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Abstract

In 2020, the United States and countries around the globe faced an unprecedented threat to everyday business, the Covid-19“Covid 19” pandemic. The Covid 19 pandemic led many businesses to restructure their business models while also working within the Center for Disease Control (CDC) guidelines in order to keep employees safe while on the job. This, in turn, made businesses relook at the way their human resource department was structured, and, if necessary, hire in-house counsel to help address possible legal issues arising from the pandemic. These additional measures help companies navigate hiring and firing processes should an issue arise. Additionally, human resource departments and in-house counsel also help companies navigate which employees are eligible for benefits stemming from the CARES Act. The CARES Act created a gap between employees who used its benefits for sick-leave or to take care of loved ones, and those who were fired from their positions. Those who had jobs, but had to stay home because of the virus, had an incentive to go back to work- while those who were fired had no incentive due to the increased benefits accompanying the CARES Act.

As shown through data, most small-to-medium sized companies did not have to lay off large numbers of employees, instead they increased the number of new hires significantly. One business increased the size its company by 109.52% (shown below). Although new hires increased substantially, companies still battled to bring “new-hires” in against the incentives to stay-home provided by the CARES Act. While Covid-19 brought new challenges to businesses and forced many to close their storefronts, the real challenge to businesses is updating their employment policies to reflect those of the federal government’s regulations.

Overview

1. Introduction of SARS CoV-2

In 2020, Covid-19 spread around the globe and forced many countries to shut down all “non-essential” businesses while wreaking havoc on global economies. While these countries have since reopened, the impacts of the Covid-19 have not gone unnoticed as the day-to-day operations of companies, as well as the structure of business organizations have shifted as result of the virus. While Covid-19 is a global phenomenon, the focus of this report is the effect of Covid-19 in the United States. The U.S. National Library of Medicine reports, “on 30 January 2020, the WHO [World Health Organization] Emergency Committee declared a global health emergency based on growing case notification rates at Chinese and international locations” (Velavan and Meyer, 2020). The Covid-19 epidemic was unprecedented and forced businesses to restructure their business model in order to stay afloat.

2. Purpose of the “CARES Act”

Covid-19 forced businesses to restructure their business models and brought new challenges to existing human resource departments. As Covid-19 spread around the globe, companies were forced to shut their offices as federal and local governments issued “shelter-in-place” ordinances. Since March 2020, the unemployment rate in the United States substantially increased and the government put the CARES, Coronavirus Aid Relief and Economic Stimulus, Act in place to help employees laid off by the pandemic (Marinescu et al. 2020). However, critics hypothesize the increased benefits accompanying the CARES Act may contribute to the rising unemployment rate. The “CARES Act” provided “unemployment insurance benefit expansions and stimulus payments [the CARES Act] instrumental in allowing almost all families to cover their recurring, non-discretionary expenses in the event of long-term unemployment”

(Bhutta et. al 2020). The CARES ACT, “provided a \$600 weekly payment in addition to any state unemployment benefits for which a worker would have already been eligible. The CARES Act provides assistance to full-time, part-time, and self-employed workers and covers 100 percent of the wages of the average American worker (Altonji et. al 2020). The Act was intended to alleviate the financial stress accompanying employees when illness resulted in them having to miss work. The payment was designed to replace 100 percent of the mean U.S. wage when combined with existing [unemployment insurance] benefits” (Altonji et. al 2020).

The CARES Act allowed workers the peace of mind should they encounter an unexpected illness due in part to the Covid-19 pandemic. However, the CARES Act has requirements to ensure government funding is where it is needed the most. According to Yale University, “a worker who quits her job is ineligible for [unemployment insurance]. While workers who quit due to exceptional circumstances related to Covid-19 are exempted from this, those who quit for no other reason other than general concern about contracting Covid-19 are not eligible for [unemployment insurance]” ... “once a person receives a “suitable offer of employment,” they are no longer eligible for [unemployment insurance] even if they reject the offer” (Altonji et. al 2020). The CARES Act alleviated the stress for employees to stay home if they were sick or exposed to the virus by alleviating the financial burden placed on employees.

3. Effects on Unemployment Due to the CARES Act

While the CARES Act has been beneficial to those impacted by increased layoffs accompanying Covid-19, some reports suggest the CARES Act could be contributing to both the rise in people going back to work and the unemployment rate. Yale University reports, “[the requirement to accept a suitable offer of employment] may lead to overestimates of re-employment since workers with an offer to return would face a stronger incentive to begin

working again than those who would search for a job to become re-employed” (Altonji et al 2020). Employees who have a suitable offer of employment are unable to continue receiving unemployment insurance and benefits stemming from the CARES Act, whereas those who are unemployed can continue receiving said benefits until a suitable offer is found. A worker who has an offer in-hand for a company faces no choice than to begin work for the company so-long as it is suitable; however, for persons who do not have an offer in-hand- there is no incentive to lead them back into the workforce as they can continue to stay-at-home and receive benefits from the CARES Act.

The benefits accompanying the CARES Act helped alleviate the financial burden for workers following the Covid-19 pandemic; however, it created a chasm between workers in the workforce and those who were unemployed. In a study from the Yale University Tobin Center for Economic Policy, “[the CARES Act] has been hypothesized that such high benefits encourage employers to lay off workers and discourage workers from returning to work” ... “workers who experience larger increases in [unemployment insurance] generosity did not experience larger declines in employment when benefit expansion went into effect” (Altonji et. al 2020). This assistance lessens the incentive for those who are unemployed to actively search for a job, while employees who have jobs are more likely to stay in their current position. Because of this incentive, potential employees may be kept out of the employment pool because of the benefits accompanying the CARES Act. Yale University reports, “[unemployment insurance] has not depressed employment in the aggregate” ... “[future studies hypothesize] that disincentivizing people from going back to work may hinder reallocation in the labor market” (Altonji et. al 2020). It is important to recognize the impact the CARES Act has on employees’ incentive to go back to work. As the pandemic continues to be a driving force for unemployment

rates, it is important to give unemployed individuals an incentive to actively look for a job opportunity.

4. Legal Impacts on Human Resources as Result of Covid-19

While the CARES Act protects employees should they fall ill or face unexpected circumstances due to the Covid-19 pandemic, employees are, also, protected under various employment laws. There are many policies in place to protect employees in the wake of the Covid-19 pandemic, and employers should be mindful of these policies during day-to-day business operations. From a human resource perspective, it is important that businesses take adequate steps to ensure that health of employees remains a top priority. According to legal group, Burness Paul, employees who are waiting for a Covid-19 test result, who have been in close contact with someone who has Covid-19, and returning travelers should self-isolate before returning to work (Burness Paul, 2020). Burness Paul reports, “[If an employee is sent home to self-isolate by the employer] and it’s not possible for them to work from home, then it is likely such workers will be entitled to their full pay” (Burness Paul, 2020). Employers need to be mindful of the financial impacts accompanying sending employees’ home to quarantine. While it is important to keep the health and safety of office employees a priority, employers are expected to pay employees who are sent home even if the employee is unable to work from home. Employers, also, need to be mindful of discrimination risks accompanying the Covid-19 outbreak. Burness Paul reports, “employers will be liable for harassment committed by their employees in the workplace, unless they can show they took all reasonable steps to prevent [the behavior]” ... “workers may be reluctant to declare a need to self-isolate or report symptoms where there is a risk they may not get paid. All workers have individual duties under the Health and Safety at Work Act 1974 to take reasonable care for their own health and safety and that of

the people they work with. Failure to do so is a criminal offense” (Burness Paul, 2020). With the protection of the Health and Safety at Work Act 1974, as well as the CARES Act- employees are federally safeguarded to stay home if they are ill. Companies must utilize the insight of their human resource department, or in-house counsel, to navigate the potential legal action that could arise from an employee. Companies should have an understanding of the rights given both to them and to their employees before pursuing any action against an employee for a Covid-19 situation.

Research

1. Companies Reaction to Covid-19

At first sight of the Covid-19 pandemic, companies across the United States were frightened of the future as the virus caused unprecedented government shutdowns. While the Covid-19 pandemic was unprecedented, some businesses are seeing it as a benefit while others are viewing it as a detriment. In an interview with Steve McClure, Vice-President of United Mechanical in Dallas, Texas, Mr. McClure says, “Before [the Covid-19 pandemic] our company hired 210 employees per year, after [March 2020] we have hired 240 employees” (Steve McClure, 2020). United Mechanical did not see a decrease in business due to the pandemic, and they were able to add 30 additional employees to their payroll. However, United Mechanical is considered an “essential” business as they provide heating, air-conditioning, and plumbing services to the Dallas-Fort Worth metroplex. As United Mechanical provides door-to-door services for clients, they were not able to take business “remote” during the pandemic. Another company, Intex Electrical, a mid-size electric company in Forney, Texas, also saw increased growth during the Covid-19 pandemic. Human Resource Manager, Kristal Hunt, reports, “[Intex Electric] has seen a growth in business during the pandemic. Before the pandemic, we employed

approximately 340 employees, and after [March 2020] we employ 363 full-time employees” (Kristal Hunt, 2020). Electrical is an essential business, thus Intex Electric never saw the repercussions stemming from the mandated shutdowns in Texas. Moreover, Intex was able to hire more employees to keep up with the increased demand as result of the pandemic. Companies who saw an increased demand in services were, on average, able to hire more employees as a result of the Covid-19 pandemic.

Gallagher Construction, a family-owned construction company in Dallas, Texas, reported an increase in overall hiring for 2020. Lisa Gallagher, vice-president for Gallagher Construction, reports “before Covid-19 [the company] on average filled 2-3 positions per year, after [March 2020] we are on track to fill 8-10 new positions” (Lisa Gallagher, 2020). Ms. Gallagher reports the increased rates in hiring ties back to Texas schools closing for the schoolyear in March. Gallagher Construction primarily builds schools and city halls, and as school was out-of-session the company was able to start on projects earlier than expected- thus leading to more employees needing to be hired. Both United Mechanical and Gallagher Construction provide hands-on services that are “essential” and could not be transferred to a remote setting, this led to increased hires and more demand for their work during the Covid-19 pandemic.

While some essential businesses were able to increase the rate of hiring, other companies were unable to hire employees due to decreased supply of workers in the workforce. For other businesses, like the Forney Independent School District, the district faced its own challenge-finding workers in the midst of a global pandemic. Forney Independent School District superintendent, Justin Terry, reports, “[after March 2020] we saw an increase in mid-year exiting. We faced a huge challenge to find [teachers, custodians and bus drivers]” (Justin Terry, 2020). Mr. Terry attributes the difficulty in finding suitable employees for vacant positions to the

CARES Act. According to the Tobin Center for Economic Policy at Yale University, “the extra \$600 weekly payments provided under CARES yields a total [unemployment insurance] benefit that is greater than weekly earnings when working for the median worker” (Altonji et. al, 2020). As unemployed workers were paid \$600 with the CARES Act, firms that were actively looking for new-hires were not only competing with other firms, but also with the incentives to stay-home provided with the CARES Act. The incentives provided by the CARES Act made it difficult for employers to find suitable employees, and it, also, made employees less likely to return to work due to health concerns accompanying the Covid-19 pandemic. The Covid-19 pandemic did not only wreak havoc on the hiring processes for businesses, but it also tasked businesses with restructuring their day-to-day operations.

2. Significant Changes in Day-to-Day Operations as Result of Covid-19

While the Covid-19 pandemic placed a large amount of stress on hiring decisions among companies, the day-to-day operations within companies were also impacted significantly. For essential business, such as Gallagher Construction Company, business was expected to proceed like usual; however, the Center for Disease Control put guidelines in place to protect the health and safety of employees and customers. Lisa Gallagher, Vice-President of Gallagher Construction, says “[Gallagher Construction] had a secure office before [the pandemic]. We did not allow unsolicited visitors in the office, and we kept our doors locked. However, [after March 2020], we don’t allow any clients to enter the office- we put all out-going documents on the front porch for pick-up. We, also, require all mail be sent through FedEx or UPS [not USPS]” (Lisa Gallagher, 2020). Gallagher Construction recognizes the need to limit their employee’s exposure to unknown individuals, and the best way to do this is to restrict who can enter the office. However, Gallagher Construction, also, actively works on construction sites- even in the midst of

the Covid-19 pandemic. Ms. Gallagher reports, “from March to July 2020, we required all employees to have their temperature checked along with a series of health-related questions before being let into the jobsite. At each jobsite entrance, supervisors for Gallagher Construction scanned all entering employees’ temperatures, as well as asked a series of questions that screened employees for Covid-19.” These increased safety precautions stayed in place from March 2020 until July 2020. Ms. Gallagher states, “As of [November 2020], workers no longer have their temperature checked daily, but they are required to wear masks and remain six feet apart at all times on the jobsite.”

3. Human Resource Impacts as Result of Covid-19

As a result of the Covid-19 pandemic, many companies not only had to change their day-to-day operations, but also their approach to employee-related issues. The normal hiring and firing processes were, also, combined with federal requirements for the CARES Act along with guidelines from the Center for Disease Control as to how to maintain a safe work environment for employees in the midst of the pandemic. Diane Stephens, director of Human Resources for American National Bank, says “I am the [Covid-19] queen. If there is a Covid-19 related question: an employee at one of the [bank] branches has Covid-19, what do we do? Or, How do we fire someone who was diagnosed with Covid-19? I am the person bank members turn to” (Diane Stephens, 2020). While Ms. Stephens is on-staff for American National Bank, the bank also has attorneys on retainer to answer other Covid-19 related questions. Ms. Stephens reports, “[the bank] has in-house counsel, but they act more as corporate counsel when relating to employee questions. We use outside counsel on retainer to help us navigate employee related issues that could turn into a legal issue” (Stephens, 2020). The Covid-19 pandemic put many guidelines in place that made it difficult for companies to navigate their normal hiring and firing

processes, thus many companies turned to legal advice or human resource professionals.

American National Bank was able to utilize the human resource positions they already had available; however, some companies had to add new positions.

Most companies had a human resources department in place they could use to help navigate potential problems with firing employees; however, other companies decided to add multiple positions solely dedicate to help with employee issues related to Covid 19. Intex Electric added two positions and organized a taskforce to help with Covid-19 questions. Kristal Hunt, director of Human Resources for Intex Electric, says “in mid-March, Intex Electric put together an internal Covid-19 task force. The task force is responsible for creating policies and procedures relating to Covid-19, identifying [personal protection equipment] necessary companywide, and evaluating all potential Covid-19 cases” (Kristal Hunt, 2020). As the Covid-19 pandemic was unprecedented, United Mechanical believed it was important to bring in differing opinions to guide the company through such uncertain times. According to Ms. Hunt “the Task Force included the Owner of Intex, Controller, Director of Operations, Business Relations Manager, and Human Recourse Manager. Intex also utilized an in-house and outside counsel, SHRM (Society of Human Resource Management), as well as numerous outside agencies - local and statewide” (Kristal Hunt, 2020). United Mechanical not only needed the guidance of executives within their own company, but also the guidance of executives from outside agencies. As the CARES Act was put in place by the federal government and the Centers for Disease Control put guidelines in place for a safe reopening of office spaces, United Mechanical utilized outside resources to help them have the best understanding of external regulations. As shown through data, not all companies created new positions to help navigate

the Covid-19 pandemic; however, most companies utilized the human resource professionals available to them in order to find a solution that worked best for their individual companies.

Conclusion

After March 2020, the normal way of doing business was no more. Lockdowns across the globe, and specifically in the United States, caused many businesses to close their storefronts- some permanently. These lockdowns wreaked havoc on the global economy and led the unemployment rate to increase. However, scholars believe the CARES Act, or the Coronavirus Aid, Relief and Economic Security package contributed to such a high unemployment rate. The CARES Act provided relief, in the form of \$600 a week, to those who were ill and those who were laid off from their work. As a result, employers not only competed with other companies to recruit new employees, but they also fought against the CARES Act which incentivized employees to stay home and receive a large weekly paycheck. As shown through the data, most companies needed to fill vacant positions, but were unable to do so because of the lack of suitable employees. To help navigate the CARES Act, federal regulations for the hiring and firing of employees with Covid 19, and the Centers for Disease Controls guidelines to maintain a safe and healthy work environment- many companies relied on the knowledge of human resource professionals. While the Covid-19 pandemic was unprecedented, the ability of local companies to increase the size of their company during the pandemic- shows the economic future is promising.

While a number of independent surveys were conducted, these surveys are not representative of the national population- and, thus cannot be used to gather a conclusion about COVID 19 and the United States workforce. Moving forward, it will be beneficial to survey a

greater amount of employers from both the “essential” workforce, as well as the “nonessential” workforce.

Appendix

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Interview with Diane Stephens
Director of HR, American National Bank

Approximately how many positions do you fill per year...

1. Pre COVID: 150 per year
2. Post-COVID: Numbers have remained the same, if not increased a little

Are there legal issues that have been a concern in laying off or hiring employees during the pandemic?

1. No. 1 employee is no longer at the bank because of COVID related issues. It could have turned into a legal issue, but it did not

Has your company laid off workers as a result of the pandemic?

1. No, and we don't plan to

Approximately how many employees did you have company-wide pre-COVID vs. post-COVID?

1. Pre-COVID: 560 employees
2. Post-COVID: 564 employees

Has COVID affected day-to-day operations of your company?

1. No, COVID has not impacted resignation rate. Most employees leave for higher salaries, because they are moving, or other types of reasons.
2. 2 people left due to COVID related reasons
3. ANB is increasing new hires because of increased headcount at the bank

Does your company have an in-house lawyer and/ or HR professional who is familiar with these types of legal issues and provides guidance?

1. Yes, I am the HR professional
 - a. "COVID Queen"
 - i. If there is a COVID related question: "Someone on staff was diagnosed with COVID- do we need to shut down the branch?" "How do we go about firing someone who was diagnosed with COVID?"- all those questions come to me
2. COVID related issue- ANB calls outside legal team
3. ANB has in-house counsel, but they act more as corporate attorneys

Interview with Justin Terry
Superintendent, Forney ISD

- 1. Approximately how many positions do you fill per year...**
 1. Pre-COVID: Added 120 positions (9:1 ratio students to staff)
 2. After-COVID: Added 120 positions
 3. Pre-COVID: 15% attrition rate annually (1500 staff)
 - a. 225 people
 4. Post-COVID: increase in mid-year staff exiting
 - a. Huge challenge in find staff period (Teachers, custodial, bus staffers)
 - i. Custodians work 60 hour weeks

- 2. Are there legal issues that have been a concern in laying off or hiring employees during the pandemic?**
 1. Challenges with contractually if teachers leave they are held under Forney ISD. Texas Board of Education put something in place if they leave due to health related causes- they can be let out of contracts through district

- 3. Has your company laid off workers as a result of the pandemic?**
 1. 2 employees took advantage of CARES Act: been extremely symptomatic and overused their 12-week allotment.
 - a. Due to absences remove 2 employees

- 4. Approximately how many employees did you have company-wide pre-COVID vs. post-COVID?**
 1. 1500 staff: pre COVID
 2. 1500: post COVID
 - a. Full funding from state: so yearly revenue did not change

- 5. Has COVID affected day-to-day operations of your company?**
 1. COVID has totally changed the way. Mask up, COVID protocols. Mitigate by keeping schools/ buildings closed to the public. 2 different school settings: virtual and in-person. Services offered had to change. Heavy burden put on staff

- 6. Does your company have an in-house lawyer and/ or HR professional who is familiar with these types of legal issues and provides guidance?**
 1. General Counsel (no in-house counsel)
 2. Full HR team- that is familiar with COVID
 - a. Executive HR
 - b. Director HR
 - c. Benefits Coordinator
 - d. Temporary Staffing from Staffing

Interview with Lisa Gallagher
Vice-President, Gallagher Construction

- 1. Approximately how many positions do you fill per year...**
 - Before COVID: 2-3
 - After COVID: increase, on track to fill 8-10 positions

- 2. Are there legal issues that have been a concern in laying off or hiring employees during the pandemic?**
 - No. We have not had to lay off anyone during the pandemic.
 - We have been able to hire employees who have been laid off by other companies

- 3. Has your company laid off workers as a result of the pandemic?**
 - No

- 4. Approximately how many employees did you have companywide pre-COVID vs. post-COVID?**
 - Pre COVID: 52-53
 - Post COVID: 60-62

- 5. Has COVID affected day-to-day operations of your company?**
 - Yes.
 - Office Work: “secure office prior to COVID”
 - No visitors allowed in office
 - Contracts/ checks put on front porch
 - Deliveries left on front porch or sent through FedEx/ UPS (No USPS)
 - Jobsites:
 - March- July: all employees had their temperatures checked and health questions asked
 - Now: Workers wear masks and remain 6 feet apart

- 6. Does your company have an in-house lawyer and/ or HR professional who is familiar with these types of legal issues and provides guidance?**
 - No in-house counsel
 - HR consultant on retainer
 - HR attorney on retainer that deals with COVID related issues

Interview with Kristal Hunt
HR Manager, Intex Electric

1. Approximately how many positions do you fill per year...

2020 calendar year to date, Intex has hired approximately 200 employees.

2. Are there legal issues that have been a concern in laying off or hiring employees during the pandemic?

3. Has your company laid off workers as a result of the pandemic?

To answer questions 2 and 3: Electricians are considered essential workforce; therefore, Intex has continued to work our normal work schedule throughout the entire pandemic. Intex has been able to sustain and even grow business during the pandemic, meaning no layoffs have occurred.

4. Approximately how many employees did you have companywide pre-COVID vs. post-COVID?

Because Intex has not performed any layoffs during the pandemic, and our business has grown, we currently employ 363 full time employees. Pre-COVID we employed approximately 340 employees.

5. Has COVID affected day-to-day operations of your company?

Intex COVID-19 Policy requires employees to monitor symptoms on a daily basis and report any abnormalities to his/her direct supervisor and HR Manager. Intex purchased and distributed face masks to all employees as well as hand washing stations to each job site.

6. Does your company have an in-house lawyer and/ or HR professional who is familiar with these types of legal issues and provides guidance?

Mid-March Intex management put together an internal COVID-19 Task Force which met every day at 8am. The Task Force was responsible for creating our COVID-19 Policy and Procedures, identify PPE necessary companywide, evaluated and monitored all potential COVID-19 cases, monitored CDC Guidelines (updated policies as necessary).

The Task Force included the Owner of Intex, Controller, Director of Operations, Business Relations Manager, and Human Recourse Manager. Intex also utilized an in-house and outside counsel, SHRM (Society of Human Resource Management), as well as numerous outside agencies - local and statewide.

Interview with Steve McClure
United Mechanical

1. Approximately how many positions do you fill per year...

We add approximately 25 people annually.

2. Are there legal issues that have been a concern in laying off or hiring employees during the pandemic?

We have not been faced with any legal concerns regarding our hiring and firing process. The interview process looks a little different since we interview via zoom. The onboarding process has changed from being taught by an instructor to watching videos about the company's safety policies and procedures.

3. Has your company laid off workers as a result of the pandemic?

We have not laid anyone off during the pandemic, and we have actually had to add employees to keep up with our work load

4. Approximately how many employees did you have companywide pre-COVID vs. post-COVID?

Pre-COVID 210

Post-COVID 240

5. Has COVID affected day-to-day operations of your company?

Absolutely, We no longer gather in large crowds so all of our meetings are now virtual. Virtual meetings can be very productive but you lose a lot of the comradery and team aspect of the organization.

While working on job sites you can no longer have a large population in one area trying to complete a task, the work has to be staged to achieve proper social distancing.

6. Does your company have an in-house lawyer and/ or HR professional who is familiar with these types of legal issues and provides guidance?

Yes, We have a full time HR professional on staff and we have daily meetings with a team of key personnel to discuss the ever changing CDC guidelines and the Virus as it spreads. Our main goal is to keep our employees safe within our legal rights.