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ATTORNEYS AT LAW



General Counsel Employment Law Report

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Coming to A City Near You? Fair Workweek Gains Ground

There is a new wrinkle to wage and hour compliance—predictive scheduling and fines associated with failing to meet the laws. Philadelphia—home to the cheese steak, the Liberty Bell, Ben Franklin and some sports teams—has joined several jurisdictions in enacting a Fair Workweek Ordinance. Large retail, hospitality and food services (250 employees or more world-wide with 30 or more locations) must: (1) give existing employees the right of first refusal to work additional hours before hiring new employees; (2) post and provide advance written notice of work schedules; (3) provide predictability pay for any departures from the posted schedules; and (4) permit a rest period of nine hours between shifts. These requirements would impact as many as 130,000 workers in Philadelphia, beginning 7/1/2020.

But it is not all brotherly love in Philly (or elsewhere) when it comes to accepting predictive scheduling laws. Eleven states have passed legislation preempting local laws governing employee scheduling: Alabama, Arizona, Arkansas, Georgia, Indiana, Iowa, Kansas, Michigan, North Carolina, Tennessee, and Wisconsin. Preemption legislation failed to pass in the last legislative session in Pennsylvania.

What does this trend mean for smaller employers? For now, nothing legally. As a practical matter however if predictive scheduling becomes the norm for hourly workers in large retail, hospitality and food service businesses, attracting workers in an already tight job market could get more difficult. As we have noted before, [union activity and labor dissent](#) continue to grow even amid a business friendly federal government.

Questions on fair workweek issues or any other workplace matter? We can help.

*New York City, Chicago, Seattle, the State of Oregon and San Francisco, San Jose and Emeryville, CA

Coronavirus at Work: Be Prepared

Just a few weeks ago, the coronavirus seemed exotic and far away. Now the arrival of the coronavirus (COVID-19) is not an issue of if but when. Beyond having an ample supply of hand sanitizer and keyboard wipes (masks are sold out), how can employers best handle an outbreak or avoid one at their workplace?

First and foremost, the CDC offers [excellent guidance](#) and their website is updated constantly. We recommend employers check this resource frequently –and call us with any questions.

DO:

- Think about remote work possibilities wherever possible now. There may be days–or weeks– when keeping workers apart will spare a bigger outbreak overall.
- Actively encourage sick employees to stay home. The virus is upper respiratory–which is why it is so contagious. The Center for Disease Control (CDC) recommends employees stay out until they are fever free for 24 hours without use of fever reducing medicines.
- Separate sick employees who do come to work and send them home immediately.
- Consider suspending the need for a healthcare provider note if that is your policy as medical facilities are expected to be overtaxed and reserved for the very sick.
- Encourage respiratory etiquette–sneezing and coughing into a tissue or your elbow in a pinch–and regular hand washing hygiene. The CDC provides [posters](#) on hand-washing and a clear explanation of [respiratory etiquette](#) to share.
- Keep the workplace clean, especially door knobs and frequently touched surfaces, and encourage employees to wipe down keyboards, phones and their work area.
- If your employees travel for work, check the [CDC travel webpage](#) for updates.

DO NOT:

- Make determinations of risk based on an employee’s race or country of origin.
- Breach confidentiality of employees with confirmed coronavirus infection.
- Penalize employees for using sick time themselves or to care for a sick (and contagious) member of their household.

The good news so far is the virus is not expected to be fatal except in the elderly, very young and people with lowered immune systems. The bad news is coronavirus is highly contagious and will most likely be wide spread in short order.

We can help.

Beyond Hand Washing: Coronavirus Workplace Issues

Quarantines, furloughs, pandemic—rarely used words now bandied about with regularity. With COVID-19 causing the first US deaths and the virus identified in more places each day, hypotheticals are becoming realities. Below is an update on common issues as of today:

Do I Have to Pay for COVID-19 related Sick Leave? That depends on your policy and your state's law—if you are paying for sick leave already yes, this illness is no different. The Centers for Disease Control is recommending a more generous sick leave policy as an incentive to keep sick workers away from healthy ones. At this point there is no mandate however to actually revise your policy above your state law requirements on employee sick leave. As always, any changes in policy must be uniformly applied.

There are some wrinkles here—if an employee became ill during work related travel to a high-risk area, she may be eligible for workers compensation. If an employee is otherwise eligible for FMLA, use of that leave will be allowed for oneself or to care for a family member under the Act. Finally, employers may be able to let workers to use other paid time (vacation, personal, etc) where no sick time is available. We expect to see this occur if the illness is as widespread as predicted.

Can I Prevent a Suspected Infected Worker from Coming to Work? You can require an employee to stay home for the quarantine period (14 days) and require a fitness for duty note before return to work. Under this scenario the best practice is to pay for the leave time and any tests or doctors visits required for documentation. Remember to avoid identifying potentially infected workers by race or national origin, or based on a perceived or actual disability with symptoms like COVID-19. Also, maintain employee confidentiality at all times.

Should I Require Employees To Wear a Mask? If you want to train employees in proper mask usage and exempt employees with underlying medical issues who cannot wear a mask, yes. Is it worth it? Probably not. At this point the CDC is not encouraging wide spread mask use as the best deterrent. Health care facilities may be the exception.

What About Pregnant Workers? Under OSHA, all employees have a right to a safe workplace and employers must adopt neutral policies that protect everyone equally. So far, the government has not identified pregnant workers at greater risk than the general population. If that were to change and the government released guidance, employers would need to follow the government's lead. Issues like this show why [checking the CDC site](#) regularly is so important.

More questions? Oh yes, there will be plenty. Feel free to contact us. We can help.

CCHRA Membership Meeting
February 27, 2020

**Special CCHRA Members-Only Employment Law Compliance
and HR-Related Risk Management Benefits**



Here is a reminder of the Board's Members-Only Special Benefits Announcement from August 2018

The CCHRA Board of Directors knows that the need for all members to more effectively manage HR-related risk and employment law compliance remains constant. Today's political and legal landscape creates a level of risk, confusion, challenges and chaos that employers have not seen in the past. The regulations that govern today's workplace in Massachusetts are extensive and expanding and reach employers of all sizes and in all industry sectors – each and every one of our members. Compliance obligations are burdensome and the corresponding liability and exposure for business owners, managers, and supervisors is extraordinary. In fact, the cost to settle an employment law suit has tripled during the last five years alone, to an average of more than \$300,000. The average compensatory award in federal employment cases now exceeds \$500,000. Unfortunately, there is no end in sight to this trend.

We created the General Counsel role for our organization to help bring calm to the chaos. **The Board is very pleased to announce that all CCHRA members in good standing will receive the following new special members-only benefits to allow members to keep pace with their compliance obligations and thereby more effectively manage HR-related risk:**

- **Gratis (no cost) advice and counsel** via telephonic access to Attorney Michael E. Foley, in his role as CCHRA General Counsel, during Mike's CCHRA Virtual-Office Hours (the first and third Tuesday of each month from 2:00 pm to 3:00 pm) in order to receive advice and recommendations on Employment Law Compliance and HR- Related Risk Management issues when they present.
- **Mike also prepares a semi-monthly CCHRA General Counsel Employment Law Report.** This will be a blog-type newsletter that will help all members keep pace with the constantly changing laws and regulations that govern their workplace, including best practices. That Employment Law Report is issued the second and fourth Tuesday of each month.



Additional CCHRA special Members-Only Benefits from Foley & Foley, PC

- The resource documents Mike distributed during his February 27, 2020 presentation:
 - [Changes to Massachusetts and Federal Employment Law Since 2014;](#)
 - [Pop Quiz with Answers;](#)
 - [Screening Applicants;](#)
 - [Positions Classification;](#)
 - [Menu of Services.](#)
- [Employment Counsel On-Call Triage Service](#) – Virtual In-House Employment Counsel Protection:
 - CCHRA Members with less than 50 employees will be protected for a fixed monthly fee of \$200; and
 - CCHRA Members with 50 or more employees will be protected for a fixed monthly fee of \$325.
- [Handbook Preparation/Updating Service](#) – Fixed-fee of \$1,800;
- [Diagnostic Compliance Audit of Personnel Practices](#) – Fixed-fee of \$2,400.

Our hope is that the special CCHRA Members-Only benefits help bring calm to the chaos.