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# Can You Conduct Collective Bargaining By Phone Or Teleconference In The Age Of Coronavirus?

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The coronavirus has dramatically altered the lives of Americans and impacted every aspect of our society. This includes labor relations issues like collective bargaining, which has rich tradition in face-to-face bargaining across the table.

As companies and unions both adjust to the new normal, both sides have been proposing tele-bargaining, which has raised questions as to what employers can control or propose related to the logistics of negotiations.

While the coronavirus situation is unique, labor law does provide us with a framework with which to analyze this question. Labor law draws a distinction between mandatory and permissive subjects of bargaining. Parties can bargain and reach agreements over either, but parties are only *required* to bargain over mandatory subjects. Thus, if a party refuses to bargain over a mandatory subject of bargaining, it violates the law. But if a party refused to bargain over a permissive subject of bargaining, it does not violate the law.

The National Labor Relations Board routinely finds that technical preconditions on the bargaining process are permissive, for example: whether a stenographer is present, whether the bargaining session is videotaped, whether an agenda is provided, or whether a mediator is present. The Board has also said that face-to-face meetings are the “bargaining norm,” so mediation (where the parties are separated into different rooms), is permissive.

For this same reason, *requiring* that the parties bargain by phone or videoconference is permissive, which means employers cannot make it a precondition to bargaining. While there may be some flexibility by the Board on this issue, given the CDC's recommendations on social distancing, employers should be careful not to make tele-bargaining an ultimatum to bargaining.

Employers can, however, propose that bargaining be conducted by phone or some other technological means, and explain to the union why that is the best course of action during the coronavirus pandemic.