

Inside 2Q2020

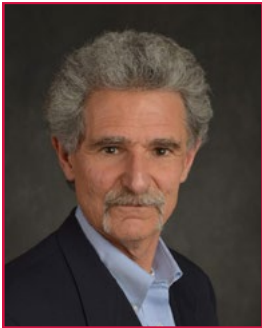
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FOCUS

President's Message

Bruce Martino



Dear Northeast Ohio Chapter Members:

ACC NEO started 2020 the same as we always do every year: the calendar was mapped out with substantive CLE and professional development programs, pro bono clinics, social events and more.

Ah, the best laid plans of mice and men! There is nothing like a pandemic to throw a monkey wrench into getting our regular work done.

Suddenly we not only had to continue doing our jobs as in-house counsel, we also had to set up home

offices that were secure and compliant. Then we had to become experts on the CARES Act and figure out multiple webinar platforms, all the while keeping our loved ones safe, homeschooled and fed.

Unfortunately, some are now dealing with furloughs, layoffs, or underemployment, and worry that the economy cannot recover soon enough. Lastly, there is of course the actual virus we need to avoid catching.

If nothing else, this pandemic has shown us how amazing we are at mobilizing swiftly to respond to the challenges it presented to us: Our law firm sponsors invited our members to join their many webinars and conference calls on dealing with the impact of COVID-19 on businesses.

Our Chapter provided members with timely updates on COVID-19 related information and resources and surveyed them on what they needed from us during these unusual circumstances. So far, we have offered three live Zoom programs and are working with our sponsors to move their programs online for the next few months.

I believe that we are all eager to return to business-as-usual when it is safe to do so. In the meantime, our sponsors are ready to share their legal expertise on current issues (COVID-19 or otherwise), and we know that you—our members—are seeking opportunities to enhance your professional skills and grow your network.

Thank you for being a member of ACC Northeast Ohio. We look forward to serving you. We also hope to see you again soon, whether virtually or in person.

Regards,
Bruce

Recognitions

We'd like to thank our 2020 sponsors for supporting our Chapter's educational and social programming:

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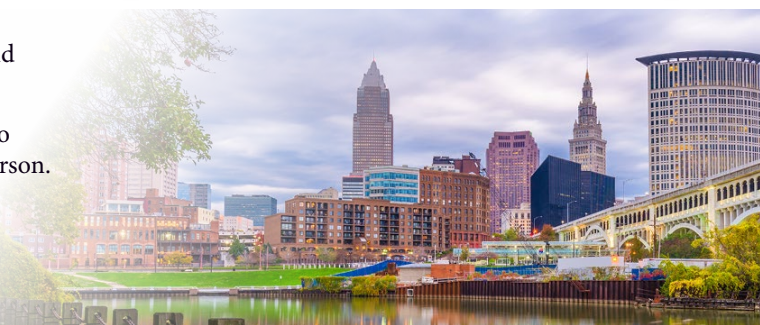
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Stepping Up: How Companies Are Helping First Responders During the Pandemic

By Karmen Fox

When COVID-19 spread across the globe, medical workers traveled from afar to help their peers beleaguered by overcrowded and understaffed emergency rooms.

Unfortunately, many regions were not prepared for the pandemic and didn't have enough personal protective equipment (PPE) needed to shield essential workers from the contagion. Hospital staff were forced to fashion [masks out of bandanas](#) and [wear ski goggles](#) to stop the spread of the coronavirus.

With inadequate government resources further hampered by delays, dozens of companies stepped up, converting their production facilities to make PPE for first responders, from jean brands sewing medical masks to brewers making hand sanitizer.

ACC Docket reached out to the in-house counsel of companies that are helping the heroes on the front lines. Below, they share how they repurposed their supplies and skills to help stop the pandemic, and how you can galvanize your company to help too.

Alpargatas/Havaianas — José Daniello, Chairman of the Board of the Alpargatas Institute and Director of People

What processes did Havaianas use before that made reconverting possible? (i.e., what tools, goods, techniques, etc. has your company traditionally used that made this effort happen?)

Havaianas is one of Alpargatas' brands. As a global company, we set up a crisis committee at the beginning of the coronavirus issue in China. We designed several scenarios and prepared to adapt the operation if needed.

Administrative professionals are working from home all over the world. We shut down brick-and-mortar stores and advised our franchisees to do the same.

We reduced production to safe levels and reinforced the essential product line to avoid any bottlenecks.

Our factories have been adapted to churn out new products: masks, lab coats, and hospital footwear. We made a commitment to produce and donate one million masks. This number may increase if we are able to source more raw material.

We are also donating 250,000 pairs of shoes to the underprivileged and healthcare professionals, the latter will receive a specific model for hospitals that we started to produce during the pandemic. In addition to footwear, 100,000 families will receive kits with essential products.

How are you balancing employee safety while ramping up production of equipment?

Since March 23, we have reduced the number of employees in logistics and production operations, reaching a minimum level and keeping only those who are essential, complying with health safety guidelines and rules. We are maintaining strict safety and social distancing standards in order to comply with the schedules and standards established in each region where we operate.

How does Havaianas ensure that it's complying with medical-grade sterilization techniques?

After all the adaptations that we promoted in our factories, we had an inspection from Anvisa, the regulatory organization that works with the Brazilian Government Healthy Ministry. They approved all the initiatives and changes in our production.

What internal stakeholders need to be involved to approve and implement these decisions?

The strategic committee, which includes the general counsel, is responsible to approve all the decisions.

How can in-house counsel who want to help during the pandemic get their stakeholders on board with implementing these decisions?

We have weekly lives streaming [calls] with all the employees to update the decisions, initiatives, and new processes during the coronavirus crisis.

In order to make it possible for individuals, such as employees and customers, to participate in helping the society, the Alpargatas Institute (IA), the company's social responsibility program, has created a fund. This fund will receive cash donations, which will be carefully recorded, and then converted into kits of essential products (e.g., hygiene products, food, and Havaianas) to be donated.

The kits are R\$15 and for each donated kit, the company will double the number of donations.

Lucky Brand — Maryn Miller, General Counsel

What processes did Lucky Brand use before that made reconverting possible? (i.e., what tools, goods, techniques, etc. has your company traditionally used that made this effort happen?)

As an apparel brand, it was fairly straight forward to pivot into non-medical cloth masks. Through our collaboration with LA City, we identified an appropriate pleated mask template, created by Kaiser Permanente and shared on [LApron.org](#).

With these tools and an existing apparel vendor base, we were able to identify a domestic vendor that was already sampling the same non-medical masks. Because we were flexible about fabric style choices, it allowed us to [produce our first 10,000 masks](#) within one and a half weeks. Since it was domestic production, we could deliver to our distribution center within four days.

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We have also partnered with other brands in The Open Innovation Coalition, led by Rothy's and including Fabletics, Marine Layer, Outerknown, and Thirdlove, among others. The purpose of the coalition is to gather others within our industry to information and resource share to factories currently producing protective equipment. The coalition has routed fabric and other supplies to [Suay Sew Shop](#), who are making a mask for medical and essential workers when there is a lack of N95s.

How are you balancing employee safety while ramping up production of equipment?

All of our corporate employees are working from home and have been sent cloth masks for their protection.

Our third-party distribution centers remain open and Lucky has given them the same masks to protect themselves at work. These distribution centers have also instituted social distancing measures on the floor for employee protection.

All of our stores are closed to the public, but 50 of approximately 200 are fulfilling online orders. While these store associates are working alone in store, they have also been given cloth masks to protect themselves going to and from stores.

In addition to sending all employees cloth masks, our human resources department has widely communicated information on social distancing measures and how to protect oneself.

The factory that produces our masks for sale is a contractor. All their employees have their temperature checked when they enter the building. They are aware of symptoms to look out for, are spaced properly to ensure social distancing, and wear masks and gloves at work.

What internal stakeholders need to be involved to approve and implement these decisions?

We have a crisis management team made up of the following positions:

- Chief financial officer and chief administrative officer
- VP Human Resources – Corporate and field

- Director, Loss Prevention and Corporate Security
- Director, OMNI operations and communications
- Director, facilities
- General counsel
- Chief technology officer
- Corp communications, HR program administrator
- CEO

How can in-house counsel who want to help during the pandemic get their stakeholders on board with implementing these decisions?

Stakeholders have been fully supportive of these decisions and are fully invested in efforts to help our community during this crisis, especially where the stakeholders see that the teams have thought through the legal, operational, and logistical considerations upfront.

How can the public support Lucky Brand's efforts?

Charitable donations are always a personal choice in both amount and recipient. At Lucky, we have offered our customers a few options to make an impact. They can purchase a five pack of masks and donate a five pack to our community partners and other beneficiaries recommend by the Los Angeles mayor's office.

Our [#LuckyTogether](#) page has information about how to donate directly to Suay Sew Shop, who are making masks for front line workers. This same page includes the donation pages of Lucky's community partners who service the unhoused in Los Angeles. Customers are welcome to choose how they want to participate and with who.

AB InBev — Cybelle Buyck, VP of Legal and Corporate Affairs

How is AB InBev helping the medical community during the pandemic?

We are a global company but strongly rooted in the local communities where we brew our beers, which is why we acted

quickly to support medical efforts in these communities.

As [medical] supplies shorten in the fight against COVID-19, our breweries are producing much-needed disinfectant alcohol and over one million bottles of hand sanitizer gel to distribute for free to hospitals and frontline workers in some of the most impacted areas.

We use the residual alcohol from the brewing process and work with excellent partners who complement our production capacity and determination to help with their expertise in making biocide products.

Additionally, in Belgium and the Netherlands, we are donating billboard space to support public health campaigns by FIFA and the World Health Organization (WHO), as well as the Dutch government.

We are also helping the medical community by donating water and non-alcoholic beers to hospitals and medical workers to support their work and show our appreciation. In some parts of the world, we are working with local authorities to build modular hospitals.

What processes did AB InBev use before that made reconverting possible? (i.e., what tools, goods, techniques, etc. has your company traditionally used that made this effort happen?)

We pride ourselves on being an agile company, able to act and react quickly. In order to produce disinfectant alcohol and hand sanitizers, we used our residual alcohol left over from de-alcoholising our non-alcoholic beers.

In addition, we reoriented multiple departments, such as procurement teams to purchase the packaging, our marketing team to develop the labels, our transport team to help with logistics, and our legal and corporate affairs teams to find the right places to distribute and cooperate with the governments' crisis coordination centers and hospitals.

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How are you balancing employee safety while ramping up production of equipment?

The health and safety of our people is our highest priority and we won't take any shortcuts in this area.

We have implemented a significant number of measures across our organization to ensure our colleagues have the support and resources that they need to stay safe and healthy. For instance, we proactively introduced enhanced cleaning cycles, social distancing measures, and entry-checks in many countries before they were mandated by the governments to safeguard our people.

Where we do produce hand sanitizer locally (e.g., in Germany or our small test brewery in Leuven, Belgium), in all circumstances, we ensure the strictest safety guidelines.

How does AB InBev ensure that it's complying with medical-grade sterilization techniques?

When we started the process to produce biocide products to help our communities, it was outside our comfort zone. We are brewers, not biocide producers. We started looking for experienced, fast-moving, and innovative partners who were familiar with the biocide regulatory framework.

Together with our partners, we were able to follow and adhere to the regulatory framework and in addition we received assistance from local governments and industry associations. Many governments made emergency exceptions in regards to obtaining biocide licenses and the European Union decided to release product standards free of charge, which has been a tremendous help.

How is AB InBev helping the public at large during this pandemic?

In addition to helping the public health sector, we are supporting our partners in the hospitality sector. As restaurants, bars, pubs, and clubs in many European countries have closed their doors, as

part of government efforts to contain the spread of COVID-19, we've acted quickly to support the hospitality sector.

In addition to offering deferred rent payments, free tap cleaning services, and keg restocks, our team has developed a series of online voucher platforms in Belgium, the United Kingdom, Italy and France, which allow individuals to pre-pay for beers in their favorite bar to redeem once reopened.

We've also pledged to match each donation, so pubs and bars get double the immediate cash injection. So far, almost 500,000 beers have been "prepaid."

In addition, we have also supported our local communities through donating laptops to support distance learning for children and young students.

What internal stakeholders need to be involved to approve and implement these decisions?

Helping to combat the effects of COVID-19 for our colleagues, customers, and communities has been a company-wide effort. All teams are involved and needed to implement decisions, ranging from our brewery teams to marketing, procurement, legal and corporate affairs, IT, and logistics colleagues.

We have an ongoing dialogue with our global senior leadership team but also operate as a European team to decide how best to support the communities we live and work in.

How can in-house counsel who want to help during the pandemic get their stakeholders on board with implementing these decisions?

In-house counsel have to radically prioritize time and resource to deliver workable solutions for rapid – and compliant – deployment of critical community support measures. Achieving that for each initiative means focusing on its specific legal challenges (e.g., permits for hand sanitizer) and covering compliance triggers.

At the same time, in-house counsel need to keep all stakeholders on the right path, even in tumultuous times, through a consistent drumbeat of reminders on data protection, antitrust, anti-corruption, anti-fraud, and other compliance requirements.

Once it's clear that in-house counsel are on top of initiatives and retaining broader compliance control even in a crisis, stakeholders are confident to back novel measures to the fullest.

Operation BBQ Relief — David Rosen, General Counsel

Operation BBQ Relief has been helping communities affected by disasters across the United States since 2011. How does your team determine which areas to help?

Since 2011, Operation BBQ Relief has provided meals to those in need and to support first responders, military personnel, and veterans. As a 501(c)(3), our charitable mission is to provide comfort to those in need by connecting, inspiring, serving, and educating in communities far and wide. Whether it is in response to a natural disaster, or as is this case now, a pandemic, we are doing our best to respond and make a positive impact in as many communities as possible.

Through our new program, Operation Restaurant Relief, we empower a local restaurant to reopen and rehire formerly laid off employees while providing 2,500 free meals per day to their community. The Operation BBQ Relief programs department developed this program and implemented it within a few weeks, and the results thus far have been very successful.

What we need most of all is funding to activate in new areas. We rely heavily on our corporate sponsors and donors. Our COVID-19 deployments started in our hometown of Kansas City, and expanded to a Kansas City restaurant, South Carolina restaurant, then via the sponsorship of Dignity Health, we activated a restaurant in Bakersfield, CA.

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The Pennsylvania Department of Health Services contracted us to feed 180,000 meals per week in conjunction with The Salvation Army. We understand the need at this time is far and wide, and we are trying our best to help in as many places as possible. We hope to work with corporations ready to deploy our resources in their local community to feed those in need and get seven to 10 employees working again at each restaurant.

How is Operation BBQ Relief helping medical, first responders, or other essential workers during the coronavirus pandemic?

They have been one of Operation BBQ Relief's targeted beneficiary groups. Our restaurant contractors have been delivering meals to their facilities.

How has Operation BBQ Relief helped other community members during this pandemic?

Operation BBQ Relief understands the comfort a hot meal brings to both the body and soul. Through Operation Restaurant Relief, we are providing that comfort to those in need, first responders, and other front-liners. The added benefit

is the reemployment of previously laid off employees at our restaurant contractors.

How is Operation BBQ Relief ensuring the safety and health of its chefs and volunteers during the pandemic?

Operation BBQ Relief is committed to following all US federal, state, and Center for Disease Control (CDC) guidelines, with relation to all laws, rules, and regulations. During this crisis, we have continuously updated our standard operating procedures and policies to reflect the changing guidelines.

We have implemented many new operational protocols governing mask usage, gloves, mandatory glove changes, sanitization of all hard surfaces every 30 minutes, checking the temperature of incoming people and then again randomly throughout the day, and many other [rules].

What internal stakeholders need to be involved to approve and implement these decisions?

The Operation BBQ Relief programs department evaluates potential deployment sites and then the CEO with

input from the management team makes the final determination.

How can in-house counsel who want to help during the pandemic get their stakeholders on board with implementing these decisions?

Operation BBQ Relief is actively looking for corporate partners and donors that want to make a positive impact in their local communities. Please share this information with decision makers within your corporate foundation, corporate social responsibility department, marketing department, and the executives.

How can the public support Operation BBQ Relief efforts (aka deployments)?

Please visit www.obr.org to get involved and become a registered volunteer or make a donation.

For more advice on the coronavirus pandemic, visit our [Coronavirus Response Resource Page](#).

Author:

Karmen Fox is the web content editor of ACC Docket.

ACC News

2020 ACC Annual Meeting: It's Happening.

Mark your calendars for October 13-16. For the first time, ACC Annual Meeting will be taking place in-person in Philadelphia, as well as virtually. Reserve your spot today at acc.com/annualmeeting.

In-house Counsel Certified (ICC) Designation

The [ACC In-house Counsel Certification Program](#), helps in-house counsel become proficient in the essential skills identified as critical to an in-house legal career. The program includes live instruction, hands-on experience, and a final assessment. Those who successfully complete the program will earn the elite ICC credential. Your law department and your employer will benefit from having a lawyer that returns with global

best practices in providing effective and efficient legal counsel. Attend one of these upcoming programs:

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New ACC Report Shows the Value of Legal Operations

One of the most comprehensive reports of its kind, the [2020 ACC Legal Operations Maturity Benchmarking Report](#), created in partnership with Wolters Kluwer Legal & Regulatory, analyzes data for 316 legal departments of all sizes, across 29 countries, and 24 industries. Quickly assess how your department rates and develop a roadmap to improve critical functions. [Download this complimentary report now.](#)

How State Short-Time Compensation Programs Can Help Employers Reduce Costs, Avoid Layoffs, Furloughs

By Patrick O. Peters

Employers are struggling to balance competing priorities during the COVID-19 pandemic. These include, for example, reducing costs, maintaining workforces, and ensuring employee safety and economic welfare. In 26 states and the District of Colombia, a short-time compensation (“STC”) program (in Ohio known as “SharedWork Ohio”) offers an alternative to furloughs and layoffs that minimizes the financial impact on employees.

STC programs are unemployment benefit programs that permit participating employers to reduce hours and corresponding wages temporarily for some or all of their employees. The affected employees, in turn, become eligible to collect partial unemployment benefits, enabling them to recoup some of the lost pay. The program benefits employers because it permits them to implement cost-saving measures while maintaining their workforces (so that they are ready to resume normal hours and operations in the future) while minimizing the financial impact on their employees. The program benefits employees because it allows them to keep their jobs while collecting partial unemployment benefits, even when they otherwise would be ineligible to do so because their income, even as reduced, is too high.

When considering whether to implement layoffs, furloughs, or hours reductions for some or all of their employees, therefore, employers should consider whether an STC program right for them. The time to do so is particularly ripe now because the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act provides that any employees who collect any unemployment benefits (whether full or partial) receive an additional \$600 per week, at least through July 31, 2020.

Employers considering adding an STC program to their crisis management toolbox should do so with an understanding of the many issues that may arise.

This special report explains what an STC program is and outlines issues for employers to consider when evaluating whether to adopt one.

I. What Are STC Programs?

Under an STC program, employees of a participating employer are eligible to receive partial unemployment benefits for periods during which the employer reduces their hours and their pay, even if the employees otherwise would not qualify to receive them. For states that have adopted them, STC programs are administered by the state agency responsible for handling unemployment benefits. SharedWork Ohio is administered by the Ohio Department of Job & Family Services (“ODJFS”).

Generally, to participate, an employer submits a plan to the agency for approval. Once the agency approves the employer’s plan, the employer may reduce hours and compensation temporarily for some or all of its employees in accordance with that plan, and the affected employees may collect unemployment benefits related to the reduction.

For example, instead of laying off 20% of its workforce, a participating employer may reduce all hours (and payroll) across its entire workforce, or a segment of its workforce, by 20%. The affected employees would receive 80% of their regular pay from the STC employer. They also would be eligible to collect partial unemployment insurance benefits from the state to off-set the reduction, at least in part.

States with STC programs include Arizona, Arkansas, California, Colorado, Connecticut, Florida, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Washington, and Wisconsin.

Under the CARES Act, the federal government reimburses currently participating states for 100% of the STC compensation benefits they pay. Recently implemented CARES Act incentives are prompting other states to create STC programs of their own. The CARES Act provides states considering STC programs with grant money and offers of full or partial STC benefit reimbursement.

II. Why Employers Should Consider STC Programs Now

While each state offering an STC program has its own formula and state-specific variations, there are two attributes common to all, which make STC programs particularly attractive now.

First, employees who otherwise would not be eligible to collect unemployment benefits become eligible to collect partial unemployment benefits. This differs from standard unemployment insurance programs. Typically, if an employer reduces hours and compensation, many employees would be ineligible to collect unemployment benefits because their wages, even as reduced, would remain above maximum eligibility thresholds for unemployment benefits. STC programs significantly relax such thresholds for employees participating in the employer’s STC plan. Thus, STC programs can help employers alleviate the effect of cost-saving measures taken as a result of current circumstances.

Second, under the CARES Act, all employees who receive any unemployment benefits whatsoever (whether it is total unemployment benefits because they are not working at all or partial unemployment benefits due to reduced work hours) also will receive an additional \$600 per week (commonly referred to as the “unemployment boost”) through July 31, 2020. This additional benefit alone will make most employees participating in an STC plan whole or even have them come out ahead.

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The following examples are illustrative, using the SharedWork Ohio formula. The STC contributions represented in the examples below represent 20% of the employee's maximum unemployment benefit based on weekly income, but do not account for outside income, dependent credits, or any other factors used by the Ohio Department of Job & Family Services to calculate unemployment benefits. In addition, each state has its own maximum unemployment benefit and its own formula for calculating unemployment benefits.

In Ohio, the maximum unemployment benefit is \$480, which was used in calculating the STC contribution in the second example.

Example 1

An employee who makes \$26,000 per year and experiences a 20% reduction in hours and income potentially may receive double their average weekly wages through July 31, 2020.

Regular Weekly Wages: \$500

Reduced Weekly Wages: \$400

Workshare benefit: \$50

CARES Act: \$600

Total: \$1,050

Example 2

Likewise, an employee who makes \$150,000 per year and experiences a 20% reduction in hours and income through an STC program potentially may receive more than their average weekly wages through July 31, 2020.

Regular Weekly Wages: \$2,884.62

Reduced Weekly Wages: \$2,307.70

Workshare benefit: \$96

CARES Act: \$600

Total: \$3,003.70

III. What Employers Need to Know about STC Programs

While STC programs make sense (at least through July 31, 2020, and, perhaps,

beyond), employers should consider the following issues:

1. Existing state STC programs vary in their eligibility and reporting requirements. As new states implement their own temporary or permanent programs, additional variations likely will emerge, with respect to, for example, whether a participating employer must: reimburse the state for amounts paid out to its employees (only in states that implement temporary STC programs in response to COVID-19); submit certain reports on participating employees; or follow various rules about employee participation and work levels. Employers should review carefully applicable state-specific requirements (in the states in which the employees work) before signing on to a program. Because of state-specific requirements, there is no one-size-fits-all solution and employers should prepare for the administrative burdens of creating a plan and completing the application process. Employers also should prepare systems for monitoring and reporting on on-going compliance.
2. The \$600 unemployment benefit "boost" under the CARES Act is set to expire July 31, 2020.
3. Employers typically must certify that their STC program is necessary to avoid a layoff or furlough. Thus, participation in an STC program may preclude employers from conducting closures, layoffs, furloughs, or otherwise changing their STC programs for some period. Likewise, some states may preclude employers from hiring new employees until the existing workforce is returned to regular hours.
4. Employers should consider carefully the scope of their potential STC plan and identify specifically the groups that will be affected. Employers have some flexibility in defining the applicable "group" or "unit" of employees under an STC plan (e.g., by department, job function, and shift). Depending on the state, employers may submit multiple plans for different groups. For example, an employer could submit one plan for a 20% reduction in hours for its marketing department and a second plan for a 30% reduction in hours for the operations department.
5. In most states, STC programs typically require a uniform reduction in hours for all employees within the defined group. The reduction in hours (and commensurate reduction in pay) is generally 10%-60%, although the range may be smaller in some states. For the duration of the program, employees generally are prohibited from working for their employer for more than their reduced schedule. Performing work for the employer that is outside their defined reduced schedule could jeopardize the program for all participating employees.
6. Employers are required to maintain employee benefits, including health insurance and retirement benefits. Along with factoring in the cost of continued benefits, employers should review applicable plan documents and coordinate with benefits providers to ensure continuity during the program.
7. While many states permit exempt employees to participate in STC programs, potential complexities may arise with including them in the STC program. First, STC programs require employers to track hours worked, which employers seldom do for exempt employees. Second, given that exempt employees' compensation is not supposed to vary with hours worked, a reduction of hours (and pay) may end the exemption. While there is Department of Labor guidance to support the view that a temporary reduction in hours and proportional reduction in pay during an economic downturn will not violate the salary basis test and (therefore, not destroy the exemption), employers should be aware of the potential risks and explore options to mitigate them.

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Once largely overlooked, STC programs are taking center stage as more states implement, and more employers utilize, them. Employers should draft STC plans that address the issues noted above and adhere to the plans once implemented.

Finally, as with any other employee-relations initiatives, employers implementing STC programs should do so with transparent and thoughtful employee communications.

Author:

Pat Peters is a Principal with the Cleveland office of Jackson Lewis P.C., a firm focused on labor and employment since 1958. For more information, visit <https://www.jacksonlewis.com>. Patrick can be reached at Patrick.Peters@jacksonlewis.com.

After the Dust Settles, A New Storm Emerges: Workers' Compensation Claims for COVID-19

By Scott Gedeon

As the COVID-19 pandemic engulfs our nation, it is likely that after the dust settles with the initial unemployment and sick leave issues, a new storm may emerge. That being, workers' compensation claims related to COVID-19 diagnoses. It is highly likely that the Plaintiff's bar in conjunction with various unions would look to have the treatment and lost time of employees who miss work or require medical treatment for COVID-19 to seek workers' compensation benefits for this condition.

In order to prevail on a claim for COVID-19, that condition would be considered as an occupational disease and a claimant would have to show by a preponderance of the evidence that it: 1) contracted COVID-19 in the course of employment; 2) that COVID-19 was peculiar to employment; and 3) that the person's employment created a risk of contracting COVID-19 to a greater degree than the public generally.

As you may know, common colds and conditions such as the flu are not compensable as they may be transmitted in a variety of settings with occupational settings being only one. Because of that, these conditions, such as the flu or COVID-19 are not peculiar to employment or the employment does not create a risk of contracting or developing the condition to a greater degree than the public generally.

However, it is highly likely that medical personnel and other first responders who have treated COVID-19 patients or come in direct contact with persons with the virus as part of their job duties would potentially meet this test. However, as conditions such as the flu and other contagious conditions generally do not meet the test for a compensable occupational disease, it is likely that COVID-19 would be created similarly.

Employers should also be aware that it is highly likely that the Ohio General

Assembly could take some action to create exceptions to the compensability of COVID-19 on a limited basis given the scope and magnitude of the pandemic. However, that is solely speculative and may not be something that we will see for quite some time.

In the meantime, employers should continue to take all reasonably necessary steps to keep their workplaces healthy and to follow all local, state and federal guidelines for maintaining a safe workplace amidst the COVID-19 pandemic. The issue of the compensability of the condition will be sorted out after the dust settles.

Author:

Scott Gedeon is an attorney in the Cleveland office of Fisher Phillips, a nationwide labor + employment law firm with 36 offices in the United States. For more information on the firm, please visit FisherPhillips.com. Scott can be reached at sgedeon@fisherphillips.com.

Welcome New (and Recently Renewed) Members!

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Lena Buttkus

Kendra Carpenter

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John Dziewisz

Patricia Gaul

Alyse Giallourakis

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Employers' Guide to Ohio Unemployment Compensation Benefits during the COVID-19 Pandemic

By Jessica Bieszczak

In response to COVID-19 and the current economic downturn, employers across Ohio have experienced a dramatic decline in business. As a result, many employers have laid off or furloughed a significant portion of their workforce. This has prompted many Ohio employers to consider whether their employees are eligible for unemployment compensation benefits and to assess their corresponding obligations to support their workforce during these economic challenges. This article focuses on some of the most popular questions about unemployment compensation in Ohio.

Expanded Eligibility

On March 15, Ohio Governor Mike DeWine [expanded eligibility](#) for Ohio workers to receive unemployment benefits during Ohio's indefinite emergency declaration period. Unemployment is now generally available for employees who are laid off or whose hours are reduced because of lost production or a shut down due to COVID-19, as well as for certain employees who are quarantined at the direction of a medical professional, health authority, or their employer – even if they are not diagnosed with COVID-19.

Waiting Period. The March 15 order waives Ohio's one-week waiting period for eligible workers to receive benefits, so workers may apply for benefits immediately.

Employer Obligations

New Layoff Number and Guide. The Ohio Department of Job and Family Services (ODJFS) is requesting that employers distribute [this guide](#) to their employees and provide them with this layoff number: 2000180 to expedite claims.

Notice Requirements. A layoff of 50 or more individuals because of lack of work within any 7-day period requires employers to provide the ODJFS with at least 3 working days' notice prior to the first day of the layoff or separation.

Additional Benefit Amounts

Most Ohio workers can receive between 20 and 26 weeks of benefits at 50% of their average weekly wage, assessed on a case-by-case basis. Individual workers can qualify for between \$134.00 and \$480.00 in 2020, although that amount could be higher if a worker has dependents.

CARES Act Expanded Benefits. The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act expands the amounts eligible, unemployed workers can collect by \$600 per week (in addition to their weekly Ohio benefit amount) for weeks of unemployment from March 29, 2020 through July 25, 2020, and extends eligibility by 13 weeks once the worker exhausts their state benefits. The extra \$600 under the CARES Act is paid automatically, and the first payment will include any retroactive payments.

PUA Benefits. If a worker is not eligible for Ohio unemployment benefits, then they can apply for Pandemic Unemployment Assistance (PUA) benefits, which cover certain COVID-19-related job losses and may extend to independent contractors. Workers will generally receive at least the equivalent of Ohio's minimum benefit under PUA for up to 39 weeks, plus the additional \$600 per week CARES Act benefit. PUA is available retroactively from the first date of eligibility beginning on February 2, 2020 through December 26, 2020. As of today, workers may pre-register to "get in line" for PUA [here](#). The full application process will likely be available in mid-May on the ODJFS website.

Health Benefits. Employer-provided health benefits do not impact Ohio benefit amounts, but other supplemental income, such as PTO or vacation benefits, may reduce an employee's benefit.

School Closures

Due to school and childcare closures, many parents are left to juggle childcare and work obligations. At this time, unem-

ployment or reduced hours due to caring for a child are not covered and workers are not eligible for Ohio benefits, though they may be entitled to PUA benefits.

Voluntary Quarantines

Employees who are unable to work remotely and fear COVID-19 exposure at work may request to self-quarantine. Employees who undertake a voluntary self-imposed quarantine, not at the direction of a medical professional, health authority, or their employer, are not entitled to unemployment in Ohio. Depending on the circumstances, they also may not qualify for PUA.

Voluntary Layoffs

While employees subject to mandatory layoffs due to COVID-19 are generally eligible for unemployment, employees who volunteer for layoff may be ineligible for benefits. Ohio requires that employees quit with just cause or be terminated without just cause to qualify for unemployment, which may exclude COVID-19-related voluntary layoffs.

Employees who volunteer for a layoff may also be ineligible for CARES Act benefits. On April 2, 2020, the U.S. Department of Labor (DOL) issued [new guidance](#) reiterating that quitting work without good cause should mean that a worker is not entitled to benefits and stressing that quitting work without good cause to obtain additional benefits is punishable fraud under unemployment laws.

Though the risk of spreading or contracting COVID-19 arguably falls under the category of quitting with just/good cause, this argument has not been tested.¹ Nevertheless, in keeping with the spirit of the CARES Act, Ohio may broadly interpret eligibility to provide wide-ranging opportunity for workers to receive benefits. Due to the uncertainty in interpretation, employers should consult with legal counsel before implementing voluntary layoffs to understand the risks to their employees' unemployment benefits.

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Partial Unemployment.

Workers who are partially unemployed due to lack of work caused by COVID-19 may be eligible for Ohio unemployment, though their earnings may reduce or eliminate the amount of unemployment they receive. Workers whose earnings are equal to or less than 20% of their weekly benefit amount will receive their full benefits. Any earnings over 20% of a worker's weekly benefit amount will reduce the benefit payment dollar for dollar. Earnings equal to or in excess of the weekly benefit amount will result in no Ohio unemployment benefits.

Whether a partially unemployed worker may collect the extra \$600 per week

under the CARES Act depends on whether they received at least a nominal amount of state unemployment. On April 4, 2020, the DOL issued Unemployment Insurance Guidance Letter 15-20 (UIPL 15-20), which provides that:

1. States will calculate the weekly benefit amount;
2. If the individual is eligible to receive at least one dollar (\$1) of underlying state benefits for the claimed week, the claimant will receive the full \$600 payment.

Accordingly, partially unemployed workers earning more than the Ohio weekly benefit amount (and not collect-

ing state benefits) are also ineligible to receive the extra \$600 payment.² In some cases, employers may consider laying off workers completely so workers can collect Ohio unemployment and the extra \$600 payment. At minimum, to ensure that workers are able to access expanded unemployment benefits, employers may consider scheduling employees such that they will not earn more than Ohio's weekly benefit amount for any week.

Author:

Jessica Bieszczak is an Associate with the Cleveland office of Littler Mendelson P.C., a labor and employment firm that is fueled by ingenuity and inspired by you. For more information about the firm, please visit Littler.com. Jessica can be reached at jbieszczak@littler.com.

¹ To date, the DOL has not explained how an individual who might be disqualified for state benefits by quitting without just cause would also not be eligible for PUA benefits if the reason for quitting is "directly related" to COVID-19.

² Though a threshold requirement of PUA is that the worker "is not eligible for regular compensation or extended benefits under state . . . law[.]", it is unclear whether partially unemployed workers who are eligible for Ohio unemployment but whose weekly benefit amount is \$0 due to their wages amounting to or exceeding their weekly benefit amount, and who have a COVID-19 reason for PUA, would be entitled to PUA plus the \$600 extra pay.



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4.2020

NEO CHAPTER NEWS

We ♥ CLEs + ROUNDTABLES

Medical marijuana and where it fits into the workplace

In early November, Frantz Ward hosted a RoundTable at its downtown Cleveland office. ACC NEO members and the firm's attorneys enjoyed a wonderful array of gourmet goodies and drinks while enthusiastically discussing medical marijuana and where it fits into the workplace. Special thanks to our expert hosts: Pat Haggerty, Tom Haren, Christina Niro and Andrew Cleves.



What's HOT in Legal Ethics + Professionalism

In late November, Porter Wright hosted an afternoon CLE, *What's HOT in Legal Ethics + Professionalism* at the Union Club. The program focused on sensitizing in-house counsel to the ethical issues and realities they face in their challenging roles while wearing multiple hats. Key topics that were discussed included hot issues in cybersecurity, data breaches and social media; a panel of three judges from Cuyahoga County Common Pleas Court provided perspective on what attorneys need to be sensitive to; and developments in conflict issues.



Before, During, After: What are an Employer's Responsibilities When an Employee Transitions Gender?

In December, Fisher Phillips wrapped up the year's programming with a CLE, *Before, During, After: What are an Employer's Responsibilities When an Employee Transitions Gender?* The presenters discussed what employers' legal obligations are when an employee announces that they are transitioning genders. The panelists presented examples of what has been done so far—with feedback on what worked and what didn't—and how employers can turn it into a positive experience for the workplace.

Afterwards, attendees were invited to compete against each other on the venue's indoor go kart racetrack. The skills were strong on this one, but Steven Lee, General Counsel for the Oswald Companies, zoomed his way into first place, winning himself a swell trophy and \$100 gift card to BOSS Pro-Karting, the venue where the program was held.



Tips for Proxy Season and Year-end Reporting

Squire Patton Boggs kicked off ACC NEO's 2020 programming in January with a 1.0 CLE, *Tips for Proxy Season and Year-end Reporting*. With the 2020 public company proxy season and year end reporting cycle in full gear, this course will provide an overview of and tips for navigating issues, updates and trends making an impact this year, including: SEC rule updates and activity affecting the proxy statement and Form 10-K; hot governance and disclosure topics, including diversity and ESG; and proxy advisory firm developments.



FEBRUARY WAS BUSY WITH THREE PROGRAMS:

Workplace Technology, and its Security and Privacy Implications for Businesses

Littler hosted a RoundTable about workplace technology, and its security and privacy implications for businesses. During the engaging discussion, we covered biometrics, location tracking, microchipping, texting, wearable tech, and even drones in the workplace, and what companies should be doing to anticipate and minimize risks while reaping the benefits of the latest advances.

Reading Financial Statements - The Basics

Mid-month, Brouse hosted a 1.5 CLE, *Reading Financial Statements - The Basics*. The presenters identified and explained the three sections that comprise most annual reports: the Executive Letter, the Business Review, and the Financial Review.



Working with Executive Teams to Analyze Risk and Develop Strategy to Resolve Business Issues

McGlinchey hosted a 2.0 CLE, *Working with Executive Teams to Analyze Risk and Develop Strategy to Resolve Business Issues*. The program provided guidance on how in-house counsel can work effectively with executives to analyze and mitigate business and operational risk and develop strategies to avoid and/or resolve compliance issues or business disputes.



More Data, More Regulations, More Threats – Your New Problems: The World of Doubling Data Sizes

Right before Ohio Governor Mike DeWine issued a stay-in-place order because of the COVID-19 outbreak, Epiq Global and Frantz Ward co-presented a half-day CLE, *More Data, More Regulations, More Threats – Your New Problems: The World of Doubling Data Sizes*.

The program covered several topics related to data management, privacy and security, including complying with several new regulations; taking advantage of the protections afforded to businesses by the Ohio Data Protection Act; the ethics associated with eDiscovery; preventing and mitigating your exposure to data breaches and liability; and how to treat data once obtained. The last portion of the program was dedicated to Q+A, with all panelists and speakers participating.



A cocktail for me and thee: Littler crafts another amazing winter social

The Velvet Tango Room—the venue for our 2019 Winter Social— isn't the kind of bar where one orders a Bud Light or a whiskey and soda, any brand will do. No, this is the kind of classy joint where the drink list is a leather-bound book and the cocktails are all handcrafted from scratch.

Even more special for the more than 53 attendees— ACC NEO members, their guests and the Littler team—was the exclusiveness of the elegant back room where our party was held:

Thank you again to the Littler team for sponsoring and hosting this year's Winter Social. Well done!





The Right Stuff

A guide to leveraging your
ACC NEO membership
(even when a pandemic blows an engine
in your lawyer module)

GIVE BACK TO THE UNIVERSE (when you feel comfortable doing so!)

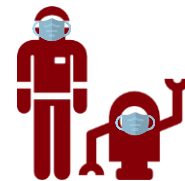
- Volunteer for one of our pro bono events
- Write an article for our quarterly newsletter
- Inspire law school students to consider an in-house career
- Join an ACC NEO Committee



* NOT a graphic of the coronavirus

EXPAND YOUR NETWORK

- Schmooze with fellow members at one of our virtual Happier Hour programs, which focus on professional development and health + wellness for corporate counsel
- Join one of our virtual RoundTables, an informal forum for members to discuss work challenges with each other



* Remember to practice safe
social distancing!

BE A STAR

- Sign up for our upcoming virtual and in-person CLEs, which are FREE to ACC NEO members
- Attend ACC's Annual Meeting this October, in-person or remotely—your choice!
- Tap into ACC's extensive online resources



BLAST OFF!

Be sure to complete your ACC member profile and
set up your username/password to ensure you
have access to ACC's full buffet of online resources



START HERE!

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Executive Director

Betsy Keck

216.333.3008

neoh@accglobal.com



Betsy Keck
Executive Director
2195 Cranston Road
University Heights, Ohio 44118