STATE OF MICHIGAN PROVIDING GUIDANCE TO EMPLOYERS CONTEMPLATING LAYOFFS
MICHIGAN UNEMPLOYMENT INSURANCE AGENCY OFFERING WORK SHARE PROGRAM

The Michigan Department of Labor and Economic Opportunity is providing guidance to Michigan employers on how to avoid potential layoffs related to COVID-19.

Work Share
If employers are financially distressed but hope to continue operations by cutting back hours, they are encouraged to use the Unemployment Insurance Agency’s Work Share program that allows employers to maintain employment levels and business operations during declines in regular business activity rather than laying off workers. More information about the program can be found at www.michigan.gov/workshare.

Temporary Leave vs. Termination
Due to the uncertainty regarding potential congressional action regarding whether and how furloughed workers will be able to access federal paid sick, family and medical leave resources, employers are strongly urged to place employees on temporary leave and advise the worker that they expect to have work available within 120-days as opposed to termination. There is no additional cost to employers, employees remain eligible for UI benefits through the state, and employees may remain eligible for potential federal assistance.

Steps for employers placing employers on temporary unpaid leave:
- Do not terminate the employee – specify a temporary/indefinite leave with return to work expected that is within 120 days.
- Do not create a contractual obligation to bring the employee back to work – Let the employee know that the situation is fluid and subject to change.
- Provide the employee with a formal Unemployment Compensation Notice. Employers will need to provide their Employer Account Number and Federal Identification Number.
- Communicate to the employee about their rights. Under Governor Whitmer’s recent Executive Order, workers are placed on leave, or are unable to work because they are sick, quarantined, immunocompromised, or have an unanticipated family care responsibility, are eligible for unemployment insurance benefits.
- Ensure employers are provided information on how to obtain unemployment insurance benefits. A fact sheet can be found at: https://www.michigan.gov/documents/ua/160_-_Claiming_U1_Benefit_In_Michigan_-_Jan2014_444213_7.pdf
- Get each employee’s up-to-date contact information.
- Let employees know if you will be putting updated information on the entity’s website or intranet, if applicable.
- Appoint a single, or limited number of individuals who will field questions, and communicate that information to employees.
- Keep a tally of all questions and answers. Periodically share with employees.

The state is monitoring issues related to continued medical insurance coverage and will update accordingly.

Elimination of Certain Unemployment Costs to Employers
Under the governor’s order, an employer or employing unit must not be charged for unemployment benefits if their employees become unemployed because of an executive order requiring them to close or limit operations.

The Michigan Economic Development Corporation’s call center can also support businesses looking for assistance through other available state programs. For more information, visit the MEDC’s website: www.michiganbusiness.org or call 888.522.0103. The Michigan Small Business Development Center can also provide resources for small businesses impacted by COVID-19. Visit their website https://sbdemichigan.org/small-business-covid19/ for additional information.
President Trump signed the “Family First Coronavirus Response Act” following its 90–8 passage in the U.S. Senate. The legislation requires health insurers to cover the costs of testing for and treatment of coronavirus disease 2019 (COVID-19) at no cost to policyholders, provides an additional $1 billion for nutrition assistance programs including the Supplemental Nutrition Assistance Program, provides $1 billion to states to help bolster state unemployment insurance systems and adds new paid-time-off requirements for smaller businesses for employees affected by COVID-19.

The legislation, which originated in the House this past weekend, takes effect on April 2, 2020. A detailed breakdown of the bill by NACS labor counsel Fisher Phillips can be found at: www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act

Small employers who have less than 500 employees will be subject to the new paid-time-off provisions of the bill. They will be required to pay for two weeks of sick leave to any employee who contracts COVID-19 or needs to care for other family members who have contracted the disease or qualify under other specific scenarios outlined in the legislation.

Those same employers also will be required to provide paid Family & Medical Leave Act (FMLA) time to employees who need to care for a family member stricken with COVID-19 or care for a child whose school or childcare is closed due to COVID-19 concerns. Employers may require that the first 10 days of that FMLA time be taken unpaid unless the employee elects to use other accrued paid time off, such as the required sick leave or other accumulated vacation time. For the remainder of the time, up to 60 days, employees must be paid at 67% of their usual rate of pay.

However, “the act now includes language allowing the Secretary of Labor to exclude healthcare providers and emergency responders from the definition of employees who are allowed to take such leave, and to exempt small businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business,” Fisher Phillips explained.

Covered employers will be eligible for quarterly tax credits equal to 100% of the costs of the leave taken against their employer share of Social Security taxes. The credits are refundable, meaning if an employers’ social security tax liability is less than the amount of their available credit they will receive a refund of the additional amount. It is important to note that the mandates under this act are specific to COVID-19-related situations and not any other reason an employee may seek time off. The provisions also expire at the end of 2020.

Meanwhile, Congress has turned its attention to what is being called phase 3 of its coronavirus response—a massive economic stimulus package that is likely to include financial support for the transportation industry and more support for businesses impacted by the economic downturn resulting from the pandemic. The package also is likely to include a proposed $500 billion in direct payments to American households.

The Senate will remain in session until that package is finished, which is expected by this weekend. The House, which is currently in recess, is likely to come back soon after to finalize and pass the package.

Source: NACS