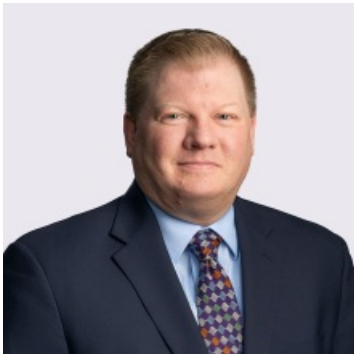


New Requirements, Recommendations for Utah Employers Amidst COVID-19 Crisis

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In response to the spread of the coronavirus (COVID-19), several states have implemented closure orders, shutting down most of their internal operations and requiring most of the public to stay home, or “shelter in place.” While Utah has not yet joined the list of states doing so, employers in Utah should keep in mind certain new restrictions and recommendations while navigating this national pandemic.

Requirements from Utah Department of Health

On March 17 and 21, the Utah Department of Health issued public health orders requiring all food service establishments (not including grocery stores), restaurants, self-serve buffets, salad bars, unpackaged self-serve food services, bars, taverns, nightclubs, private liquor clubs, and saloons to be closed until April 1, 2020.

Pick up and drive-thru services remain permissible for these businesses, as are take-out services, so long as the food order is placed remotely and not inside the food service establishment.

Third-party delivery services also may continue operating, but they are prohibited from engaging in person-to-person contact upon delivery.

Salt Lake County has restricted the same activities, but has extended those restrictions two weeks longer, until April 15, 2020.

Recommendations from Utah Department of Health

While Utah does not currently require its residents to shelter in place, the Department of Health has recommended that all individuals take precautionary measures to help limit the spread of COVID-19.

Businesses are specifically encouraged to have their employees telecommute where possible and practicable. If employees need to come into the workplace, they should be grouped into cohorts of no more than 10 people and avoid close contact with other individuals. Employees should keep six-foot distances from one another, engage in frequent hand washing and sanitizing, and disinfect surfaces often.

Employers also are encouraged to screen their employees daily at the beginning of each shift for COVID-19 symptoms. Under recent guidance from the Equal Employment Opportunity Commission, this screening may include taking employee body temperatures. Any employee who exhibits symptoms should be sent home to self-quarantine. As with all medical information, the fact that an employee has a fever or other symptoms must be maintained as a confidential medical record in compliance with the Americans with Disabilities Act. Once an employee has recovered, employers may require the employee to provide a doctor’s note certifying their fitness for duty before returning to the workplace.

Summit County Stay-at-Home Order

Summit County, which has been hit particularly hard by the COVID-19 virus, issued a stay-at-home public health order on March 25, 2020, that directs citizens of the county to shelter in place.

The restrictions will start on March 27, 2020, at midnight and extend through May 1, 2020.

The county is a tourism hotspot due to its ski resorts and it has asked all visitors to leave as quickly as possible. Although the order carves out exceptions for essential businesses and travel, employers should take into account that Summit County commuters might believe they are unable to come to worksites in other counties.

Decisions Regarding Employees

In light of the COVID-19 pandemic, many employers are finding the need to restructure their businesses, including making difficult decisions about their employees. When making any decision, employers should be sure to keep in mind legal requirements under Utah and federal law. For example, Utah law requires employers to provide advance notice before changing an employee's rate of pay. Additionally, terminated employees must receive their final wages within 24 hours of termination.

As layoffs occur, Utah employers must ensure the reason for any employee termination is business-related. Terminating an employee solely because the employee is subject to an isolation or quarantine order is statutorily prohibited.

When considering a mass layoff, businesses must also consider whether the Workers Adjustment and Retraining Notification (WARN) Act applies. Under the WARN Act, covered business must provide at least 60 days advanced written notice for any reduction in the workforce that results in loss of employment at a single site of at least 50 employees, excluding part-time employees, that qualify as 33 percent of the workforce at that single site.

During this unprecedented COVID-19 pandemic, the WARN Act's "unforeseeable business circumstances" may apply to eliminate the 60-day advanced written notice requirement. Even if this exception applies, employers must still provide written notice. Please consult with counsel before applying this exception.

Furloughs of Employees

During this time, many employers are considering furloughing employees. If doing so, employers must communicate that the furlough is temporary, and the intent is for the employees to return to their job on a definite date within six months. Furloughed Utah employees may apply for and receive unemployment benefits.

If plans change and a furlough extends beyond six months or becomes permanent, the WARN Act may apply. In such a case, there may be risks for failure to provide the required notices when the furlough was first communicated. Thus, employers should not furlough employees if they are unsure about whether the employees will be returned to the workplace.

As the virus continues to spread, guidance from public health authorities and officials is

likely to change. For these reasons, employers should regularly check for updates about their obligations and responsibilities in preventing the spread of COVID-19. If you have questions about your compliance, please feel free to contact us directly.

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