



Armstrong
Teasdale

Key Considerations for Employers During the Distressed Bank Crisis

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Travis R. Kearbey

Julie O'Dell

Alexandra (Sasha) Thaler

// Always exceed expectations through teamwork and excellent client service.

Timeline of Banking Crisis

- **Silicon Valley Bank (SVB) Closure – March 10, 2023**
- **Signature Bank Closure – March 12, 2023**
- **FDIC Announces All Deposits Will Be Available on March 13**

HR Implications from Banking Crisis

- **Obstructed access to funds could prevent an employer from satisfying payroll obligations.**

Missing Payroll – Risks and Consequences

- **Paying earned wages is more than a contractual obligation. Relevant legal obligations:**
 - Fair Labor Standards Act
 - State Wage Theft Laws
- **Inaccessibility of funds is not a recognized defense to unpaid wage claims**
- **Some state laws impose significant penalties for failure to pay earned wages in a timely manner:**
 - **Massachusetts**
 - Wages must be paid weekly or biweekly, less frequently only in certain circumstances; due within 6 days of end of pay period
 - Penalties: automatic treble damages as soon as wages are late, both during employment and at termination

Missing Payroll – Risks and Consequences

- **Penalties continued:**

- **California**

- Wages earned between the 1st and 15th day of any calendar month due by the 26th day of the same month
- Wages earned between the 16th and the last day of the month due by the 10th day of the following month
- Penalties:
 - During employment:
 - » Statutory penalties for each failure to pay: \$100 initially, or \$200 if willful or intentional; \$200 for each subsequent violation; plus 25% of the amount unlawfully withheld
 - » Potential PAGA claim for civil penalties: \$100 per initial violation; \$200 per subsequent violation
 - At termination: one day of wages for each day late, up to 30 days (“waiting time penalties”)

Avoid Incurring Unpaid Wage Liabilities

- **If funds will not be available to pay employees for upcoming work, DO NOT allow the employees to perform the work**
 - If an employee is “suffered or permitted to work,” the employer must pay at least the applicable minimum wage – executives are not an exception
 - A business cannot let employees “volunteer” to work without pay or agree to forgo timely wage payments
 - Agreements that purport to violate wage laws are generally void as a matter of law
- **Executives and others may have contractual pay rights that may require additional attention**

Layoff/Furlough Options

- **Federal WARN Act – Applies to employers with 100 or more employees**
 - 60 days' notice to employees and certain government entities
 - Plant closing or mass layoff in which:
 - 50 or more affected within 30 days (counting only “full-time” employees as defined)
 - If mass layoff, also must constitute 33% of workforce
 - Aggregate smaller layoffs over 90-day period
 - Exceptions:
 - “faltering company”
 - “unforeseeable business circumstances”
 - “natural disaster”
 - potentially a “liquidating fiduciary” exception in case of bankruptcy if business not a going concern (i.e., not in a Chapter 11 reorganization)

Layoff/Furlough Options

- **State “Mini” WARN Laws – Rules vary from state to state**
 - Example: California WARN
 - Applies to business (“covered establishment”) with 75 or more employees
 - 60 days’ notice to employees and certain government entities
 - Plant closing or mass layoff at a covered establishment in which:
 - 50 or more employees affected by layoff within 30 days
 - Any amount affected in termination (equivalent of “plant closing”)
 - No 90-day aggregation required
 - Only exceptions for “faltering company,” “act of war”/physical calamity
 - Unlike Federal WARN, “unforeseen business circumstances” not available
- **Other states’ mini-WARN laws may apply to smaller employers, or smaller layoffs, or require additional advance notice**

Pay Cut Options

- Advance notice required in some states
- Review agreements and “Good Reason” definitions for execs
- Consider minimum salary requirements for overtime exemptions to avoid inadvertent loss of exempt status
- Avoid suggesting that salary levels will fluctuate



Travis R. Kearbey

PARTNER | ST. LOUIS, MO

tkearbey@atllp.com



Julie O'Dell

PARTNER | ORANGE COUNTY, CA

jodell@atllp.com



Alexandra (Sasha) Thaler

PARTNER | BOSTON, MA

adthaler@atllp.com

**THANK YOU FOR
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