tentative agreement regarding a contract, PERB Rule 6.5(2) requires a vote on the tentative agreement by secret ballot. PERB has not suspended this Rule as of yet. In turn, Local Unions may need to start considering how to conduct ratification meetings by mail or other means in the event that there is an order from the Governor requiring everyone to stay home.

## NATIONAL LABOR RELATIONS BOARD

The NLRB issued an order on March 16, 2020 ordering all staff to telework, other than minimal staffing to handle mail, until at least April 1, 2020.

Additionally, it is our understanding that the NLRB will not hold representational case elections at this time. In turn, any Local Union that was contemplating filing for a representational election should consider waiting until such time as the NLRB reinstitutes the holding of representational case elections. (Please note the NLRB may also not do so until after the new representational case rules become effective on April 16, 2020).

Finally, we note that service of all Board and ALJ decisions on parties will be done via the NLRB's E-Service. If a Local Union has a case pending with the NLRB, the Local Union should sign up for E-Service.

## U.S. DEPARTMENT OF LABOR
## OFFICE OF LABOR-MANAGEMENT STANDARDS

### *Union Elections*

The LMRDA requires that all national and international labor unions elect their officers not less often than every five years. Officers of intermediate bodies, such as general committees, system boards, joint boards, joint councils, conferences, and certain districts, district councils and similar organizations, must be elected at least every four years, and officers of local labor unions not less than every three years.

OLMS has stated the following with respect to internal union elections:

- Labor Unions affected by COVID-19 must still make a good faith effort to conduct officer elections within LMRDA timeframes.
- OLMS retains jurisdiction to file a civil enforcement action concerning a failure to hold a timely election after receipt of a complaint from a union member who has first sought a remedy from his or her union.
- If OLMS receives a complaint from a union member solely regarding a union's failure to hold an election within LMRDA timeframes, but the election has been completed prior to OLMS receipt of the complaint, then OLMS will take no enforcement action.
- If OLMS receives a complaint regarding a union's ongoing failure to hold an election, and the failure was attributable to COVID-19, OLMS will promptly seek a voluntary compliance agreement with the union.
- The agreement would require the union to hold the election when practicable on a certain date. With such an agreement, OLMS will not seek a civil enforcement action based on the complaint, provided the election is held in conformance with the agreement.

Based upon this guidance, Local Unions will continue to have to have officer elections. Local Unions should consult with their International Unions and counsel as to the manner in which the elections should be conducted.

***Public Disclosures Reports – e.g. LM-2s, etc.***

Under current law, there is no mechanism to seek an extension to file an LM-2 Report or other required filings with OLMS. These filings must be made within ninety days of the end of the Local Union's fiscal year.

Failure to file a timely and complete report is an ongoing violation of the LMRDA. OLMS has jurisdiction to file a civil enforcement action concerning a failure to meet reporting requirements.

However, OLMS will not pursue a civil enforcement action with regard to a delinquent or deficient report when these reporting violations are attributable to COVID-19. Local Unions wishing to take advantage of this enforcement policy should contact OLMS before the report is due, describe the circumstances necessitating additional time, and provide a date certain by which the report can be reasonably submitted. Under these circumstances, OLMS will not lodge a civil enforcement to obtain the delinquent or deficient report.

The point is – if a Local Union cannot meet its filing deadline due to COVID-19 (for many Local Unions it is March 30), the Local Union should notify OLMS and provide a date when the Local Union believes that the report can be submitted.

## THE ADA AND EMPLOYER RELATED INQUIRIES

Prior to the start of the COVID-19 pandemic, the ADA prohibited inquiries into the medical history of employees and medical examinations of employees once an employee had begun work, subject to the exceptions for business necessity or if the condition was obvious (e.g. an employee has a broken arm, in which case, the employer could ask questions).

Given the current pandemic, employers will be permitted to take precautions against the spread of the virus. In this regard, it appears to us that employers will be permitted to do the following with respect to screening:

***Permitted Screening – Most Likely:***

- Asking returning travelers about exposure;
- Asking why an employee was absent;
- Requiring infection-control practices;
- Requiring use of personal protective equipment (but may need accommodation)
- Encouraging getting any vaccine;
- Taking temperatures or asking about symptoms;
- Requiring medical input certifying fitness for duty on return to work;

- Taking temperature and screening for symptoms of applicants, if conditional job offer and done for all those entering same job type;
- Delay start date of applicant with symptoms;
- Withdraw offer if applicant has COVID-19 or symptoms, and must start immediately

***Improper Screening – Possible ADA Violations***

- Asking asymptomatic employees if they have medical conditions that would make them especially vulnerable;
- Compelling employees to take vaccine if they have a medical condition that prevents doing so safely;
- Failing to share medical information only with those who have a need to know.

Depending upon the industry in which a Local Union may represent employees, screenings may differ. However, Local Unions should work with employers to help mitigate the spread of the virus, but Local Unions need to also be vigilant to protect against potential abuses and violations of contractual terms and the ADA.

## COLLECTIVE BARGAINING AGREEMENT ISSUES

***Contract Terms***

There is a myriad of issues for Labor Unions with respect the COVID-19 pandemic and collective bargaining agreements. At the outset, Labor Unions need to familiarize themselves with the following types of provisions contained in their CBAs:

- Sick Leave and Other Paid Leave Provisions;
- Vacation Policies;
- Seniority and Layoff;
- Sickness and Accident Benefits;
- Management Rights and the Right to Establish Reasonable Rules;
- Hour Guarantees;
- Health and Safety Language and Contractual Rights to Refuse to Work;
- Act of God, emergency, etc. provisions.

As a general proposition, collective bargaining agreements are likely to provide better benefits than those that were just passed by the United States Congress this past week. (We will discuss some of those provisions enacted by Congress below).

However, the difficult aspect of the current pandemic is three-fold. First, the pandemic has not changed the labor-relations maxim – obey now, grieve later. Second, at this point, getting to an arbitration hearing is likely going to take a significant amount of time, many arbitrators are postponing hearings and are delaying hearings due to the pandemic. Finally, even if a Local Union may get to a hearing, an arbitrator may find that, given the circumstances of the pandemic, the employer was permitted to act in the manner in which the employer acted.

Nonetheless, despite the foregoing, Local Unions need to continue to file and process grievances. Local Unions should consider holding grievance meetings telephonically and/or electronically. Local Unions' duty of fair representation has not been impacted by the pandemic, and as a result, Local Unions need to continue to police the contract.

***Bargaining***

Section 8(d) of the NLRA obligates the parties to "meet at reasonable times and confer in good faith." Again, if a Local Union has a contract that is set to open during the pandemic, the Local Union continues to have an obligation to bargain, which includes notifying FMCS of the opening of the contract by submitting the F-7 Notice to the Agency.[1]

Under current law, face to face bargaining is required. *See*, *Fountain Lodge*, 269 NLRB 674, 674 (NLRB 1984); *Redway Carriers, Inc.*, 274 NLRB 1359, 1377 (NLRB 1985) ("face to face negotiations between the bargaining principals is an elementary and essential condition of bona fide bargaining.")

In turn, employers cannot insist on bargaining by mail or by telephone. *See*, *Success Village Apartments*, 347 NLRB 1065, 1080 (NLRB 2006); *Beverly Farm Foundation, Inc.*, 323 NLRB 787 (NLRB 1997); *Fountain Lodge*, 269 NLRB 674, 674 (NLRB 1984).

As to videoconferencing, a 2003 Advice Memorandum, *United Restoration*, 36-CA-9318 (Oct. 30, 2003), concluded that:

> Videoconferencing is an inadequate substitute for face-to-face meetings and recommended issuance of complaint against an employer insisting upon such bargaining.

Similarly, a 2019 ALJ decision concluded that an offer to bargain via videoconference was insufficient to satisfy its obligation to bargain, at least in the context of the employer's overall dilatory tactics. *Rhino N.W., LLC*, 2019 WL 5565134 (Oct. 28, 2019). The ALJ decision was not appealed.

The question, then, becomes whether a party can insist upon meeting only by conference call or video conference. In this regard, Local Unions should be cognizant of the following cases:

> "The procedure of collective bargaining requires that the employer make his representatives available for conferences at reasonable times and places and in such a manner that personal negotiations are practicable." *Lorillard, P., Co., Inc.*, 16 NLRB 684, 696 (NLRB 1939).
>
> "The Board does not take a per se approach to deciding where bargaining should take place and instead considers all the relevant circumstances

[1] According to the FMCS website, all F-7 notices must be submitted electronically.

> bearing on the issue." *Somerville Mills*, 308 NLRB 425, 426 (1992) (rejecting ALJ view that law requires presumption that parties are to meet at or near the place where unit employees work).
>
> The "determining factors" identified in *Somerville Mills* are "whether the proposed bargaining location is unreasonable, burdensome, or designated to frustrate bargaining, and whether the proponent has been intransigent and in bad faith." *Somerville Mills*, 308 NLRB at 426.

Given the current circumstances – e.g. the current pandemic and the current nature of the Board, Local Unions should work with their employers to determine (1) whether an extension is possible and/or in the best interest of the membership; (2) whether the Union is in a position to engage in telephonic and/or electronic bargaining; and (3) whether current orders from the Government would allow the parties to meet in person.

Moreover, Local Unions should be cognizant of the current law regarding unilateral changes during bargaining. In *Hartford Head Start Agency, Inc. & Local 517m, Serv. Employees Int.'l Union,* 354 NLRB 164 NLRB 2009), two exceptions to the rule prohibiting unilateral changes during bargaining were stated:

> 1. When a union engages in bargaining delay tactics and
> 2. "[W]hen economic exigencies compel prompt action."
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> Citing *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991).

Economic exigencies are "extraordinary events which are an unforeseen occurrence, having a major economic effect [requiring] the company to take immediate action." *Hankins Lumber Co.*, 316 NLRB 837, 838 (NLRB 1995).

The following cases address economic exigencies. "Absent a dire financial emergency, economic events such as . . . operation at a competitive disadvantage . . . do not justify unilateral action." *RBE Electronics*, 320 NLRB 80, 81 (1995). Additionally, an employer can "satisfy its statutory bargaining obligation by providing . . . adequate notice an opportunity to bargain over the changes it proposes to respond to the exigency and by bargaining to impasse over the particular matter. In such time sensitive circumstances, however, bargaining to be in good faith, need not be protracted." *See also*, *Naperville Ready Mix, Inc.*, 329 NLRB 174, 182-184 (1999).

Further, Local Unions should also note the following. "In defining the less compelling type of economic exigency, the Board in *RBE Electronics* made clear that the exception will be limited only to those exigencies in which time is of the essence and which demand prompt action. The Board will require an employer to show a need that the particular action proposed by implemented properly. Consistent with the requirement that an employer prove that its proposed changes were "compelled," the employer must also show the exigency was caused by external events, was beyond its control, or was not reasonably foreseeable." *Hartford Head Start*, 354 NLRB at 187-88 (2009).

Finally, Local Unions need to be prepared to require bargaining over unilateral changes. In this regard, Local Unions need to proactively request bargaining over proposed changes, the effects of any new legislation, or other government edicts. The importance of this is that Local Unions should attempt to avoid creating precedent by implying a waiver by failing to act.[2] To this end, if the employer claims there is a legal requirement or exigency, the Local Union should ask for detailed support.

***Benefit Issues***

There are several issues on the benefits front that Local Unions should be aware of moving forward. First, state insurance departments have directed carriers to cover tests and other services at 100% with no cost sharing. Second, states have also directed pharmacy benefit managers (PBMs) to provide flexibility with refills and other pharmacy issues. Finally, Local Unions should note that state laws would not apply to self-insured plans, therefore, third-party administrators have been asking self-insured plans to opt-in (or opt-out) of coverage rules similar to those in state insurance laws.

Further, the Families First Coronavirus Response Act took several steps related to COVID-19. The Act requires group health plans (and insurers) to cover specific services related to testing for the virus that causes COVID-19. The Act applies to all group health plans, including self-insured plans, and grandfathered plans under the Affordable Care Act. The Act became effective on March 18, 2020 and applies during the currently declared national emergency.

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[2] Local Unions should review *MV Transportation, Inc.*, 368 NLRB No. 66 (Sept. 10, 2019). In that case, the Board stated the following:

> Under contract coverage, the Board will examine the plain language of the collective-bargaining agreement to determine whether action taken by an employer was within the compass or scope of contractual language granting the employer the right to act unilaterally. For example, if an agreement contains a provision that broadly grants the employer the right to implement new rules and policies and to revise existing ones, the employer would not violate Section 8(a)(5) and (1) by unilaterally implementing new attendance or safety rules or by revising existing disciplinary or off-duty-access policies. In both instances, the employer will have made changes within the compass or scope of a contract provision granting it the right to act without further bargaining. In other words, under contract coverage the Board will honor the parties' agreement, and in each case, it will be governed by the plain terms of the agreement.
>
> On the other hand, if the agreement does not cover the employer's disputed act, and that act has materially, substantially and significantly changed a term or condition of employment constituting a mandatory subject of bargaining, the employer will have violated Section 8(a)(5) and (1) unless it demonstrates that the union clearly and unmistakably waived its right to bargain over the change or that its unilateral action was privileged for some other reason. Thus, under the contract coverage test we adopt today, the Board will first review the plain language of the parties' collective-bargaining agreement, applying ordinary principles of contract interpretation, and then, if it is determined that the disputed act does *not* come within the compass or scope of a contract provision that grants the employer the right to act unilaterally, the analysis is one of waiver.

The following applies for COVID-19 testing. Group health plans and insurers must provide coverage for and not charge any cost sharing for the following services:

> (1) Diagnostic tests to detect the virus that are approved or authorized by the FDA, including the administration of such tests; and
>
> (2) Items and services furnished to individuals during provider office visits (whether in-person or via telehealth), urgent care visits, and emergency room visits that result in an order for, or the administration of, the test described above, but only to the extent such items or services relate to the furnishing or administration of the test or the evaluation of whether the person needs the test.

The prohibition on cost sharing means that these services cannot be subject to a deductible or to copayments and coinsurance. And, plans and insurers are also prohibited from imposing prior authorization or other medical management requirements for these services. Finally, for Qualified High Deductible Health Plans (HDHP), the HDHP will not fail to be considered a HDHP merely because the health plan provides health benefits associated with testing for and treatment of COVID-19 without a deductible, or with a deductible below the minimum deductible (self-only or family) for an HDHP.[3]

Finally, the Department of Health and Human Services has stated that it will not penalize healthcare providers that use telecommunication methods that may not fully comply with HIPPA.[4] The HHS guidance is intended to make it easier for individuals to seek virtual care from their current provider.

## FEDERAL MEDIATION AND CONCILIATION SERVICES (FMCS)

We note the following with respect to how FMCS is handling the COVID-19 pandemic. First, as noted above, all F-7 filings must be submitted electronically.

Second, FMCS is working to expand its electronic mediation services. Please review the FMCS website for further guidance on this issue.

Finally, FMCS has given the following advice to arbitrators as to how to handle the situation.

> Arbitration and COVID-19

[3] The IRS Notice 2020-15 that provided for the treatment of HDHP at this time appears to be written broadly to apply to any benefits associated with testing for and treatment of COVID-19.

[4] We remind Local Unions that there is no private right of action under HIPPA for a violation of HIPPA's privacy rules. Additionally, we note that not all employers are subject to HIPPA requirements – only those who would be considered a "covered entity" under the HIPPA rules.

> The short answer regarding how to deal with the situation as far as this Office is concerned is: use your best judgment; it is up to your discretion how to handle any given case under the circumstances. FMCS cannot be in the position of offering medical advice, other than to suggest you check on appropriate website sources of information, such as the Centers for Disease Control, and health departments for your state and locality, as well as with your own physician, if you have any doubts or questions. A few things to make clear from our perspective:
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> We will not be second-guessing any determination that you make as far as scheduling, postponing, or canceling hearings under the circumstances.
>
> Among options you may wish to consider in any given case are:
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> (1) Postponing the hearing until the situation improves
>
> (2) Offering the possibility of appointing a different arbitrator: if you do this, let the parties know we will happily issue a new panel at no additional charge
>
> (3) Offering to hold the hearing via video (e.g., Skype)
>
> If you know you would be postponing the scheduling of hearings in all cases or in cases involving air travel or other mass transportation, we ask that you please go into your account and make yourself unavailable for all cases, or for cases not falling within a particular geographic area that you specify; the alternative, if you prefer, is to immediately let the parties know upon your appointment that you will not be able to schedule the case any time in the near future based on the pandemic situation, and provide them with options.

Based upon the above direction from FMCS to arbitrators, it is likely that many arbitrators will be postponing hearings or delaying their availability. Local Unions should check their collective bargaining agreements to make sure that if the agreement provides for a hearing within a period of time that Local Unions reach an agreement with the employer to extend the deadline. And, if agreements provide for a limiting of backpay, Local Unions should consider seeking a MOU or LOA with the employer to expand the time for a backpay award, if necessary.

**OSHA**

OSHA does not have specific standards pertaining to COVID-19. However, there are some OSHA requirements that may apply to preventing occupational exposure to COVID-19. Specifically, there are three requirements that may apply:

(1) OSHA's Personal Protective Equipment (PPE) standards (in general industry, 29 C.F.R. 1910 Subpart I), which require using gloves, eye and face protection, and respiratory protection.

(2) The General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970, 29 U.S.C. 654(a)(1), which requires employers to furnish to each worker "employment and place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm."

(3) OSHA's Bloodborne Pathogens standard (29 CFR 1910.1030) applies to occupational exposure to human blood and other potentially infectious materials that typically do not include respiratory secretions that may transmit COVID-19. However, the provisions of the standard offer a framework that may help control some sources of the virus, including exposures to body fluids (e.g. respiratory secretions) not covered by the standard.

Local Unions should note that it is unlikely that OSHA is going to utilize any of these requirements to provide workplace protections for COVID-19. Rather, it is more likely that OSHA is going to treat the current pandemic in a manner similar to a natural disaster. For example, in the case of a natural disaster, an OSHA investigator may come to a work site on two occasions, find potential violations, and not issue a violation. However, if the OSHA investigator came to the work site a third time and found the same violation, the OSHA investigator would only then issue a citation. Put simply, the current OSHA standards do little to protect workers facing a pandemic such as COVID-19.

Finally, in terms of OSHA reporting, we note that COVID-19 exposures may be an OSHA recordable incident. For a COVID-19 exposure to require documentation, the following three items must be met:

(1) The case is a confirmed case of COVID-19 (see CDC information on persons under investigation and presumptive positive and laboratory-confirmed cases of COVID-19);

(2) The case is work-related as defined by 29 CFR 1904.5; and

(3) The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g. medical treatment beyond first aid, days away from work).

## WORKERS' COMPENSATION

There are at least two significant issues facing employees with respect to the COVID-19 pandemic. First, if an employee is injured at work, the employee should continue to report the injury, seek assistance from their Local Union, and seek legal counsel if needed.

Throughout this pandemic, many industries continue to operate, and it is critical that Local Unions continue to help injured workers obtain medical treatment and benefits when they are injured on the job.

Second, to the extent that an employee contracts COVID-19 in the workplace, there is no current standard that presumes the illness is work-related. However, in the event that an employee believes that the employee has contracted COVID-19 due to workplace exposure, the employee should report the illness and treat the illness as a workplace injury. Please note that this is a developing area of the law, but Local Unions and their members should act to preserve potential coverage under the Workers' Compensation statute.

## PAID SICK DAYS AND PAID FAMILY AND MEDICAL LEAVE IN THE FAMILIES FIRST CORONAVIRUS ACT APPLICABLE TO EMPLOYERS WITH FEWER THAN 500 EMPLOYEES

The following information was put together by the National Partnership for Women and Families. The changes in the law apply to employers with 500 employees or fewer. The Act also exempts some employers with less than fifty employees.

SHORT SUMMARY:

- Two weeks (or 10 work days) of emergency paid sick leave for employees of employers with 500 employees or fewer
    - Sick leave is paid by the employer at full wage replacement for personal care if one is ill with coronavirus, to quarantine, or to seek a diagnosis or preventive care for coronavirus
    - Leave is paid at 2/3 wage replacement to care for a family member for the same purposes as above, or to care for a child whose school has closed or whose child care provider is unavailable due to coronavirus
    - Part time workers are entitled to paid sick leave for the amount of hours that they typically work over a 2 week period
- 12 weeks of job-protected emergency paid family and medical leave for employees of employers with 500 employees or fewer and government employers, who have been on the job for at least 30 days, paid at 2/3 wage replacement, to:
    - Care for a child whose school or place of care has been closed, or whose child care provider is unavailable, due to coronavirus
    - *Note that the first 14 days are unpaid (so as not to duplicate paid sick leave)

  Both forms of leave can be immediately taken and paid for by the employer. Employers (other than government employers) can seek reimbursement via tax credit from the federal government, up to a cap.

- These provisions go into effect by 15 days after enactment and sunset on Dec. 31, 2020.

Section by Section Detailed Summaries

Division C - Emergency Family and Medical Leave Expansion Act

- Until December 31, 2020, adds "a qualifying need related to a public health emergency" to the list of FMLA leave purposes. This means leave that an employee needs in order to:
    - Comply with a recommendation or order by a public official or health care provider on the basis that the employee's physical presence at work would jeopardize others due to the employee's exposure to or exhibition of symptoms of coronavirus, and the employee cannot both perform the functions of their position and comply with the recommendation or order;
    - To care for a family member whose presence in the community a public official or health care provider determines would jeopardize the health of others due to the family member's exposure to or exhibition of symptoms of coronavirus; or
    - To care for the employee's child if the child's school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency.
- Up to 12 weeks of leave.
    - First 14 days of leave may be unpaid; for subsequent days of leave, employer must provide paid leave at a rate of 2/3 of the employee's regular pay.
- Covers employers with fewer than 500 employees.
    - U.S. Department of Labor has discretion to exempt small businesses with fewer than 50 employees if providing leave would jeopardize the viability of the business as a going concern.
- Employees are eligible if they have worked for their employer for at least 30 calendar days.
    - U.S. Department of Labor has discretion to exclude certain health care providers and first responders from eligibility.
- Family members for whom leave can be taken:
    - Parent
    - Spouse
    - Minor child
    - An individual who is pregnant, senior citizen, individual with a disability, or has access or functional needs and is the employee's:

        - Child (of any age)
        - Next of kin
        - Grandparent
        - Grandchild

Division E - Emergency Paid Sick Leave Act

- Workers whose place of business has 500 or fewer employees are able to take up to 10 days of paid sick leave
- Sick leave is paid by the employer at full wage replacement for personal care if one is ill with coronavirus, to quarantine, or to seek a diagnosis or preventive care for coronavirus

- Act expires on December 31, 2020
- Paid sick leave can be taken:
    - To self-isolate because the employee is diagnosed with coronavirus
    - To obtain a medical diagnosis or care if employee is experiencing symptoms of coronavirus
    - To comply with a recommendation or order from a public official that the physical presence of the employee would jeopardize the health of others
    - To care for or assist a family who is
        - Self-isolating because the family has been diagnosed with thecoronavirus, or
        - Is experiencing symptoms of coronavirus and needs to obtain a medical diagnosis
        - When sick leave is taken for these purposes, the rate of pay is reduced to 2/3 of the employee's usual rate.
    - To care for a child if the child's school or place of care has been closed due to coronavirus
        - When sick leave is taken for school closures, the rate of pay is reduced to 2/3 of the employee's usual rate.
- Amount of Paid Sick Time:
    - Full time employees are entitled to 80 hours (10 days) of paid sick time
    - Part-time employees are entitled to a number of paid sick time hours equal to the number of hours they work, on average, over a 2-week period
- Employer Policies:
    - For employers with existing policies, the paid sick time afforded under the bill must be made available to workers in addition to

any employer provided leave.
        - An employer cannot require that a worker use accrued paid sick time before being allowed to use the paid sick time provided by the bill
    - Employers may not require workers to find replacement workers to cover those hours they will be on leave.
    - Employers may not discharge, discriminate or discipline workers who take leave in accordance with the Act and have filed a complaint
- Family Definition:
    - Child: includes biological, adopted, foster, stepchild, child of domestic partner, legal ward, and a child under 18 years of age for whom person is standing in loco parentis
    - Domestic partner
    - Parent
        - Biological, foster, adoptive parent; step-parent, parent-in-law, parent of domestic partner, legal guardian or other person who stood in loco parentis to employee
    - Spouse
    - An individual who is a pregnant woman, senior citizen, individual with a disability or who has access or functional needs who is a sibling, grandparent, grandchild or next of kin

<u>Division G - Tax Credits for Paid Sick and Paid Family and Medical Leave</u>

- Refundable tax credit against payroll taxes to employers for 100% of wages paid for emergency sick leave required under this Act, for up to 10 days per employee. Maximum amount of wages taken into account when calculating the credit:
    - For one's own care, $511 per employee per day;
    - For care for a family member, $200 per employee per day.
- Refundable tax credit against income taxes for self-employed individuals for 100% of income lost due to emergency sick leave under this Act, for up to 10 days. Maximum amount of lost income taken into account when calculating the credit:
    - For one's own care, $511 per day;
    - For care for a family member, $200 per day.
- Refundable tax credit against payroll taxes to employers for 100% of wages paid for emergency family leave required under this Act. Maximum amount of wages taken into account when calculating the credit:
    - $200 per employee per day, and

    - In the aggregate with respect to all calendar quarters, $10,000.
- Refundable tax credit against income taxes for self-employed individuals for 100% of income lost due to emergency family leave under this Act, for up to 50 days. Maximum amount of income taken into account when calculating the credit: $200 per day.
- Government employers are not eligible for these tax credits.
- Any wages required to be paid for emergency sick leave or emergency family leave are not considered wages for the purposes of employer social security taxes.
- Appropriates money to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in amounts equal to the reduction in revenues caused by the emergency sick leave and emergency family leave tax credits.

## UNEMPLOYMENT COMPENSATION

There are two things that Local Unions need to be cognizant of when assisting bargaining unit members with obtaining unemployment insurance. First, as of the current date, the normal rules governing unemployment insurance for separations from employment for non-COVID-19 related reasons continue to apply.

Second, there are new rules pertaining to applicants for unemployment who find themselves unemployed due to the COVID-19 pandemic. In turn, Local Unions should be cognizant of the following.

- Iowa Workforce Development is encouraging employers to provide paid leave to employees unable to work as a result of COVID-19.
- If paid leave is unavailable, claimants may file for unemployment insurance benefits.
- All claimants that file as a result of COVID-19 will be eligible for unemployment insurance benefits. This includes claimants filing due to:
    - Caring for a family member
    - Loss of childcare/school closures
    - Employer shut down
    - Need for employee to self-quarantine
    - Employee contracts COVID-19 and is unable to work
- The work search requirement is waived.
- When filing a claim for unemployment, the claimant must select the following option: “You are filing due to a temporary layoff as a result of COVID-19 (Coronavirus)”
- After filing, claimants will receive a monetary record or “green sheet” in the mail and includes:
    - Effective date of claim

    - Number of dependents claimed
    - Weekly Benefit Amount (WBA)
    - Maximum Benefit Amount (MBA)
    - Employers claimant worked for in the base period
    - Other important details of the claimant's claim
- Claimants must continue to file a weekly claim in order to receive benefits.
- If a claimant fails to file a weekly claim, the claimant will not receive payment for that week.
- Claimants may file a weekly claim during the following time periods –
    - Sunday form 8:00 a.m. to 11:00 p.m. or Monday to Friday from 8:00 a.m. to 5:30 p.m.
    - There is no weekly reporting available on Saturday.
- Claimants must file an initial claim application during the first week the claimant wishes to be paid.
- Claimants will not receive payments for any weeks prior to the effective date of the claim.
- Online claim applications may be made Saturday or Sunday from 6:00 a.m. to 11:30 p.m. or Monday through Friday from 6:00 a.m. to 6:30 p.m.
- Claimants will receive their first benefit within 7-10 business days following submission of the claim.
- During the application process, employees will be able to input the payment method – either direct deposit into a checking or savings account or Iowa Workforce Development prepaid debit card.

## CONCLUSION

We note that the guidance provided in this Report may change between receipt of the report and when an issue may arise. If a Local Union confronts a situation that appears to involve similar facts to those in one of the cases cited above, the Union should consult with its national organization or competent legal counsel to determine if the decision applies. Finally, in this regard, if a Local Union has questions concerning any of the topics covered in this report, the Local Union should consult with its national organization or competent legal counsel to determine the current legal landscape.