



COVID-19 and Labor Issues

On what feels like an almost hour-by-hour basis, we are facing an onslaught of local regional, and national responses to COVID-19. It's worthwhile dusting off some basics when it comes to the labor implications of COVID-19 in the public safety workplace.

Collective Bargaining Issues

In collective bargaining jurisdictions, the first stop in any analysis is to review applicable collective bargaining agreements or memoranda of understanding for provisions related to management's rights to take unilateral action in emergency situations, including the ability to alter shift schedules, extend hours of work, eliminate days off or vacations, eliminate special assignments to bolster core services, or the addition of duties. Sick leave provisions will undoubtedly come into play for employee or family illnesses.

But the collective bargaining agreement is not the last stop in the bargaining analysis. Local and state laws governing collective bargaining place upon both labor and management a continuing duty to bargain, especially where a collective bargaining agreement is silent on a mandatorily negotiable topic. Considerations for bargaining in this context could include:

- Securing adequate safety equipment;
- Establishing paid administrative leave systems for first responders who are forced to stay home from work;
- Presumptive sick leave usage without medical verification due to illness for COVID-19 or flu-like symptoms;
- Altered shift and vacation schedules;
- Rotation of specialty assignment personnel to core public safety functions;
- Identification of essential and non-essential personnel related to teleworking options and other modified duty assignments;
- The ability to use accrued leave or borrow against future accruals to deal with sickness, family illnesses, and childcare;

- Waiving leave accrual caps or providing cash-out options once caps are hit; and
- Waiver of co-pays and out-of-pocket expenses associated with the testing and treatment of COVID-19.

Some collective bargaining laws provide narrow business necessity or emergency provisions that may allow management more latitude to take actions in the event of an emergency. Such laws usually require “effects bargaining” over the impact of changes on employees.

Workers Compensation Issues

Beyond traditional bargaining considerations lie a cornucopia of laws potentially implicated by COVID-19. At the top of the list are state or local workers compensation/pension systems, which may provide coverage for on-the-job injuries related to COVID-19. While these systems vary significantly from jurisdiction to jurisdiction, the emergence of COVID-19 has prompted swift action by some leaders to expand the availability of workers compensation coverage for first responders. For example, [Washington Governor Jay Inslee implemented](#) a presumptive benefit system for workers quarantined after being exposed to COVID-19 on the job.

In the upcoming days, systems should be put in place by both labor and management to ensure that workers compensation claims are promptly made and handled. More broadly, political action may result in expanded, temporary workers compensation benefits for responders on the front lines of the COVID-19 response.

Local, State, and Federal Leave Law Implications

A variety of statutes and local ordinances provide access to paid or unpaid leave for events associated with coronavirus, including an employee’s own illness, to care for sick family members, or public health emergencies. The House of Representatives has now passed the Families First Coronavirus Response Act, which grants paid sick leave to many employees under similar circumstances. The Senate is poised to act on the FFCRA any day, and as the bill was the product of negotiations between the White House and House Speaker Pelosi, President Trump is expected to sign it. You can find a [good description of the FFCRA here](#).

Local, State, and Federal Anti-Discrimination Law Implications

Many statutory systems, including the Americans with Disabilities Act, prohibit discrimination against employees for actual or perceived disabilities. Employers should be mindful, and labor organizations should be watchful, when an employer sends an employee home for fear of COVID-19.

Through the collective bargaining process, reasonable rules may be reached that allow an employer to trigger employee leave in situations where:

- The employee has been exposed to an individual who has tested positive for COVID-19 (as confirmed by the CDC or other authorized body) and is directed to quarantine by a public health official;
- The employee has tested positive for COVID-19 (as confirmed by the CDC or other authorized body);
- A family member in the employee's immediate household has tested positive for COVID-19 (as confirmed by the CDC or other authorized body); or
- The employee or a member of the employee's immediate household has symptoms of flu-like illness or is recovering from flu-like symptoms.

We strongly advise managers and labor officials to confer with local legal counsel and HR professionals over their contractual and statutory rights and limitations, along with ongoing bargaining obligations.

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