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Managing Human Assets Gets Harder in COVID-19 Era



Workers in New York City continue work on essential housing and infrastructure projects under new 'social distance' rules and other jobsite changes.

PHOTO BY MICHAEL NIGRO/SIPA USA (SIPA VIA AP IMAGES)

Bruce Buckley, Scott Van Voorhis, and Debra K. Rubin

With myriad new federal, state and local COVID-19 rules covering a daunting list of workplace compliance issues for design and construction employers, the pandemic has elevated human resource managers to a new status as the knowledge center and key link between staff and chief executives.

From handling expanded emergency sick leave and payroll support to new policies for onboarding and training employees as work resumes or expands, they face mounting challenges to protect workers' health and the employer's financial well-being.

"The back-end departments are acting like first responders for employers right now," says Michelle Wightman, CEO of CSL Solutions, a California firm that provides HR services for 70 small companies, including specialty contractors. "We're navigating through all of this. We have to be able to make sense of what information is being thrown at us."

Wightman recalls a March 16 "business as usual" staff meeting that quickly changed in tenor as clients started calling with concerns. California's stay-at-home order three days later ramped up the queries as firms sought confirmation of construction as an essential business.

"During this time of major upheaval and uncertainty, the chief human resource officer is a loud voice in the coronavirus war room," says an [April 22 CNBC](#) report.

New Rules

Early on, many human resources concerns centered around new federal sick leave and family leave provisions, as employers feared a possible wave of workers needing time off because of COVID-19.

The Families First Coronavirus Response Act, which took effect on April 1, offers payroll tax credits to businesses with fewer than 500 employees if they provide a worker paid leave for an individual or family member's virus care. With firms clamoring for added federal guidance, an ongoing list of U.S. Labor Dept. updates and answers was approaching triple digits.

Under FFCRA, workers for eligible employers can receive up to 80 hours of paid sick leave at a rate equal to 100% of the employee's pay—capped at \$511 per day for a total of 10 workdays. Up to 10 weeks of qualifying leave can be counted toward the child-care leave credit at a cap of \$200 per day. The act applies to leave taken between April 1 and Dec. 31.

Wightman, who notes many employees who needed to take leave had already done so before the effective date, emphasizes that the law is "not retroactive." Most employees were either on unemployment or state disability.

"There's no [legal] exposure [for the employer] until after April 1," she notes. Eileen Levitt, CEO of a human-resources consultant in Columbia, Md., says her firm has been rewriting leave policies for its contractor clients since March. "We have a lot more people who think they are sick than people who are

sick,” she says. “We’re just treating them all as if they are positive [for COVID-19] until we know otherwise.”

“Most employers seem to have a pretty good grasp on leave requirements at this point,” says Erin Ebeler-Rolf, an Omaha employment attorney with industry clients. “Those I have worked with throughout the pandemic genuinely want employees to stay safe. That goes a long way.”

The Fine Print

In some cases, employees who take leave aren’t coming back to work, choosing instead to take unemployment. Levitt says in Maryland and other states, “if you have a fear of contracting the virus, it qualifies you for unemployment.” She adds that passage of the CARES Act boosts the ability to remain on unemployment. It includes a weekly \$600 federal bonus—in addition to standard benefits—through July.

But employee “telework” is a pay complication under the new federal COVID-19 coverage laws that will need to be resolved case by case, says Danny Jarrett, managing principal at Albuquerque-based law firm Jackson Lewis. He also sees potential issues from remote work in workers’ compensation claims.

There also could be conflict with union collective bargaining agreements.

Such pacts “do not exempt employers from complying with the FFCRA,” says Annette A. Idalski, national chair of the labor and employment practice at Chamberlain Hrdlicka in Atlanta. She says the law allows employers covered by union agreements to satisfy their obligations with added contributions to their multiemployer fund, plan or program in lieu of the new paid leave. Jarrett says recent guidance was issued by the National Labor Relations Board.

Disclosure of an employee’s COVID-19 illness has created another HR issue, balancing broad workplace protection with employee privacy.

Jarrett acknowledges that despite developng guidance from the U.S. Equal Employment Opportunity Commission, employers could face claims under the Americans With Disabilities Act and similar laws by revealing identities of virus-infected workers and also be sued for failing to take reasonable steps to prevent COVID-19 spread.

“At the end of the day, employers will find themselves being the proverbial birdie in the badminton game, trying to do the right thing to keep employees and customers safe while not crossing the legal line by being too aggressive,” he says.

Employees who are unwilling or unable to return to work can create problems with another new federal benefit that HR staffs have had to address—the Paycheck Protection Program (PPP). The program provides forgivable loans for up to eight weeks of payroll costs, including benefits, to businesses with 500 employees or less.

If at least 75% of the loan is used for payroll, PPP loans could be forgiven based on the employer “maintaining or quickly rehiring employees and maintaining salary levels,” says the U.S. Treasury Dept. Forgiveness is reduced if full-time headcount declines or salaries and wages decrease.

On the Hook

PPP is a potential lifeline for many construction employers, with the industry receiving the largest dollar volume of loans under the initial \$349-billion stimulus passed by Congress.

But Mike Oscar, director of government relations at the American Subcontractors Association, says its members still are struggling to meet requirements. “The problem is that many of our guys have workers who are unemployed,” he says. “[Contractors] get the paycheck protection and now are saying to those [unemployed workers], ‘You’ve got to come back to work. I’ve got the loan. I’m on the hook.’ And some aren’t thrilled to go back, but the reality is, if [the company] got the loan,” the employer will need the workers back.

Hiring and training workers in new skills for specific projects under social-distancing restrictions has created another layer of HR management concern, says Claiborne Guy, director of employment policy and practices at Associated General Contractors. “How do you handle that process now when it’s not face-to-face?” he says, noting that during the workforce crisis, contractors were too busy to be innovative. “Now they will have to innovate to survive.”

Richard Thorn, AGC of Utah CEO, says his chapter’s apprenticeship programs—including some that are run jointly with unions—are continuing to enroll but with adjustments. Classroom instruction is largely virtual, but social-distancing rules apply for in-person training. “You could teach the course virtually, but there has to be a testing element as well,” he says, noting ongoing concern in how to now safely operate a site.

Michael Gifford, AGC of Colorado president, says his chapter spent weeks working with state health officials on that challenge. “We developed a sample jobsite plan that goes through virtually every single scenario,” he says. “What do you do when workers have to come closer than 6 feet apart? How do you interview 300 employees who all need to get on a 30-story downtown construction project site all at once?”

Although contractors could follow federal and state guidelines, Gifford says processes for filing safety plans in Colorado can differ from county to county, forcing contractors to follow a mix of competing requirements.

CSL’s Wightman says HR units are under added pressure concerning COVID-19 worksite plans because of future liability risk when workers’ comp benefits are limited. “Those claims are capped, so, if there are damages, attorneys will look at filing a direct claim to the company,” she says.

Her clients have issued guidelines and protocols that employees have to sign. “We have a responsibility to organize information in a way that’s understandable. The fear is always you’ll get it wrong or misunderstand something, but you just have to keep plugging away.”

Looking North

Firms in Canada also face new COVID-19 workplace rules based on federal legislation and laws passed in several provinces since March. Federal rules ensure Canadians who are ill due to the virus are covered under medical leave laws.

Workers who go on leave can apply for \$2,000 a month from the federal government, while several provinces have instituted job protections for employees who take unpaid leave, says John Illington, an attorney in Toronto.

Ontario and British Columbia, major centers of construction, don’t require workers to obtain a manager’s permission for COVID-19 sick-leave requests and bar employers from requiring a medical certificate. Saskatchewan has passed similar rules, with all three provinces guaranteeing workers their jobs when they return from leave.

Still, how well the emerging patchwork of COVID-19 sick leave laws are working for design and construction sector companies depends on who you speak to.

Howard Levitt, a Toronto employment attorney who has industry clients, says that as some provinces begin to expand designations of essential construction in reviving their economies, contractors and other firms are having difficulty luring back employees from sick leave or furlough.

Recent Articles By Bruce Buckley

Georgia Power Cuts Vogtle Project Workforce Amid Increase in COVID-19 Cases

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As ENR Editor-at-Large for Management, Business and Workforce, Debra K. Rubin has a broad vantage for news, issues and trends in global engineering, architecture and construction—from corporate finance and executive management to regulation and risk, next-generation workforce and developing markets such as offshore wind energy.

Debra also launched and manages ENR's Top 200 Environmental Firms ranking, which defines a \$51-billion global market; and is editor of *ENR WorkforceToday*-newsletter on industry talent management; She also is a key organizer of ENR's annual **Groundbreaking Women in Construction** conference, a major AEC industry forum for talent management and women's career advancement.

[Click here](#) for more detail on the 2019 conference in May in San Francisco and plans in formation for the 2020 event.

Debra's reporting for ENR on the 2001 Ground Zero attack damage, response and recovery is featured in the National September 11 Memorial & Museum in New York City.