COVID-19 and THE WORKPLACE

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Analyzing Employment and Labor Issues Resulting from COVID & A Contrast of Two Approaches

- While the State of Oklahoma never shut down, the State of Oregon did.
- What are the approaches taken by Midwest City, OK compared with those taken by Portland, OR, in dealing with City employees and COVID?
- What are the impacts on labor and employment issues of the financial crisis resulting from COVID?

Midwest City, OK – the city that never stopped

- Employment issues resulting from COVID for a city that never stopped:
  - PPE
  - Social distancing in the office
  - Social distancing in the field
  - Rules vs suggestions
  - High risk employees
  - Employees refusing to come to work
  - Inquiries into travel, exposure, etc.
  - Quarantine – Mandatory? Duration?

City of Portland – Essential employee? Telework?

- On March 12, 2020, Portland City Mayor declared a State of Emergency. This resulted in:
  - Cancellation or postponement of nonessential gatherings involving City employees;
  - Cessation of non-mandatory travel for meetings and conferences;
  - Encouraged teleconferencing;
  - Essential employees provided with personal protective equipment (PPE); and
  - Employees who were neither essential or able to telework were sent home.

Essential Employee?

- Employees who may be “essential” for one type of emergency may not be the same for others. For example:
  - Building inspectors deemed “essential” since construction continued.
- Labor issues related to hazard pay.
- Weekly alternating work crews

Teleworking Issues

- Computers:
  - Allow take home of hard drive, laptops, monitors, mouse vs require employees use of personal devices.
  - Raised computer, separate keyboard – making home space a workspace
  - Access to City servers - does everyone really need full access?
  - Security concerns.
- Performance issues – productivity; monitoring work; other issues.
- Ergonomics:
  - Sit/stand
  - Chairs –
    - allow take home or not?
    - Use pillows, boxes under feet

Teleworking cont'd

- Workers Compensation –
  - Claims for injuries at home
  - Home inspections or photos of home set-up – 4th Amendment issues
- Virtual Meetings–
  - Productivity
  - Distraction during call – how to catch up on what you missed?
  - Background & dress concerns – Dress requirements at home? Rule on backgrounds? Hide self-view
  - Fatigue - workers comp claim?
- Reduction of carbon footprint

Re-entry to Workplace

- Requirement for Face Masks.
- PPE – providing enough for all employees that are specific to work.
- Social distancing.
- Childcare issues.
- High-risk employees.
- Medical screening.
- Quarantine .
- Employee survey regarding concerns.
- Equity issues.

Equity Issues

- How can I factor in equity into re-entry considerations?
- What do Black, Indigenous, and People of Color (BIPOC) employees want when returning to work?
- Get training on the disparate impact of COVID-19 on People of Color. See link for example: https://mbabar.org/education/the-disparate-impact-of-covid-19-on-communities-of-color-2020/
- How can you factor in the disparate impact of COVID-19 on the BIPOC community?

Face Masks

- Requirements for City employees and Contractors
  - In City facilities and city-leased spaces:
    - Entering, exiting, or moving throughout building (stairwells, elevators, hallways);
    - Talking face-to-face, even when separated by physical barrier;
    - Conference rooms holding more than one person;
    - Common shared spaces (bathrooms, breakrooms); and
    - When working with contractor.
  - In the field:
    - In City vehicle with more than one person or always?
    - When working with contractor; and
    - When cannot maintain 6’ distance.

Face Masks Cont'd

- Requirements for the public entering City facilities:
  - Similar considerations as City employees
- ADA Concerns
- Consequences of failure to comply?

PPE

- What to provide?
  - What hazards are employees facing?
  - Proper fit and recheck of equipment.
  - Hand sanitizer.
- OSHA - 29 USC 654, Section 5 – Duties - requires employers to furnish employment and place of employment that are "free from recognized hazards that are causing or are likely to cause death or serious physical harm."
- Classify worker exposure to COVID to determine level of exposure – very high risk, high risk, medium risk, low risk.
- Infection prevention rules – frequent handwashing, where to wear masks.
- Do not share equipment.

Social Distancing

- Sufficient space between workstations – currently a common OSHA complaint
- No group gatherings when possible (e.g. staggered workgroups; rotate work schedules; virtual meetings)
- Disinfect personal workspace.
- Common spaces –
  - Close off? Limit capacity?
  - Regular cleaning of restrooms.
- Direction of foot traffic in hallways.
- Contact logging in case of need for tracing.
- Customer access to City facilities – options for access restriction, limitation or prohibition.
- OSHA and CDC recommendations – check regularly for changes and update policies.

Childcare Issues

- Factor into re-entry plan.
- Do employees with childcare issues have first option for ongoing telework?
- Are childcare facilities available and safe?
- FFCRA

High Risk Employees

- First option for ongoing telework?
- Greater social distancing practices?
- Allow paid time off if unable to work?

Medical Screening

- Requirement or voluntary.
- Take temperature at home or forehead scan at work.
- Administer vs offer COVID tests to employees.
  - Confidentiality concerns.
  - Refusal to take test.
  - ADA.
- Antibody screening – recent EEOC guidance that this is not ADA compliant.
- Paid time for screening.
- Screening of new hires – EEOC allows screening of job applicants for COVID symptoms *after* conditional job offer provided screening is done for all employees in that job.

Quarantine

- Require employee to quarantine?
- Consider providing hotel/meals when employee in quarantine to avoid exposure to family members.
- Duration of quarantine?
- Use of leave during quarantine –
  - FFCRA;
  - Sick leave;
  - Other paid leave – e.g. vacation, catastrophic leave bank, etc.

Employee Survey re: Re-entry Concerns

- Whether to do a survey.

I-9 During COVID

- March 20, 2020, Department of Homeland Security (DHS) provided temporary flexibility for employers' completion of I-9s.
- Delays in-person inspection of documents.
- Remote viewing of document via scan, fax, or video link.
- Must document telework policy as a response to COVID to use the temporary flexible rule.

Labor/Employment Issues re: Financial Impacts of COVID

- Furlough.
- Wage freezes:
  - Merit increase freeze.
  - Step increase freeze in collective bargaining agreements.
  - Cost of Living Adjustment (COLA) freeze.

Impacts of Furloughs

- Convert FLSA exempt employees to FLSA covered.
  - Be wary of FLSA exempt employees who are not used to tracking hours.
  - If not careful, FLSA exempt employees can cause overtime costs, defeating the furlough savings.
- Reduce schedules.
- Saves payout of leave balances on separation of employment.
- Longer furlough may be considered layoff, requiring leave pay outs.
- Work Share Program:
  - No earning cap.
  - Minimizes need for layoffs.
  - Allows employees to earn unemployment benefits and wages, including federal stimulus money.
  - Administrative costs.
  - Requires employer to maintain health and retirement benefits at same level.

Wage Freezes

- Merit , step, and COLA freezes help save money.
- Bargaining issues with wage freezes.
  - Open contracts – likely greater flexibility in bargaining.
  - Closed contracts –
    - Union has to agree to reopen.
    - Likely must be ratified again by union members and City Council/Commissioners.
    - Unions may agree to freezes rather than face layoffs.
    - Some union members may not want to give up income to save jobs.

Other Bargaining Issues

- May need to bargain new telework policies.
- May need to bargain FFCRA benefits.
- May want to bargain other issues.

Police Reform

- Defunding of police.
- Bargaining unit work and contracting out issues – social services performed by police/fire.
- Limitations on arbitrator authority.
- Limitation on enforceability of arbitration awards when outside of public policy.
- Federal or State-wide police misconduct log.
- Prohibit/restrict carotid neck holds – make exception for threats to life?
- Require de-escalation.
- Require use of force continuums.
- Duty to report.

QUESTIONS?

THANK YOU!