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Publication

04/22/2020

Back to Basics: Managing Through COVID-19 with Traditional Labor Law | Part 3

This alert is part three of our five-part series: "Back to Basics: Managing Through COVID-19 with Traditional Labor Law." The rest of the series will be posted each day this week.

Part 3: The Duty to Provide Information

In addition to the obligation an employer may have to bargain over any decision to change the way it operates or any duty to bargain over the effects of such changes, the employer may also have a duty to provide the union with information it may request that is "relevant and necessary for the union to perform its duties as the employees' bargaining representative." In times of uncertainty and instability, it is very common for unions to request vast amounts of information relevant to the employer's current situation as well as any plans it may have to impose changes.

For example, the union may initially request copies of all of the employer's policies, practices, and rules regarding safety, including information on how the employer has enforced its safety programs in the past. The union may request information regarding how the employer intends to comply with government safety mandates or guidelines. The union may also request information

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regarding incidents of illness or injury (subject to rules regarding employee medical information as confidential).

Since the information requested is relevant to the union performing its obligations and the employees' bargaining representative, the employer is obligated to furnish it. However, there are some limitations. The employer is only obligated to furnish such information *if* it has it. It is not obligated to create information it does not have. Likewise, although the employer is obligated to furnish the information in a timely manner, the union cannot place an arbitrary deadline on when the information must be furnished. If the union's deadline is unrealistic, the employer should simply notify the union of when it reasonably believes it can provide the information. And, if the requested information is voluminous or will take an extraordinary effort to compile and/or copy, the employer can consider inviting the union to the facility to review the information, or it can expect the union to pay some or all of the cost of compiling and duplicating the information.

Coupled with a request for relevant information, the union may also "insist" that the employer impose certain changes and safeguards to protect the health and safety of its employees. Whether or not the employer is obligated to make such changes or even to bargain about them should be carefully reviewed in the same manner as the employer would determine if it had a duty to bargain over employer-proposed changes.

Stay tuned for Part 4, where we examine work stoppages in both union and non-unionized workplaces, as well as the potential for emergency "safety strikes." If you have any union related questions or other labor and employment issues, please do not hesitate to contact Howard Bernstein, Gerald Golden, Jason Kim or your Neal Gerber Eisenberg attorney.



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