
Back to Business: Labor Issues

Video Transcript

As companies consider returning to partial or full operation in wake of the COVID-19 pandemic, they will need to adapt to some new realities. As a part of our ongoing video series, Back to Business Considerations in the Wake of COVID, we'll be highlighting a few labor relations issues in this alert, including:

- Handling current union relationships;
- Evaluating exposure to union organizing; and
- First and foremost, safely getting back to business.

As governors and the White House continue to grapple with reopening local, state, and regional economies across the country, we see unions becoming ever more active, representing and pushing the interests of their membership. Unions are advocating for further representation, pay, and protection in certain industries, many of which have been deemed essential. In the last few weeks, we have seen job actions, leafletting, and informational picketing in the food service and healthcare industries. We have also seen lawsuits filed by unions arguing that legal liability can be assessed against employers that do not provide certain personal protective equipment (PPE) to employees.

Finally, we have seen debates over whether union-represented employees in healthcare and other industries, such as first responders, should get hazard pay for their role on the front lines in the COVID-19 crisis. These labor relations issues are heating up and will not go away soon, and non-union employers need to be cognizant of and familiar with the issues. If your business currently does not have a union, you may be susceptible to union organizing if you do not implement best practices in getting back to business and back to work.

So what to do? For the union-free employers, first and foremost, get advice, and don't wing it. You should evaluate ongoing remote working operations and see if they can continue in the future on a full or partial basis to get people back to the workplace. Evaluate current pay practices, benefits, and working conditions, and see if they are up to date in light of what the country is going through. The overriding message: you must return safely, with current working conditions; if you do not, your company could be a target of union organizing. As a part of this series, we have focused on the employer/employee issues and OSHA guidelines that provide further guidance and specifics on getting back to business safely. Now, for our viewers who are currently unionized, a few considerations:

- First, know your collective bargaining agreement. Do you have a unilateral management right to implement changes in the working relationship without speaking to the union?
- Do you have an epidemic or pandemic catastrophe-type clause allowing a release for your company from certain economic or benefit conditions and requirements that you would have to meet? Perhaps you can be released from those liabilities in these unforeseen times.
- Can you get back to business without implementing a wage or benefit increase that simply can't be afforded under current working conditions?

Next, consider approaching your union with ideas on best practices in getting back to work. Define your practices before any meeting. Go to a meeting with a union prepared to implement, under your management rights, anything and any practice that you believe would promote worker safety. Operate under the assumption that, as an employer, you would have enhanced management rights during a pandemic scenario. And finally, whatever you implement, do so safely and humanely. Venable is actively monitoring these issues and working with clients to evaluate and respond to the emerging business, legal, and operational challenges our clients face. Please visit our COVID-19 Resource Center at Venable.com/COVID-19 to explore our extensive collection of analysis, webinars, and other relevant insights. Thank you, stay safe, and be healthy.

Links

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