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LAW: EMPLOYMENT LAWYERS PUT IN 14-HOUR DAYS TO KEEP UP WITH CLIENT QUESTIONS, CHANGING RULES.

Attorney Overdrive

By Amy Stulick (/staff/amy-stulick/)

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Since the start of the pandemic, employment lawyers have shifted into overdrive –and except for a week or so toward the end of April, have not seen a slowdown.

Even when the crisis subsides, attorneys interviewed by the Business Journal expect an oversupply of work as litigation takes the place of compliance.

At this point, calls about layoffs and closures in the early days of the pandemic are replaced by questions on reopening, many Valley firms said, when Gov. Gavin Newsom announced his four-phase plan to get the state's economic engine going again.

"Our lawyers were one-armed paper hangers, so to speak, trying to figure out how to stay up with everything. We were probably working on average 12- to 14-hour days, including the weekends, to get through all that," said Richard Rosenberg, partner at Ballard Rosenberg Golper & Savitt in Encino.

Jon Light, partner at the firm LightGabler in Camarillo, likened the end of March and beginning of April to "a firehose up our nose the whole time" with the amount of information being taken in, analyzed and presented to clients.

"Now that all those businesses got stabilized as far as what they were doing, all of a sudden we're talking about reopening, and the governor's ideas, which are different from the federal government, which are different from the CDC," added Rosenberg.

Who's calling?

Except for businesses such as hotels that are at the tail end of reopening phases, virtually every sector of the economy has reached out to employment law firms to help them navigate a sea of confusing governmental policies, attorneys who spoke to the Business Journal said.

"We have all sizes, all industries. We hear from people with four or five employees to people with a couple thousand," said Karen Gabler, partner at Light Gabler.

"Then you have labor contractors, staffing agencies who have hundreds and hundreds of employees spread out among a bunch of different industries," added Light. "We're hearing less from the hospitality industry after the initial crunch of 'Do we furlough, do we lay off?' Now they've just got skeletal staff, if any, at a hotel or restaurant. We haven't heard from them for a month because they're not working. Until they can open, other than the preparatory stuff, there's no reason for them to contact us."

Law firms haven't had to hire new people to meet the demand, but they have become innovative when it comes to presenting rapidly changing employment law policies to a wide breadth of clients.

For the San Fernando Valley Bar Association, that innovation came in the form of webinars, newsletters and a stronger social media presence. Its president-elect, David Jones, pulls double duty by sending much-needed information to businesses via such methods, both through the bar association and as a shareholder at law firm Lewitt Hackman in Encino.

"We have small business owners and lawyers that represent a lot of small business owners tune in to (the webinars)," said Jones. "We did one on the CARES Act, we did one on how to reopen, given all the conflicting laws and

the different directives for specific industries."

Client information provided in March and April was mostly uniform, Gabler and Light said, so much so that they would often have to copy and paste examples and responses to the same questions for multiple clients to keep the work moving.

"All of these businesses fell into two categories: those that were allowed to remain open, so-called essential businesses, and those which were ordered to be shut," explained Rosenberg. "We were very busy with (Worker Adjustment Retraining Notification) Act notices. Thankfully, the governor issued an executive order amending the California WARN Act to include a provision for layoffs between the middle of March and Dec. 31."

Normally, if a business lays off 50 or more employees over a 30 day period, it needs to provide 60 days advance notice; the new provision allows businesses to issue truncated WARN notices for employees laid off due to COVID-19.

"All of a sudden, we were giving out hundreds – our companies were giving out WARN notices overnight, they needed them right away," said Rosenberg.

Reopening, however, will require employment lawyers to take a more individualistic tack.

"(The governor) put out the regulations: 18 different industry orders. I had clients calling the next day," added Rosenberg.

Employment lawyers have had to brainstorm with clients to persuade former employees to come back, too.

It has been a difficult case to make between fear of contracting a highly contagious and deadly virus and, at least for those that used to get paid at or near the minimum wage who are now on unemployment, risking their health for a smaller paycheck.

"Four-hundred fifty dollars from the state and $600 from the Feds for $1,050 a week, that's $52,000 or so a year, and they're (usually) making $30,000 to $40,000 – they're happy to sit home," said Light.

"How are we going to motivate people? How do we energize the workforce and move the business forward?" added Gabler while discussing bringing back laid off workers. "We're advising during this crisis to have a conversation first and be more gentle than you would be otherwise. Work with people and make sure they know you are in this together before jumping to the legal conclusion of 'OK, then now you're resigning.'"

Litigation wave coming

With so many potential pitfalls for business moving toward or in the middle of reopening, employment lawyers expect a slew of litigation.

“The front end is employers don’t know what to do; it’s changing in real time. But the back end is employees are being let go and there are wage and hour violations that are happening; small employers don’t know every rule and how things should happen,” said Jones.

Besides wage and hour violations, there have been county and city policies passed that allow for rebuttable presumption when businesses are finally in a position to hire workers again.

Rebuttable presumption refers to an assumption made by a court, taken at face value to be true, unless someone can prove otherwise. Under the right to recall ordinance, first passed by the city of Los Angeles and later adopted by L.A. County, a worker can take his or her former employer to court over a perceived pass over when it comes time to rehire. What’s assumed is the worker was passed up unfairly, and the employer would have to prove that it did everything correctly when rehiring that staff member. If the worker was not brought back for disciplinary reasons, the employer would need to prove that too.

“These ordinances ensure that hotels will be sued for untold millions of dollars for simple and innocuous mistakes,” Stuart Waldman, president of the Valley Industry and Commerce Association, said in a previous statement about the right to recall measure, as well as the worker retention ordinance which would require employers keep workers for a certain amount of time if the business changes ownership.

An employer would also have to prove in court that an employee didn’t contract COVID-19 on the job, since another order was passed adding the virus as a viable workers’ compensation claim. The presumption here is that the employee contracted the virus at work; the employer would need to prove that is not the case.

“I guess it all circles back to the fact that these employers need not just the advice of how do I comply with these orders, but also how do I protect myself,” added Jones.