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Has Your Temporary Layoff Been Extended?

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Beginning in early March, strict social distancing measures forced numerous businesses to either curtail operations or temporarily close. Many employers chose to temporarily lay off employees with the expectation that employees would be brought back within a few weeks. As we enter mid-April, some businesses that initially considered their layoffs to be temporary are now having to reconsider the length of their closure. At this juncture, it is important to determine what, if any, obligation an employer may have to pay out any earned but unpaid wages.

Generally, an employer is required to pay laid off employees their final paycheck by the end of the next business day or the next regular payday after the layoff, whichever occurs first. This includes all earned and unpaid wages, such as accrued PTO or vacation pay according to the company's policy.

However, when an employee is laid off and the employer expects the employee to return within 35 days, the layoff is temporary and not considered to be a termination of employment under final paycheck rules. Wages earned and unpaid during a temporary layoff are not due until the next regularly scheduled payday.

The 35-day clock on temporary layoffs will soon expire for many businesses. A temporary layoff that extends beyond 35 days will be treated as a true and full separation between the employer and laid off workers. This may trigger an employer's obligation to pay out earned but unpaid wages. Employers who are extending a temporary layoff should treat the extension as a separation of employment and pay laid off employees all wages, commissions, PTO, and vacation pay that are due under the employer's policy.

Each layoff situation is unique and often presents competing interests and considerations. We encourage employers to proactively reach out to counsel to clarify any remaining questions as to best practices when reevaluating an existing layoff.

For questions about layoffs or any other circumstances created by COVID-19, contact Andrew Schpak or Daniel Walker at 503-228-0500, or at aschpak@barran.com or dwalker@barran.com.

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