



NEW YORK STATE
RESTAURANT
ASSOCIATION

JacksonLewis

BACK TO WORK:
Legal Issues Operators Should Be Thinking About as
They Plan for Reopening

Friday, April 24 | Webinar will begin at 11 a.m.

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Back to Work: Legal Issues Operators Should Be Thinking About as They Plan for Reopening

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Please note: no legal advice

- The information provided is not legal advice. We will not be able to provide individualized answers to an operator's particular circumstances. We urge our restaurant operators to consult with retained professionals to secure legal compliance.

What we will not be talking about?

- CARES Act - PPP
 - Regulations required to be issued by April 26th.
 - There remain significant unanswered questions.
 - Regulations will hopefully fill in the gaps in the statute.
 - Just yesterday, guidance was issued that significantly changed prior understanding regarding eligibility requirements.
- Specific reopening safety guidelines
 - Will be determined by the governor (and municipalities)

Rehiring employees

- Selecting who to bring back
 - Furlough versus layoff – how does this impact the question?
 - Analysis should be the same as in a mass layoff scenario – need objective, consistent criteria.
 - Not rehiring someone may be viewed in the same lens as a termination.
 - Not just a “clean slate” for restaurants to bring back only those employees they want to return.

Revisiting WARN

- Should restaurants still be thinking about sending notices?
- Implications of not bringing everyone back
 - Could trigger a WARN violation even if fully operational within 6 months of original layoffs/furloughs

Onboarding requirements

- Terminated employees who are rehired are new employees
 - Need new wage notice forms at hiring
 - Do not need new I-9 if gone less than 6 months
 - Best practice is to reissue handbook (or other legally required policies, such as non-sexual harassment policy, sick leave)
- Benefits waiting periods?

What to pay employees

- Need to incentivize to return?
 - Enhanced unemployment benefits through July 31, 2020
 - Appreciation pay – “hazard pay” has unwanted connotation
 - Potential for partial unemployment benefits
- Heightened benefit of paying full minimum wage to FOH staff
 - Provides more flexibility with assigned duties
 - With reduced staff, may be more difficult to comply with 80/20

Are exempt employees still properly classified?

- Misclassification concerns
 - Employees may no longer be performing their usual duties
 - If supervisors are brought back first, are there a sufficient number of employees for them to supervise?
 - Consider paying higher hourly rate for lower level supervisors, at least on temporary basis

Eligibility for sick and other paid leave

- Families First Coronavirus Response Act (“FFCRA”) – applicable to employers with fewer than 500 employees
 - Emergency Paid Sick Leave - employees are immediately eligible, assuming qualifying reason
 - Emergency Paid Sick Leave is in addition to any sick time provided for by policy or under state/local law (e.g. in addition to sick leave required under NYC law)
 - After 30 days of employment - paid FMLA due to need to care for a child whose school or place of child care has closed (potential exemption for employers with fewer than 50 employees if provision of this leave would jeopardize viability of the business)
- New York expansion to Paid Family Leave
 - Pay for quarantine

Eligibility for sick and other paid leave

- NYC Safe/Sick leave – accrued hours are reinstated if employee is rehired within 6 months
- PTO (separate from sick time) – dictated by policy
 - Usually, employers reserve broad discretion to approve PTO and have ability to institute policy to prohibit PTO use (must be consistent)
 - Ensure that policy does not permit payout of PTO at end of year or at time of separation



Questions?

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Thank **you.**