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EMPLOYMENT PRACTICES AND DISCRIMINATION

Employer Considerations During the COVID-19 Crisis

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The current COVID-19 pandemic is changing the lives of businesses and employees on a daily basis. Last week, Illinois Governor J.B. Pritzker announced a “Stay at Home” order that effectively shuttered all “non-essential” business operations. Similar orders in Indiana and Wisconsin have followed this week.

“Essential” businesses, include, but are not limited to: grocery stores; gas stations; critical trades such as plumbing, painting, and automotive repair; pharmacies; professional services such as accounting firms and law firms; animal shelters; financial institutions; media including newspapers, television and radio stations; and residential facilities and shelters. It will be important to check your state’s order to determine which businesses are considered essential and can remain open.

The Illinois Department of Employment Security reported that 64,000 claims for unemployment benefits in Illinois were filed from March 16-18, an increase of about 10 times over the amount for the same time period in 2019. This followed Governor Pritzker’s closing of Illinois schools, bars, and restaurants earlier this month.

In Wisconsin, the Department of Workforce Development received nearly 70,000 initial unemployment claims last week. Indiana’s Department of Workforce Development also reported a significant increase in claims.

These numbers will only continue to rise following these states’ “stay at home” orders. It will therefore be imperative that employers in these states stay current on their states’ respective employment laws, which may change on a daily basis during this crisis.

In the event that your company has to shut down operations, state and federal wage laws will still require that all employees must be compensated for all hours worked. If it is not feasible for employees to continue to work, and they must be laid off, these employees are likely eligible for unemployment benefits.

In Illinois, unemployment benefits are generally available to individuals who have been separated from their employment through no fault of their own and meet eligibility requirements. The eligibility requirements for unemployment benefits are that the individual is able and available for work, has registered with the state employment services, and is actively seeking work.

Illinois, Indiana, and Wisconsin have expanded eligibility requirements for employees effected by COVID-19. Illinois has seemingly loosened its requirements the most, as it has in many cases waived requirements that employees are able and available to work.

Employees Laid-Off Because of COVID-19

Employees in Illinois, Indiana, and Wisconsin who are temporarily laid off because their workplace is closed because of the COVID-19 crisis could qualify for unemployment as long as the state requirements have been met.

Illinois

In Illinois, employees will not be required to register with state employment services. The employee would be considered to be actively seeking work so long as the he or she is prepared to return to work as soon as the employer reopens.

Indiana

Indiana employees filing for unemployment benefits before April 4, 2020, will be eligible for unemployment insurance benefits only if they have earned enough money during their “base period,” i.e., the last quarter of 2018 and the first three quarters of 2019. In addition, Indiana employees must file a voucher each week and comply with its terms to remain eligible and also must stay in contact with their employer and be available to work if called back by their employer. Indiana employees are also eligible to receive partial unemployment benefits if their hours have been reduced through no fault of their own during the COVID-19 crisis.

Wisconsin

Wisconsin employees whose hours have been reduced will be eligible for partial unemployment benefits so long as they meet the eligibility requirements. Additionally, Wisconsin employees claiming unemployment will not be required to do a work search during the Governor’s declared emergency.

Employees Who Quit Because of COVID-19

In Illinois, Indiana, and Wisconsin, if an employee quits because of a concern about COVID-19, he or she will generally not be considered unemployed through no fault of their own. But, the employee could be eligible if he or she is able to show a good reason for quitting, attributable to the employer. Therefore, a factual determination will be needed to determine whether the individual had a good reason for quitting, attributable to his or her employer

Employees Who Are Diagnosed with COVID-19, Confined at Home to Care for Children, Other Family Members

Illinois

Illinois employees diagnosed with COVID-19, or who are confined to their home to care for their spouse, child, or parent who has been diagnosed, will be eligible for unemployment benefits. This also includes individuals confined to their homes because of a government-imposed or recommended quarantine. These individuals would still need to meet all eligibility requirements, including registering with their state’s employment service.

Wisconsin

Wisconsin employees who are ill with COVID-19 and unable to work would not satisfy the state’s requirements that they are able, available, and actively seeking work. These employees therefore would be ineligible for unemployment benefits.

Indiana has not yet provided information as to whether such employees would be eligible for unemployment benefits.

Employees Who Have Children That Are Required to Stay Home

In Illinois and Indiana, an employee whose child is required to stay home would previously have been disqualified for unemployment benefits. But now, given the fact that schools in both states have temporarily closed, these employees will be considered unemployed through no fault of his or her own. Again, these employees will need to meet all eligibility requirements.

Wisconsin has not yet provided information as to whether such employees would be eligible for unemployment benefits.

Employers' Unemployment Contribution Rates

It is generally understood that employers' unemployment contribution rates will continue to be determined under normal procedures during this time.

HIPAA Considerations

Employers should also continue to be mindful of their obligations under HIPAA during this time. As a reminder, an employee's diagnosis is considered protected health information and therefore subject to the rules under HIPAA. Employers may not disclose an employee's diagnosis nor take any employment or retaliatory action based on the diagnosis.

Doherty & Progar, LLC will remain in full operation and devoted to its clients during this unprecedented time. This will include staying up to date on all developments in state and federal laws. We understand that many of our clients will be faced with tough questions in the near future. As you prepare to make the necessary adjustments for your business, please consider reaching out to our attorneys for guidance to ensure that you navigate the coming weeks with the knowledge needed for your business and compassion for your employees.

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