



Brian Mumaugh

Partner
303.295.8551
Denver
bmumaugh@hollandhart.com

COVID-19: Collective Bargaining Agreements

Insight — March 16, 2020

Last updated 3.16.2020

For Employers with employees covered by a Labor Agreement

- Check your Collective Bargaining Agreement (CBA) carefully to avoid violations of the CBA in respect to any bargained-for benefits and/or any changes to such benefits or policies implemented on account of COVID-19
- for those employees covered by a union-sponsored health & welfare insurance plan
- check with the union to determine what the plan provides, e.g. what is/is not covered
- consider asking a representative from the insurance plan to prepare a short summary of coverage and options for the employees
- consider whether the company is willing to supplement payment for COVID-19 related testing or for other related issues that may not be covered
- for example, consider offering to pay for COVID-19 related testing, or covering co-payments/deductibles directly related to COVID-19 testing
- if the company is considering changing or supplementing the terms and conditions of its employees' employment, then give notice and an opportunity to discuss it with the union ahead of time
- for employees covered under a company-provided health insurance plan
- check with a plan representative and determine what the plan provides, e.g. what is/is not covered
- consider asking a representative from the insurance plan to prepare a short summary of coverage and options for the employees
- consider whether the company is willing to supplement payment for COVID-19 related testing or for other related issues that may not be covered
- for example, consider offering to pay for COVID-19 related testing, or covering co-payments/deductibles directly related to COVID-19 testing
- altering, changing or supplement—even to the employee's benefit—the terms and conditions of employment, triggers the need

to give notice and an opportunity to discuss it with the union ahead of time

- Sick leave
- If the CBA provides for sick leave
- determine whether the CBA "rules" for sick-leave use allow for short notice, emergency notice, or after-the-fact requests to use sick leave related to COVID-19
- determine whether the CBA allows the company to compel an employee to use sick leave for public health reasons
- if the CBA is not clear or there is any concern that the union may challenge the company's actions, then discuss with the union before taking action
- If the CBA does not provide for sick leave (or available leave is insufficient)
- consider implementing temporary COVID-19-related paid leave of up to two weeks with documentation of a positive COVID-19 test, a positive COVID-19 test for a person living in the employee's household, or potential infection from vacation to/visiting a CDC category 3 area
- REMEMBER: if an infected employee comes to work because he/she "can't afford" to miss time—they will likely cause other employees to miss work
- providing additional leave changes the employees' terms and conditions of employment, which means the company must give the union reasonable notice and an opportunity to discuss it ahead of implementation
- Vacation leave
- if all other forms of available leave are exhausted, not available, or not an option
- consider allowing sick employees—at their option—to take time off/cover with vacation
- altering a leave policy is likely a change to the employee's terms and conditions of employment which triggers the requirements to provide the union reasonable notice and an opportunity to discuss it ahead of implementation
- Communication
- Keeping the business agent/local leadership informed as to company plans/policy changes is advisable
- unions do not benefit from having the employees they represent get sick or panic
- with respect to COVID-19 most unions are going to be willing to work with management to resolve these issues
- be sure to communicate clearly and in writing/via email—the company will likely want any changes made to be temporary and not precedent setting

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.