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Labor & Employment Alert

# COVID-19 — Impact on Unemployment Compensation Benefits

Recent legislation has enhanced workers' ability to receive unemployment compensation benefits when their jobs are impacted by COVID-19. These changes stem primarily from the two new federal laws—the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the Families First Coronavirus Relief Act (FFCRA)—although several states have implemented further changes and employer requirements, including Pennsylvania. Below is a summary of what employers need to know about these changes.

## CARES ACT

The CARES Act boosts benefits for workers who are unemployed, partly unemployed, or cannot work for a variety of COVID-19-related reasons. Qualifying reasons include having a COVID-19 diagnosis, caring for a family member due to certain COVID-19-related reasons, being unable to work because your workplace is closed due to COVID-19, and resigning as a direct result of COVID-19. Benefits available under the CARES Act are fully funded by the federal government, but are administered by states.

- **$600 Weekly Supplement.** The CARES Act provides temporary Federal Pandemic Unemployment Compensation (FPUC) of $600 per week to all workers eligible for unemployment benefits through July 31, 2020. This straight-across-the-board supplement is in addition to the weekly benefit workers otherwise would receive under state law. It will be paid at the same time workers receive their benefits from the state. This supplement does not affect eligibility for Medicaid or the Children's Health Insurance Program (CHIP). For some workers, receipt of this supplement may put their weekly unemployment benefit amount at or over 100% of their regular earnings.

- **Additional 13 Weeks.** Under state law, claimants receive their benefits for a specific period, which is usually 26 weeks. The CARES Act gives claimants an additional 13 weeks of benefits until December 31, 2020.

- **More Availability.** The CARES Act makes benefits available to independent contractors, self-employed workers, part-time workers, and those with limited work history. However, it does not include workers who telework or have paid leave.

## FEDERAL FAMILIES FIRST CORONAVIRUS RELIEF ACT (FFCRA)

Division D of the FFCRA is the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA). The EUISAA allocates $1 billion in emergency state grants to assist with administering and paying unemployment benefits. The EUISAA authorizes emergency flexibility, allowing states to temporarily modify certain aspects of their unemployment compensation laws, providing a short-term waiver of interest on state trust fund advances, and, importantly, ensuring full federal funding during extended benefit periods. States must meet certain requirements to

receive the emergency funding, and receipt of certain funds depends on the magnitude of the increase in unemployment claims filed in the state.

Although much of the law is directed toward states, the EUISAA affects employers and employees in several ways:

- In order to receive the grants, states are required to relax unemployment compensation eligibility requirements, such as **waiving the one-week waiting period** (specifically, the EUISAA eliminates the federal penalty for states that waive the waiting week during the crisis) **and waiving work search requirements.**

- States also **must require employers to provide notice** of the availability of unemployment benefits to employees upon termination. The Department of Labor's Employment & Training Administration has released guidance to state workforce agencies. Attachment III to the guidance is a model notice employers may use. As described below, some states, such as Pennsylvania, have already amended their laws to require that employers provide certain information to separating employees regarding the availability of benefits.

## OTHER STATE-SPECIFIC CHANGES

States have begun introducing changes or guidance related to their unemployment compensation programs in light of COVID-19.

For example, ***Pennsylvania now requires employers to provide notice to separating employees of the availability of unemployment benefits at the time of separation.*** This notice must include, at minimum:

1. the availability of benefits to eligible employees,

2. the ability to file a claim in the first week of the employment loss,

3. the availability of assistance or information about a claim on the Department of Labor & Industry's website or by calling the toll-free number the employer must include in the notice, and

4. that the employee will need certain information to file a claim, including the employee's full name, Social Security number, and, if not a U.S. citizen, authorization to work in the U.S.

*See* 43 P.S. § 766.1. Unlike several other COVID-19-related laws, this notification requirement is permanent and does not contain an expiration date.

In some states, employers' unemployment compensation tax rates will not increase if their employees file claims based on the employers' temporary closure or reduction of employees' hours due to COVID-19. For example, ***in Pennsylvania, employers may secure relief from charges for certain COVID-19-related unemployment claims by filing a request within 21 days of notice from the Department indicating a claimant's eligibility.*** Other states have issued COVID-19-specific guidance regarding the interaction of statutorily-required paid sick leave or disability insurance with unemployment compensation (*e.g.,* New Jersey).

Employers should also be aware that many states have waived the waiting period independent of any prompting by the FFCRA or EUISAA, making benefits available to workers sooner (e.g., Pennsylvania, Massachusetts, District of Columbia). Additionally, to streamline the enormous influx of claims, some states have required claimants to file their initial claims on certain days or times based on their last names or the last four digits of their social security numbers (*e.g.,*

New York, New Jersey). Employers should also consider the effect of severance pay on unemployment benefits. Each state's unemployment compensation program is different, and employers are encouraged to review their state's program and to consult with counsel.

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