

CORONAVIRUS –FAQ’S FOR HUMAN RESOURCES AND MANAGERS

From your Jackson Lewis Madison Office Team

The Fear and Panic FAQs to Help Employers with Concerns from Employees

Q. Employees asked me if the National Guard is being called up to impose martial law.

A. No. The National Guard has no authority to do anything, except assist local law enforcement and stand in the shoes of local law enforcement at the direction of the governor of a state. The National Guard has no more, nor less, authority than your current federal or local law enforcement departments. Employees should calm down. Martial law is something entirely different than when a governor calls up the national guard for an emergency, like may be needed for this. Martial law is defined as a situation in which the Military usurps the current head of a state (*i.e.*, replaces Governor Evers) as commander in chief of the state and then the military replaces the current standing government. Employees are saying all over Wisconsin right now that “martial law is coming” and it is an unfounded rumor. Governor Evers may call up National Guard Members to assist local authorities with transportation, planning, communications, normal law enforcement, and other tasks. It has been reported that the Governor has already activated 300 members for logistics and planning. That is something different – it is not martial law. There is a need to have adequate support necessary to replace and/or supplement local law enforcement officers who may succumb to COVID-19 and perhaps all at the same time. If you see a Guard Member in your neighborhood, she/he has the same authority as your local police and is no different than the local cop who bears just as much authority and weapons. One wears blue and one wears camo. There is no other difference, so employees should calm down and work the problem like everyone else. We will not have martial unless the State of Wisconsin Government (or some other state for you clients elsewhere) collapses. That is not happening. Second, if the Governor decides to call up Guard members (which might happen if enough police officers are sick with the virus or they otherwise need help), it might be that such a call-up occurs simultaneous with our Governor deciding to issue an order to limit certain travel and/or closure of all businesses that are not essential. In any event, this is also not martial law as civilian leaders are still in charge.

Q. Can law enforcement limit our freedoms more than during normal times?

A. Yes. The 4th Amendment to the U.S. Constitution protects citizens from unreasonable searches and seizures. Government seizures of our freedom of movement occur every day in government buildings (courthouse, airports, etc.), upon being directed by a traffic officer at the scene of an accident or outside Camp Randall on game day, under the Patriot Act following 9/11, or upon being pulled over or arrested by law enforcement. During times of greater emergency and in prior situations, the U.S. Supreme Court has authorized law enforcement (and the National Guard as an extension of law enforcement) to limit our freedoms. This has occurred following hurricanes, wild fires, tornados, floods, and upon riots or civil unrest. It may occur again, it is all subject to constitutional challenge in the courts because we are entitled to due process, and it is usually temporary unless the courts agree with Congress that it will become permanent (Example: The Patriot Act limitations after 9/11).

Q. We are still open for business, but can employees who are afraid of leaving their houses refuse to come to work?

A. No, at least not without risk of facing discipline from the employer. Employees do not have a

right to deem themselves off work because they are afraid to leave their house, unless they qualify for leave and they are exercising their rights under employment laws (FMLA, paid sick leave, ADA, etc.). In other words, if employees are merely uncomfortable coming to work because of their general fears about the virus, it is an important and valid data point for you to consider so that you are acting like a responsible employer and role model. But you still get to decide for yourself whether you will give them the choice to come to work or whether you will simply tell them to show up if they want to continue to have a job. Most employers right now are being compassionate, flexible, and working the problem because employees will remember the behavior of their employer for a long time. In fact, acting too heavy handed right now may just be the type of behavior that will drive employees to unionize when this situation is over. Employees are talking via phone and computer with their families, neighbors, and friends. They are all comparing how their employers are treating them, even how they are being treated through the layoff process. Each employer should do what it needs to do for the business and set the rules for employment (including showing up for work if you need them), but balance it against the human element of this. There is a lot of fear out there. This generation of employee did not live through the Spanish flu, Polio outbreak, the Great Depression, nor WWII. They don't know hard times like those generations knew and they have been conditioned that those are just words in a book. That will not be true after this, but always do your best to get the most out of your team member employees, so that your business can run as best as possible, even though that "best" is a bit different for each employee. Right now, you need their very best and how you behave can either bring that out their best or it can bring out their worst. Choose wisely.

Q. What are some ways that I can calm the fears of employees? They are distracted at work, they are less efficient, and I worry about injuries and mistakes.

A. You should consider holding an Employee Appreciation Day or event. This can be anything from an individual handwritten card from the facility leader to each employee all the way up to an offer to have take-out orders of food delivered to work or an appreciation bonus. Alternatively, you could relax dress code, consider allowing music at work, or having personal counselors available via phone or video conference for employees who would like to talk to someone. Many employers have Employee Assistance Programs to which they can refer employees who are feeling heightened levels of anxiety. Without minimizing the situation, it may also be helpful to remind employees that the vast majority of people who get COVID-19 have only mild symptoms. This is not Ebola or some other highly deadly disease. The reason that the country is taking COVID-19 so seriously is that some small percentage of those who get sick will require hospitalization. Hospitals only have so much capacity, so they would be overwhelmed if all of those people needed treatment at once.