

Cris Rice

Subject: FW: Workerlaw eUpdate (04/07/20) from Barnard Iglitzin & Lavitt LLP

From: eUpdates <eupdates@oneworkerlaw.com>

Sent: Tuesday, April 7, 2020 10:35 AM

To: eUpdates <eupdates@oneworkerlaw.com>

Subject: Workerlaw eUpdate (04/07/20) from Barnard Iglitzin & Lavitt LLP



Workerlaw eUpdates

Vital, Timely and Targeted Information to Make You a More Effective Union Leader



In response to the public health emergency caused by COVID-19, state and federal governments have taken a series of actions impacting workplaces, unions, and their members. This update is to provide you a quick reference guide compiling resources on issues you may be dealing with in this rapidly-evolving situation. This is a general summary – whether these resources apply to your union or workplace will depend on the facts. You should consult the links below or an attorney for further guidance. And, the first place to look should still be your CBA, which remains enforceable.

Useful general resources

- CDC Guidelines for Businesses and Employers to Plan and Respond to COVID-19 – <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.htmlfor>.
- Washington State's coronavirus response page – <https://coronavirus.wa.gov/>.
- ESD's chart on COVID-19 Scenarios and Benefits (identifying which programs are available in different common situations) – <https://esdorchardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/newsroom/COVID-19/covid-19-scenarios-and-benefits.pdf>.
- OSHA Guidance re COVID-19 – <https://www.osha.gov/SLTC/covid-19/>.
- EEOC Guidance re COVID-19 – https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm.

Duty to bargain

Unless your CBA has language allowing the employer to unilaterally act in times of a public health emergency, the employer still has an obligation to bargain the decision and effects of changes to wages, hours, and working conditions in response to COVID-19, even where those changes are to comply with a federal, state, or local order. The employer may be able to raise an emergency or business necessity defense to excuse its failure to bargain the decision if extraordinary events required it to take immediate action, such that there was not time to bargain prior to implementation. However, the need to have a policy on an issue (even if COVID-19-related) may well be foreseeable enough that the parties had time to bargain (consider asking for detailed information to support any claim of emergency or exigency). And, the employer would still be required to bargain the effects of any proposed change. Unions can proactively request bargaining over proposed changes and the effects of any proposed changes to address new legislation or other government edicts.

Further, the Employer may not take actions that would violate a Union's CBA unless the Union agrees to modify the CBA through an MOU. For instance, a Union may agree to bargain to allow an employer to take actions it would not ordinarily be allowed to take, in exchange for some new benefit.

On March 28, 2020, the NLRB issued this Guidance – <https://www.nlrb.gov/guidance/memos-research/general-counsel-memos> – on the Duty to Bargain in Emergency Situations.

COVID-19 Assistance For Small Businesses, see the U.S. Small Business Association's Coronavirus Relief Options – <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options>

- **Paycheck Protection Program** – up to \$10 million in low-interest loans to cover payroll costs, continuation of group health care benefits during leave periods and insurance premiums, interest on mortgage obligations and other debt, rent, and utilities; 8 weeks of loan forgiveness for employee retention through June 30, 2020. The Paycheck Protection loans are available to certain small businesses, sole proprietors, independent contractors, and non-profits if organized as 501(c)(3) (charitable) or 501(c)(19) (veteran) entities, but not to 501(c)(5) (labor) organizations. It is a “first come, first served” program.
- **Economic Injury Disaster Loans** – up to \$2 million in loans, and emergency grants of up to \$10,000, to assist businesses with bills that cannot be paid due to the coronavirus emergency, like payroll, rent or mortgage obligations, and other operating expenses. These loans are available for small businesses up to 500 employees and to private non-profit organizations with a current tax-exempt status with the IRS (this appears to include all 501(c) organizations, including labor unions).
- **Employee Retention Tax Credit** – may be available to employers and 501(c) organizations (including labor unions) whose operations are suspended due to a governmental order (e.g., a shelter-in-place order) or whose gross receipts have fallen this quarter at least 50% from the corresponding quarter in the previous year, see IRS FAQ – <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act> – on employee retention credit.

Paid Sick Leave

- Employer-provided sick leave – per terms of CBA or policy.
- State or local paid sick and safe time, see [L&I FAQ on COVID-19](#) – <https://lni.wa.gov/agency/outreach/paid-sick-leave-and-coronavirus-covid-19-common-questions>
 - if you or a family member are sick from COVID-19.
 - if you are isolating due to potential COVID-19 exposure.
 - if place of business or child's school or place of care has been shut down by a public official.
- Federal Families First Coronavirus Response Act, see [DOL FAQ](#) – <https://www.dol.gov/agencies/whd/pandemic/ffcrs-questions>
 - up to 80 hours of paid sick leave at employee's regular rate of pay if employee is unable to work because the employee is quarantined and/or is experiencing symptoms and seeking medical diagnosis.
 - up to 80 hours of paid sick leave at 2/3 the employee's regular rate of pay if employee is unable to work because the employee must care for a quarantined individual or for a child whose school or child care provider is closed due to COVID-19.
 - applies to most public employers, and to private employers with fewer than 500 employees.
 - employers of health care providers or emergency responders may elect to exclude employees from eligibility for this sick leave.
 - small businesses with fewer than 50 employees may qualify for an exemption if leave requirements would jeopardize the viability of the business as a going concern and the employers properly document the reasons for invoking the exemption.

Paid Family and Medical Leave

- State PFMLA - if a healthcare provider certifies that employee is unable to work due to a serious health condition or to care for a family member with serious health condition. See [ESD's COVID-19 worker information page](#), <https://esd.wa.gov/newsroom/covid-19-worker-information>.
- Federal Families First Coronavirus Response Act, see [DOL FAQ](#) – <https://www.dol.gov/agencies/whd/pandemic/ffcrs-questions>.
 - If healthcare provider certifies that employee is unable to work due to a serious health condition or to care for family member with serious health condition.
 - Up to an additional 10 weeks of paid expanded FMLA where employee is unable to work due to need to care for a child whose school or child care provider is closed due to COVID-19.
 - employers of health care providers or emergency responders may elect to exclude employees from eligibility for this sick leave.

- Applies to most public employers and private employers with fewer than 500 employees, but small businesses with fewer than 50 employees may qualify for an exemption if leave requirements would jeopardize the viability of the business as a going concern and the employers properly document the reasons for invoking the exemption.

Unemployment

- The federal CARES Act expanded unemployment benefits for individuals affected by COVID-19 due to illness, quarantine, loss of employment and other circumstances. Major changes include an additional \$600 per week for benefit recipients, expanded length of benefits, and expanded coverage, including for self-employed workers, including independent contractors, who are left out of regular state unemployment coverage.
- The ESD has a [site](https://esd.wa.gov/newsroom/covid-19) (<https://esd.wa.gov/newsroom/covid-19>) discussing when to apply and an [FAQ page](https://esd.wa.gov/newsroom/covid-19-worker-information) – <https://esd.wa.gov/newsroom/covid-19-worker-information>. Notably, the one-week waiting period before being eligible for benefits has been temporarily lifted so claimants may be immediately eligible for benefits.

Other Temporary Emergency Measures, see [State's coronavirus webpage](https://www.coronavirus.wa.gov/) – <https://www.coronavirus.wa.gov/>

- Temporary moratorium on evictions.
- Help with utilities.
- Cash assistance for families.
- Free school lunches.
- Special enrollment period for health insurance.

JENNIFER ROBBINS

DIR: 206.257.6008

robbins@workerlaw.com

If you wish to stop receiving these Workerlaw eUpdates from Barnard Iglitzin & Lavitt LLP, please reply to this email or contact David Helfer at 1-800-238-4231 to request removal from the list.

18 West Mercer Street Suite 400, Seattle, Washington 98119-3971 | TEL 800.238.4231 | TEL 206.285.2828 | FAX 206.378.4132