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## Special Report: Navigating employment laws amid Covid-19

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Among the most significant issues that Hawaii businesses are facing as a result of Covid-19 is “how to align their organization with the

pandemic’s impact on their business,” said Barbara A. Petrus, a partner at Goodsill Anderson Quinn & Stifel, who specializes in labor and employment law.

As the pandemic and related restrictions continue to impact businesses, employers are faced with hard decisions, Petrus said. “Businesses may need to decide whether they stay in business at all, whether they close business segments, whether they need to permanently lay off employees, or otherwise decrease employee work hours, compensation or benefits.”

Petrus shared some insights into Covid-related legal issues for employers.

### **Are there new issues your clients are experiencing as a result of Covid-19?**

Applying disability discrimination and other existing laws in the Covid-19 context continues to be a new challenge for many businesses. Common issues include (1) can we and should we, or are we required to, have employees have their



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temperature checked and wellness questions answered before they start work, (2) can we ask an employee questions about the medical condition of a family member, (3) can an employee refuse to come to work because they are afraid that they could catch Covid-19, (4) should we have employees or customers sign liability waivers before entering our premises, and (5) what do we do to make our workplace safe from Covid-19?

Are there any new laws employers need to know about? Employers with less than 500 employees need to know about the Families First Coronavirus Response Act (FFCRA), which is in effect through December 31, 2020. The FFCRA requires these employers to grant leave and possibly pay employees who need leave for certain qualifying reasons. When this law may apply, however, is in question as parts of the U.S. Department of Labor's April temporary rules limiting FFCRA's applicability has since been struck down by a federal judge ... Employers covered by the FFCRA need to be aware and stay tuned as the rules may change from what was initially announced by the U.S. Department of Labor.

### **As tele-commuting is now more popular amid Covid, what potential legal issues should employers consider regarding remote work?**

While there are a number of legal issues that may arise from remote work, the most significant and currently difficult one is the need to ensure that all non-exempt employees, i.e. those who are paid for the time worked not for the job itself and who are entitled to overtime if they work more than 40 hours in a workweek, are paid for all time worked. With easy access to employer computer systems, employees may work outside scheduled work hours and, if the employer knows or should know that they are working, may be entitled to be paid for that time.

### **What advice do you have for employers who are having to furlough or lay off employees during this time?**

Recognize that the pandemic is not going to give employers a free pass if employees believe that they were treated unlawfully or that the laws were otherwise violated. Claims will arise out of Covid-19 furloughs and layoffs, although they are more likely to arise out of permanent layoffs as opposed to temporary layoffs or reduced schedules. Layoff decisions must be supported by a business case in the particular effected business units and job classifications and, where

some employees are retained and others laid off, there must be legitimate, non-discriminatory business reasons for the selection decisions.

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