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What Philly employment lawyers are telling their 'terrified clients' about the coronavirus

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Three weeks ago, some of the most common questions employment lawyer [Jonathan Segal's](#) clients asked about COVID-19 included whether they could allow employees to work from home or travel for business. With the virus quickly spreading across the U.S., the Duane Morris partner said those same business executives are now asking what to do if an employee cannot work from home or how to handle cutting jobs, hours or salaries.



COURTESY OF DUANE MORRIS

Duane Morris partner Jonathan Segal.

As coronavirus cripples the economy, employment lawyers have been thrust into the spotlight to navigate their clients through a hyper-fluid situation. And their advice involves the highest of stakes, as the fate of thousands of businesses are in the balance.

“We have a lot of terrified clients,” said [Harold Goldner](#) of Blue Bell’s Kraut Harris, whose clientele tends to be smaller businesses who are most at risk.

“I have practiced law for 40 years. I spent the first 15 years doing plaintiffs personal injury work and then plaintiffs employment work. The employer was always the villain. Now I am doing more work representing management and I have a different view. These guys are not sleeping because they are thinking about their employees. It’s heart-wrenching and that aspect surprised me.”

While many large companies have pandemic plans in place, Goldner said small businesses are not as prepared. For instance, many have a family member handle human resources functions such as finding health insurance and other employee benefits.

“But now when they get certain claims during this situation, Aunt Bertha doesn’t know how to handle it,” Goldner said.

As COVID-19 has spread and issues have evolved, so have the questions and concerns. Federal, state and local governments have instituted policies or new laws placing restrictions on operations while also offering a helping hand to impacted businesses. Each move has brought a fresh set of inquiries from business owners.

Both Pennsylvania and Philadelphia have ordered all “non-life-sustaining” or “nonessential” businesses to close until further notice. Employment lawyers said there was a rush of questions from clients wondering if they qualified and, if not, whether they could secure a waiver.

There are also questions about the new Families First Coronavirus Response Act, which expands the Family and Medical Leave Act (FMLA). The new law requires employers with less than 500 employees to provide 12 weeks of protected leave for child care if an employees' care provider is unavailable due to a public health emergency. Many businesses with less than 50 employees are exempt.

The law also requires employers to provide 80 hours of paid leave to employees that are under quarantine, advised by a medical professional to self-quarantine or are experiencing COVID-19 symptoms and seeking medical diagnosis. Businesses want to know if they are exempt or how to comply.

Employment lawyers are getting questions about compliance with the Worker Adjustment and Retraining Notification (WARN) Act, which requires businesses with 100 or more employees to provide 60 days written notice of a closure or mass layoff when the job losses are expected to last six months or more. Workplace safety is also a major area of concern for businesses that are permitted to keep physical operations open during the crisis.

The next set of questions will surely revolve around the \$2 trillion federal stimulus bill passed by the U.S. Senate Wednesday night.

Eric Meyer of Fisher Broyles, one of the few virtual law firms, said his phone has been ringing off the hook with questions about the Families First Coronavirus Response Act and whether a client qualifies as an essential businesses.

“In general, a lot of businesses are struggling right now with liquidity issues and some are concerned about being able to pay employees for any period of time,” Meyer said. “So every question comes from that perspective. Businesses are reluctant to lay off people and would rather furlough. The big issue is that if they leave, you might not get them back.”

Meyer describes himself as a bit of an employment law nerd and has his own popular blog called "The Employee Handbook" that he updates regularly.

He hosted a pair of free Facebook Live sessions last week in which he answered coronavirus-related employment law questions that readers of the blog submitted by the hundreds.

Some of the more popular questions were:

How do we calculate 500 employees?

How does a business with less than 50 employees get exempted from the new paid leave rules?

How does the expanded FMLA interact with the paid sick leave rules? Do they run concurrently or consecutively?

Segal tells clients when communicating with employees, it's important to show a basic level of kindness, empathy and transparency while painting with broad brush strokes. He advises not to get into too much detail, because that could create confusion and potential legal issues.

For example, some employers who have employees work on site are spelling out the terms and conditions before an employee can return from an employer-imposed quarantine. Those terms and conditions may change. Instead, Segal says its better to say something like: Before you will be able to return to work, we will let you know what terms and conditions you will need to satisfy at such time.

Another example involves furlough letters. In most cases, it is not practical to address what will happen with every insured benefit. An employer will want to address health insurance because that will be top of mind. For other benefits, the

employer must say only something like: For other insured benefits, your coverage will continue only if permitted by the applicable plan document. An employer always can go back and provide more detail later.

One question employment lawyers cannot answer is how long this crisis is going to last, something essential for the future of the businesses they represent. Both Goldner and Segal said the next few weeks will be an inflection point filled with tough decisions made by employers about their companies and employees.

"I hope it won't be as bad as 2009 but everyone needs to brace for the worst-case scenario and hope for the best," Segal said. "They need to anticipate this getting worse before it gets better."

Goldner said even if the worst is behind businesses in the coming weeks, there is still a long, rough road ahead.

"It will take a while to gear up again and for customers to have enough money to spend," Goldner said. "So I think you are looking at three to six months before things get back to normal."

Jeff Blumenthal

Reporter

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