

GREENWALD·DOHERTY
C O U N S E L F O R E M P L O Y E R S



Getting Back to Work

And the Labor Laws that Apply

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May 13, 2020

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Employment Lawyers feel like we are giving a weather forecast

- Changes happening so frequently
- Don't make rash decisions



**This talk is informational only
– it is not legal advice*



Political Divide

- Some states are opening nonessential businesses
- Many states still have shelter in place
- Federal government itching to reopen

**city vs. state in some locations as well*



Companies Continue Reductions

- Reduction of pay/hours
 - Exempt vs. non-exempt
 - Time tracking for telecommuting
- Furlough vs. layoff
- Documentation logistics for all of the above



What is the plan for reopening?

- Who are the decision makers?
- What measures are being implemented?
- Are there phases?
- Who is being recalled?



Discrimination issues on who you bring back

- Unlikely all brought back → need to make choices
- Best if decisions are objective (e.g. seniority)
 - Could be sales numbers, billable hours, etc.
- Have operational/business necessary backup for why you made decisions
- Not based upon perceived higher risk (e.g. older or disabled)

**Consider the possibility of people volunteering first*



Safety Protocols & Policies

- Employers looking for guidance
 - CDC, OSHA, EEOC
 - State and local authorities
- Implement strong, clear safety standards and policies (not just guidelines)



Some Examples of Safety Measures

■ Organizational Changes

- Policies and plans
- Who's in charge?
- Training employees

■ Personal preventative measures

- PPE (e.g. masks and face coverings)
- Testing – temp, COVID, antibody?
- Monitoring symptoms (don't ignore)
- Recordkeeping
- Hygiene

■ Employment infrastructure

- Social & Physical distancing
- Stagger shifts
- Telecommuting available
- Common area rules
- Virtual meetings and parties

■ Physical changes to the worksite

- Barriers
- Cleaning
- Workplace modifications (e.g. door handles)
- Stairways/hallways one way
- Signage
- Engineering

■ Responding to illness

- Health agency reporting
- Contact tracing
- Disinfecting

■ Business changes

- Visitor, vendor rules, delivery, etc.
- Cancel non-essential travel



Wrongful Death vs. Discrimination

Which lawsuit would you rather face?

- ADA, HIPAA, etc.
- Negligence lawsuits
 - Government protection from liability?
 - Any insurance coverage?
 - Workers comp – new developments
 - Where was the virus contracted? (difficult to prove)
- US Chamber of Commerce – advocating for protection from negligence lawsuits by following government safety guidelines



Disability Accommodation Issues

- Unique accommodation requests
 - Older
 - Underlying conditions
 - Mental (anxiety)
- Remote working as accommodation
 - Harder to challenge



Staffing Challenges

- How do you operate a business?
 - Out sick?
 - Afraid? Does the employee believe they are safe?
- Retaliation risk
 - Employee complaint
- Hazard pay
- Waivers?
- Unemployment pay an impediment?



CARES Act - Paycheck Protection Program (PPP)

- Loans program for small businesses
 - For use for specific costs, for example:
 - Payroll costs
 - Rent/utilities
 - Loan potentially at least partially forgivable

* *WARN issues*



Staffing Impacts PPP Forgiveness

- 75% payroll
- FTE match
- No lower than 25% wage safe harbor



Reopening economy vs. safety

*Is now really the time for us to be
distracted by employee lawsuits?



2020 Staffing and Compensation Planning In Response to COVID-19

Pre-Webinar Survey Responses

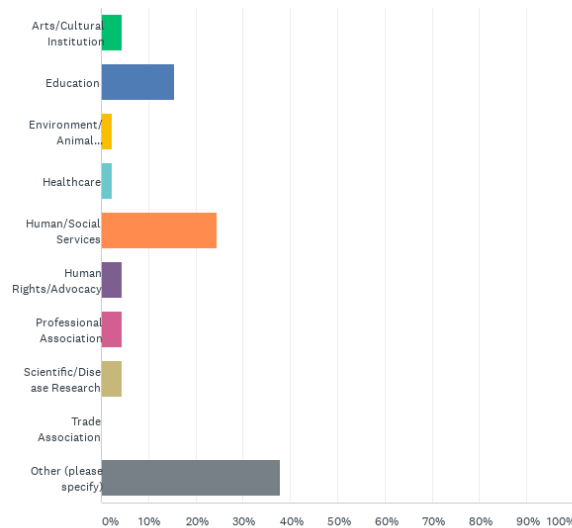


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Industry Sector

A total of 45 responses were received, with a strong representation of human/social service agencies and educational organizations.

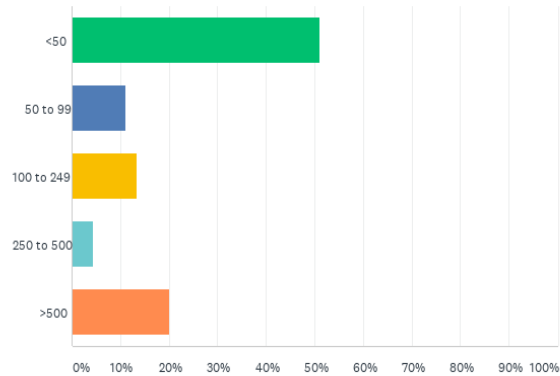
Q8 Please indicate your industry sector



“Other” included a diverse array of industries, including manufacturing, retail, municipal/county government, renewable energy, natural resources, managed IT support services, business to business services, hospitality, building material/construction, consulting, and multi-industry service provider.

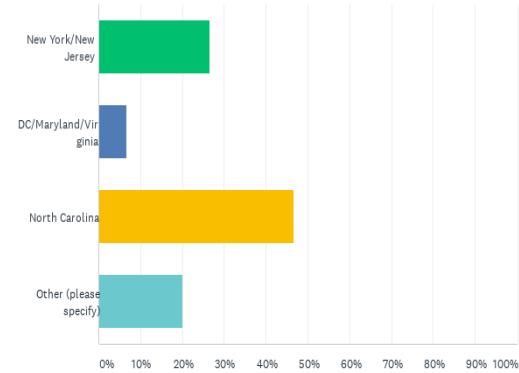
Staff Size and Location

Q9 Please indicate the number of FTE employees in your organization.



The majority of respondents have fewer than 50 full-time equivalent employees

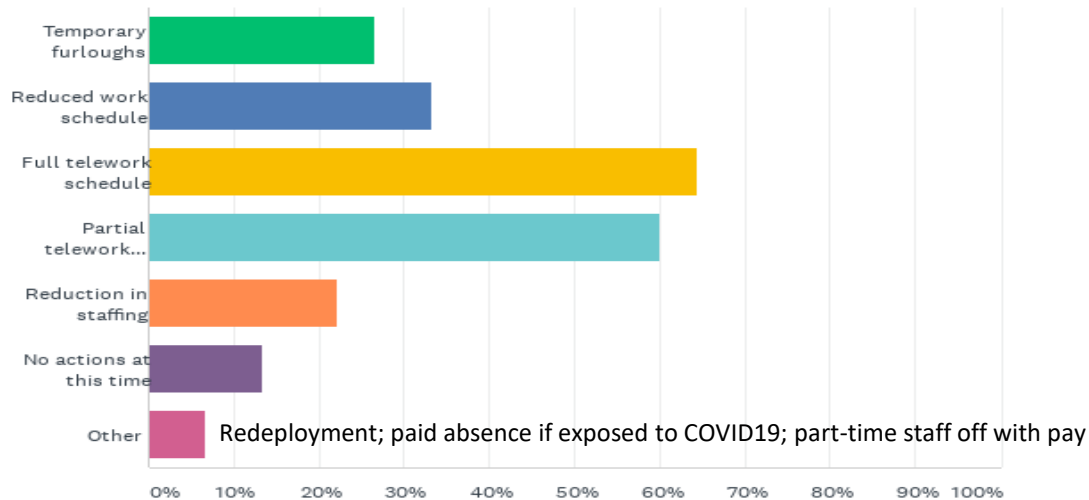
Q10 Geographic Location



“Other” locations included Pennsylvania, Canada, Atlanta, Michigan, the Midwest, Kentucky, Massachusetts, and “Global”.

Planned Staffing Actions

Q1 Planned Staffing Actions



50% of responding companies plan to implement multiple approaches, beyond full or partial telework options, including furloughs, reduced schedules, or reduction in staffing.

Furloughs and Reductions in Work Schedule

Who is affected?

- Temporary, seasonal and non-essential staff
- Those who are unable to work remotely
- Operations, maintenance, security, clerical, customer service representatives
- Executives (for reduction in work schedule only)

How long will staff be furloughed?

- Most expect 2 to 3 months

What is the expected reduction in work schedules?

- Average of 22.3%; most frequent response was 25%
- Responses ranged from 10% to 50%

Reductions in Staffing

Who will be affected?

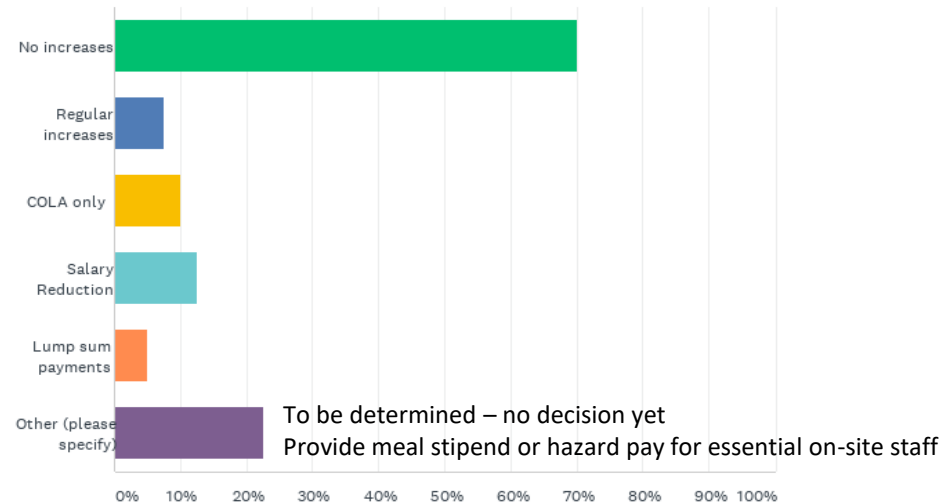
- Part-time and temporary staff
- Operations
- Custodians
- Program
- Office and sales staff

What % of the workforce is targeted?

- Average of 17.6%; most frequent response was 25%
- Responses ranged from 1% to 50%

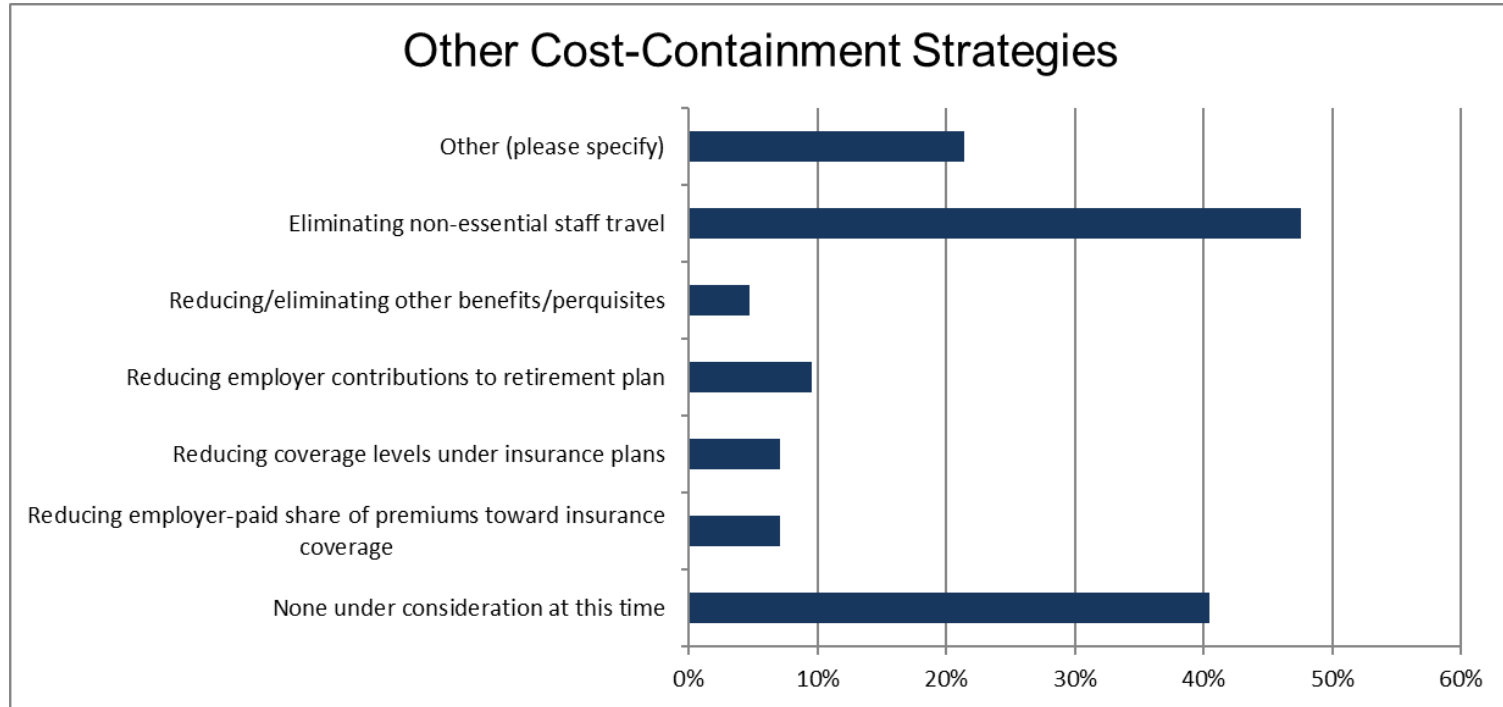
Planned Compensation Actions

Q4 Planned Compensation Actions



- For those planning increases or COLAs, the average is 3% -- ranging from 2% to 5%.
- For those reducing salaries, the average is 20% -- ranging from 5% to 50%.

Other Cost-Containment Strategies



Other Cost-Containment Strategies (continued)

- Reduce departmental budgets by 5%
- Implement zero-based budgeting for coming fiscal year
- Spending freeze – no new commitments
- Reduce supply and copying expenses
- Cancel staff retreat/events
- Hiring freeze
- Pause new programming
- Review office space needs: sublet or renegotiate lease

About JER HR Group LLC

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Our team of HR industry specialists provides expert assistance that is tailored to the individual needs and challenges of each valued client. We have extensive experience working with organizations of all sizes and types in supporting their HR functions including leadership training and development, executive search and recruiting, compensation design, compliance, and HR technology solutions. We work closely with client Human Resources Departments to design programs and strategies that are targeted to their individual organizational needs, easy to implement and built upon leading edge best practices.

As a leading Human Resource outsourcing firm, JER HR Group provides HR services for city governments, non-profit organizations and for-profit companies both large and small, from Fortune 500 companies to family businesses. We provide professional external team support with extended services and expertise. Our HR services include HR Audits, Interim HR Management, Employee Handbooks, Safety and Compliance Consulting, and Organizational Analysis.



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Disclaimer

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