Managing Workforce Challenges During Shutdowns

Sarah Sawyer: Welcome to this week's Offit Kurman with myself, Sarah Sawyer, my colleague Russell Berger, both attorneys at Offit Kurman, and today we are talking about the government shutdown and preparing for economic uncertainty that comes with that and other, adjacent things.

So when there's some volatility in the market and there's volatility with the government and, volatility and unpredictability it's always good to prepare for what will happen if my sources of income as a business are impacted? We've seen it obviously over the last year or more with tariffs and changing landscapes that then end up having a downstream impact on what you do with your employees and with other parts of your business.

So what are some things, Russell, just to kick us off that employers, business owners should be thinking about as it relates to their [00:01:00] workforce in particular during this time?

Russell Berger: Yeah. Yeah. Well, as you mentioned, we're dealing with the government shutdown right now as we're recording this.

By the time this goes live, maybe that'll be over, maybe it won't. But, the uncertainty and the threats to revenue streams perpetually exist. One of the things that, you need to be conscious of as an employer, is that, you gotta have cash to pay wages.

That's one of the primary obligations if employees don't get wages, there are multipliers and liquidated damages and attorney's fees and it becomes a lot more expensive if you're unable to pay wages. So you've gotta have a plan if there's short term cash interruption as to what you're going to do.

And, as we're seeing now in the context of, the federal government shut down if you're a government contracting business and you are not going to get paid, then it's really hard to have the cash to pay employees. We start having the furlough conversation as we did back the last time the government shut down or when around [00:02:00] the pandemic.

And that ostensibly means that, we tell people you're still employed, but you're not coming to work. You are not working, we're not going to pay you for work. Obviously for exempt employees that work at all in the week, they still have to be paid their salary for that week. It's just hey, we gotta hit the pause button here because we're not going to have the cash to be able to pay you.

So we can't have you work in incurring your wage obligation.

Sarah Sawyer: And an important thing whenever we're talking about furloughs or any reductions in force or any kind of groups of people that might be subject to changes in their employment conditions, is taking a look at what does that group look like?

Why are you making the decisions? Who are you choosing? And making sure that you're doing it in a way that's tied to your business reasons and that does not appear to be disproportionately skewed , towards one category of protected class or another. And just being really mindful of that, both from a legal perspective to make sure as I mentioned, that there's not any kind of discriminatory [00:03:00] implication of it, but also from a practical perspective.

How you're doing it 'cause it's gonna be, you know when the lights go back on, let's say, you're gonna need butts and seats again, and you're gonna need people, right? So trying to think about that long-term decision and even though it might feel a little bit like you need to make a decision quickly the cash might be depleting as you mentioned, or you trying to make these decisions and be agile and figure it out.

You also wanna take enough time to be thoughtful. Look at the data, look at what you have and what makes sense.

Russell Berger: Yeah that's absolutely right. One of the main takeaways, and we used to say this a ton during the pandemic days is, to be flexible, be adaptable be responsive to what's going on around you.

And, I very much think that's the case when you're talking about economic uncertainty. And obviously, shutdown is a discreet form of that and it impacts certain businesses in a very direct way. We have one revenue stream, they're not paying right now.

That requires fast action. But then there are other [00:04:00] businesses that are maybe a level or two removed, in an outer ring of that economic ecosystem. And you have time, but you should be thoughtful about, well what does this mean? Part of my business is supporting government contractors.

What does it mean if my government contracting revenue streams are limited in the short term, in the medium term? How do I plan for that? What does that mean for my employees? What does that mean for my business? How do I guard against that? The big problems that could come from that.

Sarah Sawyer: Well, all great points and thanks Russell. We'll see you next time.

Russell Berger: Thanks, Sarah.