COVID-19: state guide to payroll and employment tax provisions

Updates through August 15, 2020

Building a better working world

Contents

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Introduction

To contain the outbreak of COVID-19 in the US, numerous states and local governments temporarily closed nonessential businesses and issued "stay-at-home" orders, creating a historic disruption to the US workforce.

Some states and localities have responded to the emergency by expanding their paid leave mandates; waiving certain reporting requirements; providing extensions on the due date of payroll tax returns, tax payments or both; and/or temporarily halting garnishment orders.

Federal legislation under the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) expanded unemployment insurance (UI) benefits in connection with COVID-19, temporarily altering the benefit eligibility requirements and extending coverage to individuals who would not normally qualify. The legislation generally relieves employers from the direct charging of these COVID-19 UI benefits to their UI accounts. These federal provisions are not automatic. Instead, states must enter into agreements with the U.S. Department of Labor to receive federal offset funds. The result is that the states are not uniform in the timing or application of the COVID-19 provisions and employers and employees are challenged to understand the rules that apply.

COVID-19 has also dramatically increased the number of employees working from home, an arrangement that is new for many employers. Telecommuting raises numerous questions about income tax withholding and the assertion of nexus for other business taxes (e.g., sales and use tax, corporate income tax).

In this publication, we provide an update of the many state and local payroll responses to COVID-19. This is not an exhaustive compilation, as the governmental response has been far-reaching. Further, the situation continues to evolve.

This publication is current as of May 7, 2020, unless otherwise indicated.

For updates to this COVID-19 state guide or to obtain our state trackers, contact debera.salam@ey.com or kenneth.hausser@ey.com.

Read about the federal payroll and employment tax provisions for COVID-19

In our comprehensive report, *COVID-19: employer requirements and considerations*, we explain in detail the federal provisions that address the COVID-19 emergency through mandatory paid leave, employment tax credits, the option to defer the employer portion of Social Security tax and more.

Download the report here.

Download the slide deck here.

Unemployment insurance benefits expanded for COVID-19

On March 13, 2020, and effective retroactively to March 1, 2020, President Trump declared a major disaster due to the widespread occurrence of COVID-19 in the US. Subsequently, numerous states and localities issued stay-at-home orders and temporarily closed nonessential businesses to contain the spread of the virus.

In response to the significant increase in the unemployed, the U.S. Department of Labor (DOL), under the direction of the Trump Administration, and Congress acted quickly to expand on the existing state unemployment insurance (UI) programs for lost wages related to COVID-19. The result is a dramatic increase in the number of persons eligible for UI benefits and the weekly amount that will be paid to them.

DOL urges states to adopt flexibility in their UI laws

The DOL announced that federal law has the flexibility to allow states to pass legislation or amend regulations that would allow workers affected by COVID-19 to collect state UI benefits under certain circumstances.

The announcement specifies that federal law allows states to pay UI benefits in connection with COVID-19 if:

- An employer temporarily ceases operations due to COVID-19, preventing employees from coming to work.
- An individual is quarantined with the expectation of returning to work after the quarantine is over.
- An individual leaves employment due to a risk of exposure or infection or to care for a family member. In addition, federal law does not require that an employee quit to be eligible to receive UI benefits in connection with COVID-19.

The announcement notes, however, that a worker receiving paid sick leave or paid family leave is not eligible for UI benefits because the worker is still receiving pay and is not considered to be unemployed.

The Department issued Unemployment Insurance Program Letter No. 10-20 to assist state workforce agencies in implementing UI benefit law and regulation changes due to COVID-19.

FFCRA UI benefit provisions

The Emergency Unemployment Insurance Stabilization and Access Act of 2020 enacted under the FFCRA provides federal grants to states that comply with requirements to ease their UI benefit requirements, allowing workers not eligible for regular state UI benefits to collect UI benefits during the COVID-19 crisis. (*DOL UPL 13-20*).

The Act provides as much as $1 billion for emergency transfers to states in fiscal 2020 to pay program administrative costs.

Allotment I of the UI emergency grant, which is 50% of the state's total allocation is available if the state:

- Requires employers to provide notice to employees of the UI benefits available.
- Provides that UI benefit applications are available in two of the three mediums: in-person, phone or online.
- Notifies UI benefit applicants when an application is received and is being processed and, if unable to process an application, the state provides information to the applicant on why and what steps the applicant can take to ensure the successful processing of the application.

For the second allotment (the other 50% of the state's share of the UI emergency grant), states must, at a minimum, demonstrate steps it has taken or will take to implement all three of the following elements:

- Suspending the waiting week.
- Modifying or suspending the work search requirement.
- Non-charging contributory employers.
- Showing that the state's UI claims have increased by at least 10% due to COVID-19.

States had to request the first allotment by May 8, for distribution by the DOL by May 15. Requests for Allotment II must be made by September 15, for distribution by September 30.

As previously mentioned, these federal funds do not constitute Disaster Unemployment Assistance (DUA) that is funded directly by the federal government (and also not charged to employer accounts) in the event of a qualifying major disaster declaration.

CARES Act UI benefit provisions

The CARES Act, signed into law by President Trump on March 27, 2020, provides additional funding of $250 billion to states that further expand their UI benefits in connection with COVID-19 by increasing the weekly benefit amount, increasing the number of weeks of benefits and extending coverage to additional categories of individuals.

Following is a summary of the CARES Act UI benefit provisions of interest to employers as contained in the DOL's program letter to the state workforce agencies. (*DOL UIPL 14-20*).

- **Additional weeks of UI benefits.** Provides an additional 13 weeks of UI benefits beyond what states typically allow starting with weeks of unemployment beginning on or after January 27, 2020, and ending on or before December 31, 2020.
- **Extend UI benefits to more individuals.** Extend UI benefits to individuals who are self-employed, seeking part-time employment or whom otherwise would not qualify for regular unemployment compensation (UC) or extended benefits (EB) under state or federal law. Coverage also includes individuals who have exhausted all rights to regular UC or EB under state or federal law.

  To qualify for these benefits, individuals must demonstrate that they are otherwise able to work and available for work within the meaning of applicable state law, except that they are unemployed, partially unemployed, or unable or unavailable to work because of COVID-19-related reasons.
- **Emergency unemployment relief for governmental entities and non-profit organizations (reimbursing employers).** The DOL is authorized to issue guidance to allow states to interpret their state laws in a manner that would provide maximum flexibility to reimbursing employers as it relates to timely payments in lieu of contributions and assessment of penalties and interest.

This section of the CARES Act also provides for transfers to a state's account in the unemployment trust fund from the Federal Unemployment Account to provide partial reimbursements (generally 50% of the amount of payments in lieu of contributions) to state and local governmental entities, certain nonprofit organizations, and federally recognized Indian tribes for weeks of unemployment between March 13, 2020, and December 31, 2020. These partial reimbursements apply to all payments made during this time period, even if the unemployed individual is not unemployed as a result of COVID-19.

- **Additional weekly cash benefit.** Additional UI benefits of $600 per week are extended to individuals who are collecting regular UI. This provision is available for weeks of unemployment beginning after the date on which the state enters into an agreement with the DOL and ending with weeks of unemployment ending on or before July 31, 2020.

  States are prohibited from changing the computation method governing regular UI law in a manner that results in the reduction of average weekly benefit amounts or the number of weeks of benefits payable.

- **Short-term compensation (STC), also known as shared work or work share.** States may be reimbursed for 100% of STC benefit costs up to a maximum of 26 weeks of STC per individual. These reimbursements are available starting with weeks of unemployment beginning on or after March 27,2020, and ending with weeks of unemployment ending on or before December 31, 2020.
  - If a state enacts a new law providing for the payment of STC after March 27, 2020, reimbursements are available starting with the effective date of the state law enactment and ending with weeks of unemployment ending on or before December 31, 2020.
  - States without an existing STC program in the state's UI law may provide STC benefits under an agreement with the DOL and be reimbursed for 50% of STC benefit costs, with the employer paying the other half, up to a maximum of 26 weeks of STC per individual. This federal STC program is available for weeks of unemployment beginning on or after the date on which the state enters into an agreement with the Department and ending with weeks of unemployment ending on or before December 31, 2020.
  - A $100 million grant is to be shared across states for implementation or improved administration, and promotion and enrollment of a state's STC program.

UI benefit expansion presents challenges for employers and employees

Because COVID-19 benefits are not paid under the existing DUA program, states were not able to conform to federal guidelines automatically. Instead, they had to sign agreements with the DOL agreeing to provisions making them eligible to receive federal funds for the UI benefit payouts. To comply with the requirements for federal funding, states have had to make any needed changes to their programs, systems, laws and policies to begin making the necessary payments. Accordingly, state requirements and procedures could vary, and states will not come online at the same time. This means that employers must track state developments as they occur.

Shown in Figure 1 below is a summary of the state status thus far in implementing the FFCRA UI benefit provisions. Note that as of May 11, 2020, several states have not yet confirmed their conformity with several key provisions, including the requirement that employer UI accounts not be directly charged for UI benefits paid in connection with COVID-19.

Figure 1: State adoption of FFCRA UI benefit provisions*

* State did not issue a stay-at-home order

** State has adopted a return-to-work bonus program to give incentive for employees to stop collecting UI benefits and return to work

Jurisdiction (click for the primary source for COVID-19 UI information)	Benefits charged to employer's account?	Work search requirement waived?	One-week waiting period waived?
Federal	No	Yes	Yes
Alabama	No	Yes	Yes
Alaska	N/A (Rates are based on quarterly wage fluctuations. Employers that shut down will need to file Employer Option Forms to equalize and stabilize quarterly wages to help keep 2021 rates down.)	Yes	Yes
Arizona	No	Yes	Yes
Arkansas*	Pending	Yes	Yes
California	No	Yes	Yes
Colorado	No	Yes	Yes
Connecticut	No	Yes	N/A (The state has no waiting period.)
Delaware	No (Effective March 16, 2020, and until the state emergency order expires)	Yes	Yes
District of Columbia	No	Yes	Yes
Florida	No	Yes	Yes

Jurisdiction (click for the primary source for COVID-19 UI information)	Benefits charged to employer's account?	Work search requirement waived?	One-week waiting period waived?
Georgia	No (Provided partial UI claims are paid)	Yes	N/A (The state has no waiting period.)
Hawaii	No	Yes	Yes
Idaho**	No	Yes	Yes
Illinois	No	No	No
Indiana	No	Yes	Yes
Iowa*	No	Yes	N/A (The state has no waiting period.)
Kansas	Pending	Yes	Yes
Kentucky	No	Yes	Yes
Louisiana	No	Yes	Yes
Maine	No	Yes	Yes
Maryland	No (Expired July 5, 2020, under Chapter 733 of 2017)	Yes	N/A (The state has no waiting period.)
Massachusetts	No	Yes	Yes
Michigan	No	Yes	N/A (The state has no waiting period.)
Minnesota	No	Determined on a case-by-case basis	Yes
Mississippi	No	Yes	Yes
Missouri	No Yes, after July 5, 2020	Yes No, after July 5, 2020	Yes No, after July 5, 2020
Montana	No	Yes	Yes
Nebraska*	No	Yes	Yes
Nevada	No (Effective after August 5, 2020, and retroactive)	Yes	Yes
New Hampshire	No	Determined on a case-by-case basis	Yes
New Jersey	No	Yes	N/A (The state has no waiting period.)
New Mexico	No Confirmed in state workforce agency's remarks on Senate Bill 13	Yes	No

Jurisdiction (click for the primary source for COVID-19 UI information)	Benefits charged to employer's account?	Work search requirement waived?	One-week waiting period waived?
New York	Yes (For all regular UI benefits)	Pending	Yes
North Carolina	No	Yes	Yes
North Dakota*	No	Yes	Yes
Ohio	No	Yes (Includes those individuals requested by a medical professional, local health authority or employer to be isolated or quarantined as a consequence of COVID-19 even if not actually diagnosed with COVID-19)	Yes
Oklahoma	No	Yes	Yes
Oregon	Pending	Yes	Pending
Pennsylvania	No	Yes	Yes
Rhode Island	No (Executive Order 20-52, extended from July 4, 2020, to August 4, 2020)	Yes	Yes
South Carolina	No	Yes	Yes
South Dakota*	No	Yes	Yes
Tennessee	No (Through July 31, 2020)	Yes	Yes
Texas	No	Yes	Yes
Utah*	No	Yes	No
Vermont	No	Yes	Yes
Virgin Islands	No	Yes	Yes
Virginia	No	Yes	Yes
Washington	No (Through June 30, 2020. Employers must apply for relief and budget is limited.)	Yes	Yes
West Virginia	Pending	Yes	Yes
Wisconsin	No	Yes	Yes
Wyoming*	Pending	Pending	Pending

COVID-19's impact on future unemployment insurance tax costs

The U.S. Treasury Department announced that as of July 1, 2020, 13 jurisdictions (California, Colorado, Delaware, Hawaii, Illinois, Kentucky, Massachusetts, Minnesota, New York, Ohio, Texas, the Virgin Islands and West Virginia) applied and were approved for federal unemployment insurance (UI) Title XII advances (UI loans). Connecticut had previously received approval for a UI loan but has since been removed the list.

As of July 1, 2020, California, Illinois, Kentucky, Massachusetts, New York, Ohio and Texas currently have outstanding federal UI loan balances. Virgin Islands continues to carry a federal loan balance on a loan that has existed since 2009. (*U.S. Department of Labor UI trust fund loans*.)

Federal UI law requires states to continue to pay regular UI benefits even when their UI trust funds are depleted. States with depleted trust fund balances apply for federal loans to bolster their trust fund balances so that the payment of UI benefits are not interrupted.

Under the CARES Act, federal advances taken in 2020 are interest-free if repaid by the end of 2020. Interest begins to accrue in 2021, and if a federal UI loan balance is still outstanding after two years (in 2022), employers are required to make payments toward the outstanding federal loan balance in the form of a federal unemployment insurance (FUTA) credit reduction that increases the FUTA taxes employers pay.

The last time the nation saw a substantial increase in UI benefit payouts was during the great recession of 2007 and 2008. During that period, the majority of states received federal loans to shore up their trust fund reserves, and at its peak in 2011, employers in 21 states fell subject to the FUTA credit reduction. Once triggered, it can take years for the FUTA credit reduction to go away. California, for instance, began borrowing in 2009, and its loan balance was not repaid until 2018, subjecting California employers to the FUTA credit reduction for seven years (2011 to 2017). The Virgin Islands has yet to repay its loan balance from this period, and a FUTA credit reduction in 2020 is again likely for Virgin Islands employers. (See Figure 2 below.)

Figure 2: FUTA credit reduction due to the 2007–2008 recession

First year of long-term loan	Year FUTA credit reduction first applied	Number of jurisdictions subject to FUTA credit reduction on Form 940
2007	2009	1
2008	2010	3
2009	2011	21
No new long-term loans	2012	19
	2013	14
	2014	8
	2015	4
	2016	2
	2017	2
	2018	1
	2019	1

Interest surcharges can further increase state unemployment insurance tax cost

Under federal law, the interest on a federal UI loan, or any other debt instrument (e.g., a state bond) used to fund UI benefits, cannot be paid from the states' UI trust funds, forcing many states to recover the cost from employers in the form of interest surcharges. These surcharges are paid in addition to the normal UI tax employers pay, and they cannot be counted as UI contributions for purposes of computing the allowable credit on the Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*.

US rate of unemployment continues to rise due to COVID-19

The U.S. Bureau of Labor Statistics (BLS) reports that due to the recent COVID-19 business shutdowns, for April 2020, total nonfarm payroll fell by 20.5 million and the rate of unemployment rose to 14.7%, up by 10.3% over March 2020. Employment fell sharply in all major industry sectors, with particularly heavy job loss in the leisure and hospitality sectors. (*USDL-20-0815, the employment situation for April 2020, released May 8, 2020.*)

According to the BLS, this is the highest rate and the largest over-the-month increase since the agency started measuring the monthly statistics in January 1948. In April 2020, 23.1 million individuals were unemployed; 18.1 million of these individuals reported that they were temporarily laid off and 2 million reported that their layoff was permanent.

There has been some improvement in the May figures. BLS reports that the rate of unemployment fell to 13.3% in May 2020, down from the April 2020 rate of 14.7%. Total nonfarm payroll rose by 2.5 million in May. (USDL-20-1140, the employment situation for May 2020, released June 5, 2020.)

FUTA credit reduction: the added burden of long-term debt

When a FUTA credit reduction applies, the maximum FUTA credit falls below 5.4%. To lose a portion of the maximum 5.4% FUTA credit means that the net FUTA tax rate rises above the normal 0.6%. For instance, if the maximum 5.4% FUTA credit is reduced by 0.3%, the net FUTA rate increases from 0.6% to 0.9% [6.0% - (5.4% - 0.3%) = 0.9%].

States are given the option of accepting a federal UI loan to augment their UI trust funds. If states do not repay these federal loans within a certain time frame, employers in those states are required to assist in repaying these loan balances through funds obtained from the FUTA credit reduction.

Specifically, if a state has an outstanding federal UI loan balance on January 1 of two consecutive years and fails to repay the entire balance by November 10 of the second year, employers in that state are subject to a reduction in the maximum 5.4% FUTA credit. With certain exceptions, the credit reduction increases in 0.3% increments each subsequent year the loan balance remains unpaid. The additional FUTA tax per employee that is the result of this FUTA credit reduction can be substantial, particularly if federal UI loan balances linger over several years. (See Figure 3 below.)

Figure 3: FUTA credit reduction effect before add-on

Number of years with outstanding federal UI loan	Adjusted net FUTA rate (net FUTA rate of 0.6% + FUTA credit reduction)	Increase over $42 per employee (assuming $7,000 × 0.6%)
2	0.9%	$21
3	1.2%	$42
4	1.5%	$63
5	1.8%	$84

Federal law discourages states from carrying their federal unemployment insurance loan balances over several years by further reducing the FUTA credit beginning in the fifth year of the loan. This add-on to the FUTA credit reduction is referred to as the benefit-cost ratio (BCR).

The BCR penalty may be waived if the jurisdiction's governor submits an application to the US Secretary of Labor no later than July 1 of the penalty year and the jurisdiction takes no action (legislative, judicial or administrative) during the 12-month period ending September 30 that would reduce unemployment insurance trust fund solvency during that same time period.

Should the BCR add-on be waived, as is normally the case if the conditions are met, another penalty, referred to as the 2.7 add-on, can apply if the jurisdiction's average unemployment insurance tax rate is inadequate. The 2.7 add-on penalty rate cannot be avoided or waived once activated.

Ernst & Young LLP insights

In addition to the possible increases in future FUTA taxes, employers should also anticipate forthcoming increases in state UI taxes to replenish state trust funds. Calendar year 2021 SUI tax rates will most likely be impacted by falling state UI trust funds, even though most states have agreed that employer SUI accounts will not be directly charged for UI benefits paid in connection with COVID-19.

Taxation of employees working from home due to COVID-19

To prevent the spread of contagious illnesses such as COVID-19, workers may be asked to quarantine, requiring that they work remotely where telework is possible. The reassignment of work locations and/or the displacement of workers due to health safety precautions raises many employer concerns, some of which may be addressed by upcoming state or local tax policies. (See Figure 3.)

Income tax withholding when employee lives and works in two different states

It is frequently the case that the employee's work and resident locations are in two different taxing jurisdictions. For instance, an employee may work in New York but live in New Jersey, or work in one Ohio local tax jurisdiction but live in another Ohio local tax jurisdiction. For this reason, when employees temporarily work from home, consideration must be given to the resident and nonresident income tax withholding rules that apply.

State nonresident (work location) income tax withholding

For the nonresident state, income tax withholding is generally required only on those wages earned in the nonresident state.

An exception to this rule applies in states (see Figure 4 below) that enforce the "convenience of the employer" rule. Under New York's convenience of the employer rule, the employer is required to withhold New York state income tax from all wages paid to the employee if (1) the employee spent at least one day in the year in New York and (2) the reason the employee is working from home outside of the state is for the employee's own convenience. If the reason the employee is working from home is for the convenience of the employer, work from home is excluded from the nonresident income tax withholding requirement. (*TSB-M-06(5) I*.)

The challenge is that states imposing the convenience of the employer rule generally apply a stringent definition of what constitutes work from home for the employer's convenience. Absent specific guidance that work from home due to health concerns (e.g., COVID-19) is for the employer's convenience, the exception from nonresident income tax withholding does not apply to these telework arrangements.

Will states that enforce the convenience of the employer adopt a favorable policy for COVID-19? It may take some time for states to reach a decision. However, In the past, New York offered nonresident income tax exemptions for Hurricane Sandy but did not concede that work outside of New York due to Hurricane Sandy was for the employer's convenience. (*New York Department of Taxation and Finance, Hurricane Sandy, November 20, 2012*.)

Figure 4: States with the convenience of the employer rule*

Connecticut (*Conn. Gen. Stat. § 12-711(b)(2)(C)*)

Delaware (*Del. Code. Tit. 30, §1124(b)(1)(b)*)

Nebraska (*316 Neb. Admin. Code § 22-003.01C(1)*)

New York (*20 NYCRR § 132.18(a); Technical Memorandum TSB-M-06(5)I*)

Pennsylvania (*61 Pa. Code Section 109.8*)

State resident income tax withholding

Assuming the employer has business operations in the resident state, income tax withholding is generally required on all wages earned within and outside of the resident state. This requirement is clear if the employer has business offices, retail operations, warehouses, etc., in the resident state.

The challenge arises, however, when the only work activity within the resident state is work from an employee's home. Arkansas recently ruled that work performed out of an employee's home for an out-of-state contractor is subject to Arkansas income tax but not income tax withholding. (*Arkansas Revenue Legal Counsel Opinion No. 20190514, February 3, 2020*.) Most other states contend that when work is primarily performed from an employee's home, the employee's home is a regular place of business. Accordingly, state resident income tax withholding and other employment and business taxes (e.g., unemployment insurance and sales/use tax) apply in the state of the employee's home. (*New Jersey: Telebright Corp., Inc. v. Director of Taxation; Virginia: Ruling of the Virginia Tax Commissioner, Document No. 14-158, August 28, 2014*.)

It is doubtful that a state would consider an employee's home office a regular place of business if the employee worked from home for a few days; however, states can have unique definitions of what constitutes work that is primarily performed within the state.

Because the home office can trigger nexus for other employment and business taxes, it is essential that employers confirm the resident income tax rules in each state where a teleworker will provide services.

Local payroll tax considerations

As with state income tax, work from home may trigger local payroll taxes in the employee's resident location that would otherwise not have applied. For this reason, a careful review of the resident (and nonresident) local tax rules that apply to teleworkers is also necessary.

See Figure 3 for a sample of the special provisions issued by states and localities pursuant to teleworker income tax withholding and COVID-19.

State unemployment insurance

Unlike state income tax, where sourcing rules can vary by state, state unemployment insurance is subject to federal uniform standards (DOL, Unemployment Insurance Program Letter No. 20.04.) Under the federal "Localization of Work Provisions," unemployment insurance applies only in one state and is generally paid where the employee's work is localized. An employee's work is localized in the state if (1) the services are performed entirely within such state or (2) the service is performed both within and outside of the state but the service performed outside of the state is incidental to the individual's service within the state (e.g., is temporary or transitory in nature or consists of isolated transactions).

Accordingly, for most employees temporarily working from home in connection with COVID-19, employers continue to pay unemployment insurance to the state where the employee normally works rather than to the resident state. This can change if the telework arrangement lasts for several months, such that work for the year is primarily performed from the employee's home.

Ernst & Young LLP insights

Given the state and local tax consequences of telework arrangements, it is vital that employers seek the assistance of qualified employment tax professionals who can evaluate the applicable state and local withholding and payroll tax requirements that apply to each teleworker based on the specific facts and circumstances.

It is also important that employers closely monitor federal, state and local policies as they relate to payroll tax changes in connection with COVID-19. These policies may include tax filing extensions, tax cuts, withholding exemptions, tax credits and special unemployment insurance provisions for displaced workers.

See Figure 5 for a sample of guidance taxing authorities have issued in connection with COVID-19.

Figure 5: Sample of taxing authorities' guidance for COVID-19 teleworker income tax

Taxing authority	Work-from-home income tax and withholding guidance
District of Columbia	The District of Columbia Office of Tax and Revenue (OTR) announced that it will not assert nexus for purposes of corporation franchise tax or unincorporated business franchise tax solely because employees are working temporarily from home within the District during the period of the mayor's COVID-19 emergency declaration. The assertion of nexus will also not be made solely because of property (computers, computer equipment or similar) used by employees to work from home under these circumstances.
Georgia	In its frequently asked questions (FAQs) concerning tax relief and COVID-19, the Georgia Department of Revenue announced that it will temporarily not impose nexus for work at home within the state that is directly due to the COVID-19 emergency. The Department also provides guidance concerning the income tax withholding requirements that apply. The Department will not use temporary work from home within the state that is directly connected with the COVID-19 emergency as the basis for establishing Georgia nexus or for exceeding the protections under P.L. 86-272 for the employer of the teleworker. Also, if the employee is temporarily working in Georgia due to COVID-19, the wages the employee earns during this time frame will not be considered Georgia income and not subject to Georgia income tax or withholding. The Department makes the following stipulations: ▸ If the employee remains in Georgia after the temporary remote work requirement has ended, the normal rules for determining nexus, the employee's wages and the employer's income tax withholding obligation will apply. ▸ Wages paid to a nonresident employee who normally works in Georgia but that is temporarily working in another state, under the circumstances described above, would be considered Georgia wages and the employer should continue to withhold Georgia state income tax. These provisions are temporary and apply for period where there is an official work-from-home order issued by an applicable federal, state or local government unit, or pursuant to the order of a physician in relation to the COVID-19 outbreak or due to an actual diagnosis of COVID-19, the employee is working at home. Additionally, the subsequent 14 days are included in the time period to allow for a return to normal work locations.
Indiana	The Indiana Department of Revenue announced that under certain circumstances in connection with COVID-19, it will not assert nexus or that the protections of the federal Interstate Income Act of 1959 (P.L. 86-272) have been exceeded due to a temporary remote work assignment within the state. This relief applies only for the period that: ▸ There is an official work-from-home order issued by an applicable federal, state or local government unit. ▸ There is an order of a physician in connection with the COVID-19 outbreak or an actual diagnosis of COVID-19, plus 14 days to allow for return to normal work locations. The Department cautions that if the employee remains in Indiana after the temporary remote work requirement has ended, nexus may be established for that employer.

Taxing authority	Work-from-home income tax and withholding guidance
Maryland	On May 4, 2020, the Office of the Comptroller of Maryland (Office) issued updated guidance to address withholding questions it received concerning temporary telework within the state due to COVID-19. (*For the previous guidance, see EY Tax Alert 2020-1067*.) **Resident income tax withholding** The guidance states that Maryland employer withholding requirements are not affected by the current shift from working on the employer's premises to teleworking because taxability is determined by the employee's physical presence within the state. Generally, Maryland state income tax and state income tax withholding applies to employees domiciled in Maryland, statutory residents of Maryland (except that active duty military and the spouses of active duty military are not deemed statutory residents when their presence in Maryland is solely the result of military orders) and nonresident employees receiving Maryland-sourced income. Income is deemed Maryland-sourced when it is compensation for services performed within Maryland, and as such, Maryland nonresident income tax and withholding apply. An exception applies to wages, salaries, tips and commission for work performed in Maryland by residents of Pennsylvania, Virginia, Washington D.C. and West Virginia because Maryland has a reciprocal agreement with these states. Note also that Maryland income tax withholding is not required if the employee's annual compensation is less than $5,000. (*May 2019 Maryland Employer Withholding Guide (p. 5)*.) Delaware has not entered into a reciprocal agreement with Maryland; therefore, compensation paid to a Maryland nonresident who is teleworking in Maryland is Maryland-sourced income, and therefore, subject to Maryland state income tax and withholding. The Office does not intend to change or alter the facts and circumstances it has consistently used to determine nexus or income sourcing. As has always been the case, the Office reviews and considers the specific facts and circumstances of each taxpayer in making a fair determination. In doing so going forward, the Office understands that many businesses have been required or otherwise found it necessary during the COVID-19 health emergency to temporarily alter their workplace model and deployment of their employees. Consequently, the Office will recognize the temporary nature of a business' interim workplace model and employee deployment in light of and during the current health emergency and will not use these temporary measures to impose business nexus, to alter the sourcing of business income or to impose additional withholding requirements on the employer.

Taxing authority	Work-from-home income tax and withholding guidance
Massachusetts	The Massachusetts Department of Revenue issued emergency regulations updating 830 CMR 6.5A.3, and provides guidance concerning income tax withholding for employees working temporarily in the state due to COVID-19. To minimize disruption for employers and employees during the COVID-19 state of emergency, the Department has issued emergency regulations that set forth the income tax withholding requirements that will apply pursuant to employees temporarily working in the state due to COVID-19. These emergency regulations are effective for the period beginning March 10, 2020, and end on the date on which the Massachusetts governor gives notice that the state of emergency declared in Executive Order 591 is no longer in effect. ▸ **Nonresident income tax withholding.** Under the normal rules, income derived within Massachusetts from employment within the state is sourced to Massachusetts and subject to Massachusetts income tax and income tax withholding (*M.G.L. c. 62, § 5A(a).*) Accordingly, all compensation received for personal services performed by a nonresident, who, immediately prior to the Massachusetts COVID-19 emergency, was an employee engaged in performing services in the state, and who during such emergency is performing services from a location outside of Massachusetts due solely to COVID-19, will continue to be treated as Massachusetts-sourced income subject to Massachusetts personal income tax and income tax withholding. (*M.G.L. c. 62B, § 2.*) Note that Massachusetts has not entered into a reciprocal agreement with any other states; accordingly, there is no exception to the nonresident income tax withholding requirement. ▸ **Resident income tax withholding.** A resident employee suddenly working in Massachusetts due to COVID-19 who continues to incur an income tax liability in another state due to that state's sourcing rule will be eligible for a credit for income taxes paid to that other state (M.G.L. c. 62, § 6(a).) Accordingly, the employer of such employee is not obligated to withhold Massachusetts resident income tax to the extent the employer remains required to withhold nonresident income tax with respect to the employee in such other state. ▸ **Nexus.** In TIR-20-5, the Massachusetts Department of Revenue announced that it will not assert nexus for sales and use and corporate excise tax solely because employees are working in the state temporarily due to COVID-19.
Michigan (City income tax)	On April 1, 2020, the Michigan Department of Treasury published telecommuting frequently asked questions to address questions about the applicability of Michigan city income tax when employees are temporarily working from home outside of their normal work location. The Department confirms that if employees are temporarily working from home outside of the Michigan city where they normally perform services, nonresident income tax does not apply in the Michigan city where those employees normally work.
Minnesota	The Minnesota Department of Revenue announced in its COVID-19 FAQs for businesses that the Department will not seek to establish nexus for any business tax solely because an employee is temporarily working from home due to the COVID-19 pandemic. On May 4, 2020, the Department updated the FAQ to add: "Generally, an employer that transacts business or derives income from sources in Minnesota must withhold for employees."

Taxing authority	Work-from-home income tax and withholding guidance
Mississippi	The Mississippi Department of Revenue announced on March 26, 2020, that during the COVID-19 national emergency, it will not impose nexus or alter apportionment of income for any business while its employees are temporarily on telework assignments within the state. Mississippi does require that income tax be withheld from wages paid to all Mississippi residents regardless of where they work if the employer has business operations (nexus) within the state. Pursuant to the Department's announcement, the state will not assert nexus merely because an employee is temporarily on a telework assignment within the state due to COVID-19.
New Jersey	On May 6, 2020, the New Jersey Division of Taxation expanded on its March 30, 2020 guidance concerning the assertion of nexus and the income tax withholding requirements that apply for employees temporarily working in the state due to COVID-19. In its March 30 guidance, the Division explained that during the period of the COVID-19 national emergency, it will temporarily waive the impact of the legal threshold within N.J.S.A. 54:10A-2 and N.J.A.C. 18:7-1.9(a) that treats employee work from within New Jersey as sufficient nexus for out-of-state corporations. It also stated that if employees are working from home solely as a result of closures due COVID-19 and/or the employer's social distancing policy, no threshold will be considered to have been met. (*See EY Tax Alert 2020-0797*.) **Additional guidance on nexus for sales tax** The Division states that pursuant to the COVID-19 pandemic, it will temporarily waive the sales tax nexus standard that is generally met if an out-of-state seller has an employee working within New Jersey. Accordingly, as long as the out-of-state seller did not maintain any physical presence other than employees working from home in New Jersey and is below the economic thresholds, the Division will not consider the out-of-state seller to have nexus for sales tax purposes during the period of the COVID-19 emergency. **Additional guidance on income tax withholding** Under the normal rules, New Jersey dictates that income is sourced to the state based on where the service or employment is performed using a day's method of allocation. However, during the temporary period of the COVID-19 pandemic, the Division states that wage income will continue to be sourced as determined by the employer in accordance with the employer's jurisdiction. The Division notes that because of the reciprocal agreement between New Jersey and Pennsylvania, New Jersey nonresident income tax is not required on wages for services performed within New Jersey by Pennsylvania residents. When asked if the Division would advise New Jersey employer to not change the current work state set-up for employees in their payroll systems who are now telecommuting or temporarily relocated at an out-of-state employer location, the Division responded that it would not require employers to make that change for this temporary situation; however, employers must consider their unique circumstances and make that decision. If examined at a later date for the period of the COVID-19 emergency, the Division said that relief from assessment for underwithheld tax, penalties and interest will be granted on a case-by-case basis if circumstances warrant. Finally, the Division states that it does not plan to alter its audit enforcement approach pursuant to telework arrangements instituted in 2020 due to the COVID-19 emergency because its current audit program already includes the review of sourcing of income.

Taxing authority	Work-from-home income tax and withholding guidance
North Dakota	In frequently asked questions (FAQs) for business taxes, the North Dakota Office of the State Tax Commissioner announced that if employees are working temporarily in a telecommuting capacity due to COVID-19 restrictions and recommendations, it will not assert income tax nexus on that basis alone. The announcement does not change the requirement that employers are required to withhold resident North Dakota income taxes from wages paid to residents, regardless of where earned (unless there is no business operation in the state other than telework related to COVID-19). North Dakota nonresident income tax applies to all wages for services provided within the state. An exception to the nonresident income tax withholding requirement applies to wages earned within North Dakota by residents of Minnesota and Montana because North Dakota has a reciprocal agreement with these states.
Ohio (Local taxes)	HB 197, signed into law on March 27, 2020, by Governor Mike DeWine, temporarily changes the Ohio Local Tax Enabling Act so that any day in which an employee performs personal services at a location, including the employee's home, to which the employee is required to report for employment duties because of Ohio's COVID-19 emergency declaration, is deemed to be a day performing personal services at the employee's principal place of work. The provision is effective March 9, 2020, and for 30 days after the conclusion of the Ohio COVID-19 emergency declaration. As a result of this provision, and through the effective period, employers are not required to withhold local Ohio resident taxes if Ohio local nonresident taxes are withheld for the normal Ohio work location pursuant to telework arrangements necessitated by the COVID-19 emergency.
Pennsylvania	The Pennsylvania Department of Revenue released three frequently asked questions (FAQs) to respond to inquiries concerning the imposition of nexus when employees are working from home temporarily within the state due to COVID-19. **Pennsylvania income tax withholding** When asked if a Pennsylvania employer is required to withhold Pennsylvania nonresident income tax for an employee who is not a resident of state where there is a reciprocal agreement and who is working in the state temporarily due to COVID-19, the Department responded that it will not consider a change to its sourcing rules for compensation. Accordingly, the nonresident employee's compensation is subject to Pennsylvania nonresident income tax and withholding. Note, however, that Pennsylvania income tax withholding is not required on the wages of a New Jersey nonresident working in the state because Pennsylvania has a reciprocal agreement with New Jersey. **Nexus for corporate net income tax (CNIT)** When asked if an employee working from home temporarily due to COVID-19 creates nexus for Pennsylvania CNIT purposes, the Department responded that due to Governor Tom Wolf's Proclamation of Disaster Emergency on March 6, 2020, the department will not seek to impose CNIT nexus solely on the basis of temporary activity within the state due to individuals working temporarily from home in connection with COVID-19. **Sales and use tax (SUT)** When asked if an employee working from home temporarily due to COVID-19 creates nexus for purposes of SUT, the Department responded that due to Governor Tom Wolf's Proclamation of Disaster Emergency on March 6, 2020, the department will not seek to impose SUT nexus solely on the basis of temporary activity within the state due to individuals working temporarily from home in connection with COVID-19.

Taxing authority	Work-from-home income tax and withholding guidance
Pennsylvania (Philadelphia)	On May 4, 2020, the Philadelphia Department of Revenue updated its guidance for withholding the Wage Tax from nonresident employees who are working in the city temporarily due to COVID-19 from what it previously published on March 26, 2020. In the updated guidelines, the Department states that an employer may continue to withhold the Wage Tax from 100% of a nonresident employee's wages; however, this is a business decision, not a requirement. Nonresident employees who had Wage Tax withheld during the time they were required to perform their duties from home (outside of the city) in 2020 can request a refund through the Department by completing a *Wage Tax refund petition* in 2021. The Department also clarified that employers are required to withhold and remit Wage Tax for all of its Philadelphia residents, regardless of where they perform their duties. **Nonresident Wage Tax policy (no change from what was announced on March 26, 2020)** The city of Philadelphia uses a "requirement of employment" standard that applies to all nonresidents whose base of operation is the employer's location within Philadelphia. Under this standard, a non-resident employee is exempt from the Wage Tax when the employer requires him or her to perform a job outside of Philadelphia, including working from home. Nonresidents who work from home for their own convenience (rather than the need of the employer) are not exempt from the Wage Tax, even with their employers' authorization. On the other hand, if Philadelphia employers require nonresidents to perform duties outside the city, they are exempt from the Wage Tax for the days spent fulfilling that work. For more information about the city of Philadelphia Wage Tax, go here.
West Virginia (Charleston)	The city of Charleston released guidance concerning the withholding of its city service fee from employees' wages during the COVID-19 emergency. **Employees permanently working from home** Employees who are working from home or on paid leave are still employed by a location within the city and have not been permanently assigned to an outside location. Further, the location of the employer continues to receive the benefits of city services. Therefore, employers should continue the withholding and remitting of the Charleston city service fee. **Employees temporarily working from home** Charleston residents who are temporarily working from home who are employed by employers located outside the city are not subject to the withholding of the city service fee. These employees are not employed by a location within the city; rather, they are only temporarily and involuntarily conducting business from their homes within the city for an employer who is located outside the city.

New hire reporting for employees returning to work after COVID-19 shutdown

Update: June 8, 2020

As businesses affected by COVID-19 reopen and employees return to work, several states have posted alerts to their websites directing that employers include employees on their new hire reports as they return to work after a COVID-19 shutdown. While many of these sites indicate that employers should report all returning employees (e.g., Minnesota), federal and state guidelines generally set a period before the reporting of new hires or rehires is required. Under federal law, new hire reporting is required for employees who are separated from employment for at least 60 days; however, states may require a shorter reporting period and, in that case, employers must comply with state law. Most states impose a 20-day requirement.

Employers should review state requirements to determine the frequency for reporting rehired employees. For example, Pennsylvania requires that rehired employees or those returning to work be reported following a 30-day period and Connecticut imposes a 20-day requirement.

Information concerning the state new hire reporting requirements is available from the Federal Office of Child Support Enforcement (OCSE) here.

Multistate employers may elect to report rehires to a single state

Federal law gives multistate employers the option of reporting new and rehired employees to a single state where they have employees, thereby reducing the administrative burden of reporting to individual states. In addition to lowering the number of states where new hire reporting is required, multistate employers can choose the state with the most favorable requirements.

More information on registering as a multistate employer is available on the OCSE's website. Note that a multistate employer that has not registered must report new hires and rehires to the state where each new or rehired employee works.

Registered multistate employers are required to submit new hires electronically to the chosen state no more than twice a month (12 to 16 days apart).

Ernst & Young LLP insights

Employers that hired employees during the COVID-19 crisis so that essential services could continue should have reported these individuals as new hires within 20 days of hire to the applicable state agency. Reporting is required even if the worker was hired as a temporary employee or worked for only one day.

Employers that use a third party to report new and rehired employees (i.e., a payroll service provider) should contact the third party to confirm the third party has been and is still complying with federal and state new hire reporting laws during the COVID-19 crisis.

Alabama

Unemployment insurance benefits

Alabama Department of Labor announces UI benefit availability for employees impacted by COVID-19; employer accounts will not be charged for benefits

The Alabama Department of Labor announced through two separate news releases that it will temporarily waive certain provisions of the state's unemployment insurance (UI) law to provide for flexibility as outlined by the US Department of Labor to support workers and businesses impacted by the COVID-19 pandemic. In its latest news release, it also stated that UI benefits paid in connection with COVID-19 will not be charged to employer accounts.

Employee UI benefits for COVID-19

On March 16, 2020, the Department issued a news release announcing that employees unable to work due to COVID-19 will be able to apply for UI benefits based on a temporary modification to Alabama's UI law based on guidance from the U.S. Department of Labor. As a result of these temporary measures, the requirement that a laid-off worker be "able and available" to work while receiving unemployment compensation benefits is modified for claimants who are affected by COVID-19 in any of the following situations.

- Employees quarantined by a medical professional or a government agency
- Employees laid off or sent home without pay for an extended period by their employer due to COVID-19 concerns
- Employees who are diagnosed with COVID-19
- Employees caring for an immediate family member who is diagnosed with COVID-19

Additionally, UI benefit claimants meeting the above criteria will not have to search for other work provided they take reasonable steps to preserve their ability to come back to that job when the quarantine is lifted or the illness subsides. The waiting week, which is typically the first week of compensable benefits, will also be waived.

Verification of illness or quarantine may be required.

Employees who are being paid to work from home, or those receiving paid sick or vacation leave are not eligible for UI benefits, regardless if they experience any or all of the situations.

Employers that decide to shut down due to causes related to COVID-19 are instructed to treat the shutdown as a temporary layoff.

The Department cautions that these rules are subject to change pending congressional action.

Employer accounts will not be charged for COVID-19-related UI benefits

On March 20, 2020, the Department issued an additional news release stating that the Alabama Department of Labor has temporarily ordered that UI benefits paid to employees in connection with COVID-19 will not be charged against the accounts of those employers who file partial unemployment compensation claims on behalf of their employees. These charges will be waived until further notice.

The Department is encouraging all employers to file partial claims on behalf of their employees if they are able to do so. Employers will need to answer "yes" when asked if the claim is COVID-19-related when they file partial unemployment claims. Any claims filed during the week of March 16–March 20,2020 will be addressed on a one-by-one basis.

For employers who are unable to file partial claims on their employees' behalf, the Department recommends that they notify the Department that they waive their right to respond to any Request for Separation information (BEN 241). The BEN 241 will still be mailed to employers; however, they do not have to respond to the BEN 241 if they notify the Department in writing that that they waive this right.

Employers can notify the agency by emailing ben241waiver@labor.alabama.gov or by sending a fax to +1 334 309 9098. Statements should be on company letterhead and should include the state unemployment insurance account number.

Both measures will expedite the processing of their employees' UI claims.

Information regarding partial claims and how to file them is available at: https://labor.alabama.gov/uc/partials/uc-partials.aspx.

Alabama COVID-19 unemployment insurance resources are available here.

Teleworker nexus and income tax withholding

Update: May 14, 2020

Alabama provides guidance on income tax withholding and assertion of nexus for employees working temporarily in the state due to COVID-19

In its *Operational Updates Due to COVID-19*, the Alabama Department of Revenue provided guidance concerning the tax implications of employees temporarily working from home within the state during the pandemic emergency.

Nexus

Alabama will not consider temporary changes in an employee's physical work location during periods in which temporary telework requirements are in place due to the pandemic to impose nexus or alter apportionment of income for any business.

Income tax withholding

The wages of Alabama residents are subject to income tax regardless of where they are earned, and income tax withholding applies if the employer has established nexus in Alabama.

During the period of the COVID-19 emergency, Alabama will not impose nonresident income tax or income tax withholding on the wages earned by teleworkers working temporarily within the state if the telework is necessitated by the pandemic and related federal or state measures to control its spread.

Other provisions

Update: May 28, 2020

Alabama executive order protects reopening businesses complying with COVID-19 public health guidance from liability and lawsuits; federal action is possible

In a recent movement to protect businesses from lawsuits, some state governors have ordered that health care facilities and workers be immune from civil liability during the COVID-19 pandemic (e.g., Illinois). Federal legislators are also discussing a similar protection.

Alabama Governor Kay Ivey has joined in this effort but pushed further by releasing a liability protection order that generally provides a safe harbor for reopening businesses, essentially protecting these businesses from lawsuits as long as they follow public health guidance. (*Eighth supplemental state of emergency coronavirus order, May 8, 2020; state health officer order, updated May 21, 2020.*)

Within the order, the governor states that although she had progressively issued amended "safer at home" orders allowing businesses to begin the process of reopening, as the result of continuing uncertainty regarding the impact and repercussions of doing so, businesses are reluctant to fully or partially reopen due to fear of lawsuits and the risk of the associated expense and liability (go here for the most recent amendment on May 21, 2020).

The liability protection order provides:

6. That reasonable protections from the risk and expense of lawsuits be provided to businesses and healthcare providers that comply with or reasonably attempt to comply with applicable public health guidance will encourage businesses to re-open and repair the damage to the economy of the state and the tax revenues of the state and of local governments; and

7. That providing such a safe harbor to businesses and health care providers that operate reasonably consistent with applicable public health guidance will help ameliorate the social harms of a closed economy and the spread of COVID-19.

The order provides this liability protection to businesses, health care providers and other covered entities, as defined as "an individual, partnership, association, corporation, health care provider, other business entity or organization, or any agency or instrumentality of the state of Alabama, including any university or public institution of higher education in the state of Alabama, whether any such individual or entity is for profit or not for profit, including its directors, officers, trustees, managers, members, employees, volunteers, and agents."

Ernst & Young LLP insights

As state governors relax their stay-at-home orders to allow businesses to begin to reopen under generally strict guidelines, employers are expressing their concern that employees who return to work and customers who return to services and subsequently become ill with COVID-19 will file lawsuits claiming that their employers and service providers failed to keep them safe. The Trump Administration and Congress are being called upon to pass legislation that provides federal protection from liability to businesses during the COVID-19 pandemic.

The U.S. Chamber of Commerce has released an "Implementing a national return to work plan," within which it addresses the many types of COVID-19-related liability lawsuits individuals may bring against businesses.

In an April 27, 2020, press release, U.S. Senator Mitch McConnell stated:

"Here is just one example of an urgent need. While our nation is asking everyone from front-line health care professionals to essential small-business owners to major employers to adapt in new ways and keep serving, a massive tangle of federal and state laws could easily mean their heroic efforts are met with years of endless lawsuits. We cannot let that happen. Our nation is facing the worst pandemic in over a century and potentially the worst economic shock since the Great Depression. Our response must not be slowed, weakened, or exploited to set up the biggest trial lawyer bonanza in history. The brave health care workers battling this virus and the entrepreneurs who will re-open our economy deserve strong protections from opportunistic lawsuits. Some such protections were included in the bipartisan CARES Act. We will need to expand and strengthen them."

The Senate Judiciary Committee met on May 12, 2020, to discuss the topic of liability during the COVID-19 pandemic. (*Press release, May 12, 2020.*)

Some states are providing workers' compensation (WC) coverage for health care workers, first responders and essential business employees who have become ill with COVID-19 as the result of their continued employment during the pandemic e.g., Kentucky Executive Order 2020-277). However, WC coverage may or may not protect even these employers from lawsuits. (*Forbes article, The Workplace and COVID-19: Workers' Compensation to the Rescue?, 5-13-2020.*)

The National Conference of State Legislatures (NCSL) has compiled a list of state governors that have issued Executive Orders and state legislatures that have introduced or enacted legislation requiring that health care workers, first responders and, in some cases, essential employees be covered by workers' compensation.

Alaska

Unemployment insurance benefits

Alaska employers affected by COVID-19 may see an increased UI tax rate next year; method available to prevent the increased cost

Recently enacted HB 308 provides flexibility for Alaska workers seeking unemployment insurance (UI) benefits for COVID-19 reasons. The bill waives the waiting week and work search requirements and allows for a $75 dependent allowance. Workers may file for UI benefits here. (*Governor's press release*.)

Employer state UI tax rates affected by payroll fluctuations, not workers' UI benefits

Alaska is the only state that bases its UI tax rates solely on the fluctuation of an employer's gross payroll from quarter to quarter. UI benefit charges and employer contributions do not play a role in the assignment of individual employer UI tax rates.

Employers forced to temporarily reduce or cease business operations due to COVID-19 may see a decline in the gross wages they report to the Alaska Department of Labor and Workforce Development, Employment Security Tax Division, for at least the first and second quarters 2020. This decline in wages could cause an employer's UI tax rate for 2021 to increase.

To avoid a UI tax rate increase, employers should submit *Employer Option Forms* next year to help equalize these declines in payroll. Employers will have until June 30, 2021, to submit this form to possibly reduce the 2020 SUI tax rate, as well as for 2021. From July 1, 2021, only the 2021 SUI tax rate can be changed, but the lower SUI tax rate would be retroactive to January 1, 2021.

Careful consideration should be given to the choice of options, as once a method is chosen, it is effective for future years and may not be changed without approval. Employers are required to file an option form for every quarter in which their artificial decline situation arises. For more information on this option, go here.

For more information on the Department's response to COVID-19, go here.

Arizona

Filing extensions and payment deferrals

Arizona extends first-quarter 2020 unemployment tax filing and payment

The Arizona Department of Employment Security announced that the deadline for contributory employers to file their first quarter 2020 state unemployment insurance (SUI) tax returns and pay the corresponding taxes was automatically extended to June 1, 2020.

Also, for nonprofit and government entities that chose to reimburse the state for UI benefit charges, the first quarter 2020 reimbursement deadline was extended to June 30, 2020. (Arizona DES unemployment insurance newsletter for first quarter 2020.)

According to the newsletter, there was no action required by employers to be eligible for this extension. If reports and payments were received by the extended due date, employers did not receive a delinquent notice from the Department's Collections Department.

For more information on how to submit Arizona SUI tax returns and payments, go to the Department's website.

Unemployment insurance benefits

Arizona provides UI benefits for employees impacted by COVID-19; employer accounts will not be charged for benefits

Arizona Governor Doug Ducey announced that he issued Executive Order 20-11 to temporarily waive certain provisions of the state's unemployment insurance (UI) law to provide for flexibility as outlined by the U.S. Department of Labor to support workers and businesses impacted by the COVID-19 pandemic. Specifically, the Executive Order waives the requirement that UI benefit recipients search for work, eliminates the waiting week to be eligible for UI benefits and stipulates that COVID-19 UI benefits are not charged to employers' accounts. The UI provisions of the Executive Order were adopted by the Arizona Senate under SB1694 with passage expected by the Arizona House of Representatives.

Governor Ducey stated in his announcement, "These are important steps to get help to Arizonans out of work and struggling to make ends meet because of COVID-19. These are just some steps out of many we will continue to take to support Arizonans in need during this time — and Arizona will get through this together."

Details of Executive Order 20-11

Under the temporary UI provisions, the following individuals are entitled to UI benefits pursuant to the COVID-19 emergency.

- An individual whose employer has permanently or temporarily ceased or drastically reduced operations due to COVID-19 resulting in a reduction of wages as defined by the United States Department of Labor.
- An individual who, due to requirements that the individual be quarantined, is not able to work and does not have any available paid leave even if the individual has an expectation of returning to work after the quarantine is over.
- An individual who leaves employment due to a risk of exposure or infection or to care for a family member who has been infected with COVID-19.
- An individual that for any other scenario is separated from work for reasons related to COVID-19, if the Arizona Department of Economic Security determines that such scenario is consistent with the guidance issued by the United States Department of Labor for Unemployment Compensation for Individuals Affected by the Coronavirus Disease 2019.

In addition, the Arizona Department of Economic Security will waive the following requirements for applications for UI benefits:

- The waiting period pursuant to A.R.S. §23-771(A)(5)
- The requirement to be able and available to work, actively seeking work and daily job contacts pursuant to A.R.S. §23-771(A)(3) and (4)

In adjusting employer contribution rates for the unemployment compensation fund established by A.R.S. §23-701, the Arizona Department of Economic Security will not charge benefits granted pursuant to these COVID-19 provisions against an employer's account.

Access the COVID-19 unemployment insurance resources here.

California

Filing extensions and payment deferrals

California EDD extends employment tax filing and payment by 60 days upon request

Governor Gavin Newsom's Executive Order N-25-20 required the California Employment Development Department (EDD) to delay the deadline for state tax filing by 60 days for individuals and businesses unable to file on time based on compliance with public health requirements related to COVID-19 filings.

According to the EDD, employers experiencing a hardship as a result of COVID-19 could request up to a 60-day extension of time to file their state payroll reports and/or deposit state payroll taxes without penalty or interest. A written request for extension was required to be received within 60 days from the original delinquent date of the payment or return.

Employers were instructed to mail the letter and tax report or payment to the address specified on their filing form. If an employer has already been charged a late filing or payment penalty that it believes may qualify for this extension, the employer should send a written request to Employment Development Department, P.O. Box 826880, Sacramento, CA 94280-0001. (*EDD tax branch news #432*.)

Unemployment insurance benefits*

Update: August 4, 2020

California is now issuing the annual notice of UI benefit charges; COVID-19 UI benefits should not be charged to employer accounts

The California Employment Development Department (EDD) announced that the annual Form DE 428T, Statement of Charges to Reserve Account is being issued to contributory employers with a mail date of September 4, 2020. The document reflects the employer's unemployment insurance (UI) benefit charges for the period of July 1, 2019, through June 30, 2020. These charges will be used in the computation of calendar year 2021 state UI tax rates. (*EDD tax branch listserv news #443, August 4, 2020*.)

As we reported, recently enacted fiscal year 2021 budget legislation (AB 103) provides that from January 27, 2020, through December 26, 2020, contributory employer UI reserve accounts will not be charged for UI benefits paid as a direct result of COVID-19. (*EY Tax Alert, 2020-1715; News release, governor's office, 6-29-2020*.)

In its announcement, the EDD confirmed that the fiscal year 2020 Form DE 428T "is only reflecting charges outside of the timeframe established by AB 103."

Under the AB 103 non-charge provision, an employer, or an agent of an employer, must not be found to be at fault for the payment of UI benefits under state law §1026.1 to be relieved of COVID-19 UI benefit charges. State law §1026.1 was instituted in 2013 to meet federal requirements that employers not be relieved of UI benefit charge overpayments due to the failure of the employer or its agent to timely and/or adequately respond to UI benefit claim notices.

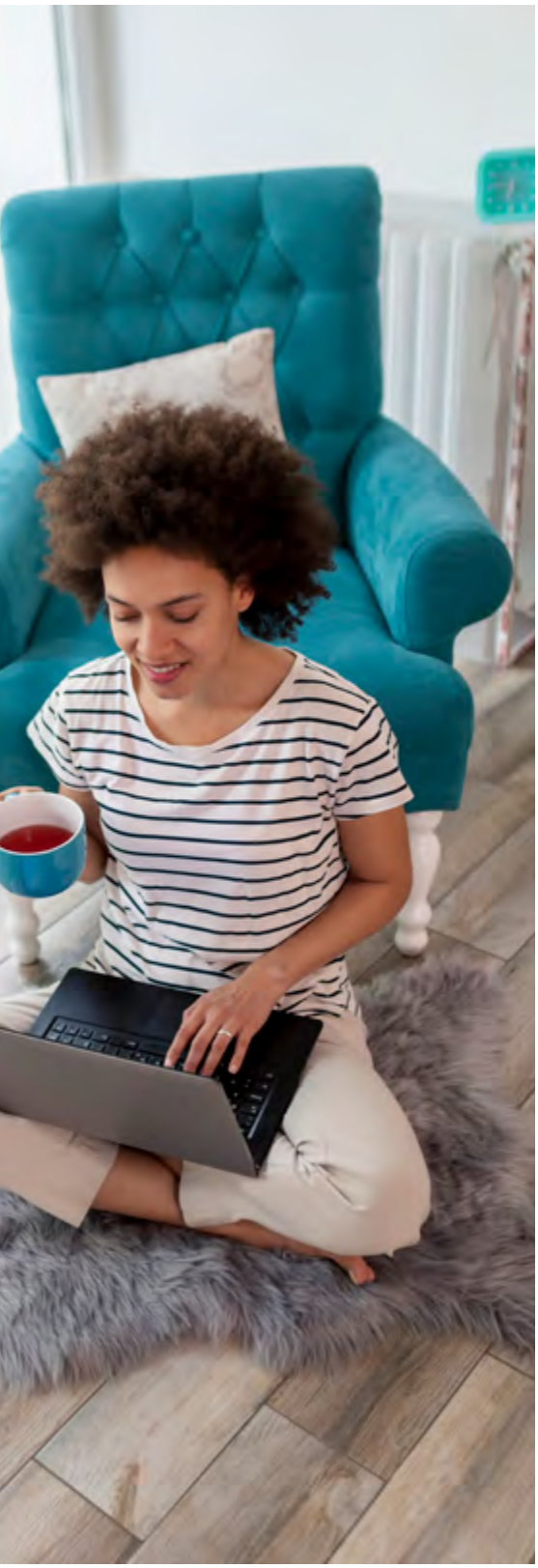
As a result, a protest of Form DE 428T may be denied if the employer failed to respond to the first claim notice, Form DE 1101CZ, *Notice of Unemployment Insurance Claim Filed* or Form DE 1545, *Notice of Wages Used for Unemployment Insurance (UI) Claim*.

For more information on the benefit charge statement, see the EDD's Information Sheet: Statement of Charges to Reserve Account DE 428T (*DE 428I*).

Employer action is necessary

Because California, unlike most other states, only recently adopted the provision of not charging employer accounts for COVID-19 UI benefits, employers should carefully check the annual statement to confirm that they are not being charged for benefits directly related to COVID-19.

If an employer disagrees with the UI benefit charges shown on the Form DE 428T, a protest may be submitted online or by mail. The protest must be submitted or postmarked within 60 days from the September 4, 2020, issuance date on the DE 428T. An extension of up to 60 days may be requested. The extension request must be timely submitted, in writing, and show good cause.



Update: July 3, 2020

California fiscal year 2021 budget act requires employer accounts not be charged for COVID-19 UI benefits

Recently enacted fiscal year 2021 budget legislation (AB 103) provides that, through December 31, 2020, contributory employer unemployment insurance (UI) accounts will not be charged for UI benefits paid as a direct result of COVID-19. (*News release, governor's office, 6-29-2020.*)

Under the AB 103 noncharge provision, an employer or an agent of an employer must not be found to be at fault for the payment of UI benefits under state law §1026.1 in order to be relieved of COVID-19 UI benefit charges. State law §1026.1 was instituted in 2013 to meet federal requirements that employers not be relieved of UI benefit charge overpayments due to the failure of the employer or its agent to timely and/or adequately respond to UI benefit claim notices.

Extended UI benefit program triggers on for California

Due to the state's high UI benefit rate, AB 103 also allows the state to begin, as of July 1, 2020, to pay extended UI benefits under the federal-state extended benefit (EB) program to individuals who have exhausted their previous state and federal UI benefits.

Under federal law, the EB program offers up to an additional 13 weeks of benefits to individuals who have exhausted both their regular unemployment benefits and 13 weeks of the Pandemic Emergency Unemployment Compensation (PEUC) assistance.

AB 103 also adds an extra seven weeks of extended UI benefits (known in California as the Federal-State Extended Duration benefits program (FED-ED)) and an extra seven weeks of federal Pandemic Unemployment Assistance (PUA) benefits for eligible claimants.

The California Employment Development Department announced that the extra FED-ED and PUA benefits will also not be charged to contributory employer accounts through the end of the year.

Reimbursing employers

Reimbursing or noncontributory employers that reimburse the state for the costs of regular and extended UI benefits are required to pay 100% of their former employees' UI benefit costs. But under the federal Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act), they are eligible to receive a 50% reimbursement of COVID-19 UI benefit charges, including FED-ED benefits.

According to the US DOL, under the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) (Pub. L.116-127), and the CARES Act (Pub. L. 116-136), the federal government will repay states for up to 100% of EB benefits paid between March 18, 2020, and December 31, 2020. As a result, the DOL allows states to not charge employers with the reimbursed portion of EB benefits; although the DOL guidance provides that states are allowed to charge the employer with any or all of EB benefits if they so desire. (*DOL Unemployment insurance program letter (UIPL) 24-20, 5-14-2020.*)

Ernst & Young LLP insights

Because California, unlike most other states, has only recently adopted the provision of not charging employer accounts for COVID-19 UI benefits, employers should carefully check the annual Form DE 428T, *Statement of Charges to Reserve Account* to confirm that they are not being charged for these benefits. The 2020 Form DE 428T covers UI benefit charges for fiscal year 2020 (July 1, 2019, through June 30, 2020). Charges on this statement will be used to calculate the 2021 SUI tax rates.

Form DE 428T should be issued to employers in the next couple of months.

If an employer disagrees with the UI benefit charges shown on the Form DE 428T, a protest may be submitted online or by mail. The protest must be submitted or postmarked within 60 days from the issuance date on the DE 428T. An extension of up to 60 days may be requested. The extension request must be submitted timely, in writing, and show good cause. As stated above, the protest may be denied if the employer failed to respond to the first claim notice, Form DE 1101CZ, *Notice of Unemployment Insurance Claim Filed* or Form DE 1545, *Notice of Wages Used for Unemployment Insurance (UI) Claim*.

California governor issues order for UI benefits in connection with COVID-19; no confirmation yet that employer accounts won't be charged for COVID-19 UI benefits

Governor Newsom proclaimed a state of emergency on March 4, 2020, and has issued several additional COVID-19 orders since then.

On March 11, 2020, the governor announced that workers affected by COVID-19 would be eligible for one of several benefits available in California, as follows:

- Workers unable to work because they are caring for an ill or quarantined family member with COVID-19 may qualify for state paid family leave (PFL).
- Workers unable to work due to medical quarantine or illness may qualify for state disability insurance (SDI).
- Workers who have lost a job or have had their hours reduced for reasons related to COVID-19 may be able to partially recover their wages by filing an unemployment insurance (UI) benefit claim.
- Workers who are sick, have a family member who is, or are quarantined for preventative care may use accrued paid sick leave in accordance with the law.
- Workers unable to do their usual job because they were exposed to and contracted COVID-19 during the regular course of their work may be eligible for workers' compensation benefits.

The proclamation does not specifically provide that employer accounts will not be charged for COVID-19 UI benefits.

A chart is available to help workers determine which program would be most beneficial.

Paid leave

California expands paid leave to essential food sector employees for COVID-19

In Executive Order N-51-20, Governor Newsom provides expanded COVID-19 supplemental paid sick leave to employees in the food sector, with limited exceptions, who perform work for a hiring entity and are unable to work for the following reasons:

- The food sector worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
- The food sector worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19.

  OR

- The food sector worker is prohibited from working by the food sector worker's hiring entity due to health concerns related to the potential transmission of COVID-19.

Hours of leave available

Food-sector workers are entitled to COVID-19 supplemental paid leave as follows:

- 80 hours of COVID-19 supplemental paid sick leave if the food sector worker satisfies either of the following criteria:
  - The hiring entity considers the food sector worker to work "full-time."

    OR

  - The food sector worker worked or was scheduled to work, on average, at least 40 hours per week for the hiring entity in the two weeks preceding the date the food sector worker took COVID-19 supplemental paid sick leave.

A food sector worker who does not satisfy any of the above criteria is entitled to an COVID-19 supplemental paid sick leave as follows:

- If the food sector worker has a normal weekly schedule, the total number of hours the food sector worker is normally scheduled to work for or through a hiring entity over two weeks.

  OR

- If the food sector worker works a variable number of hours, 14 times the average number of hours the food sector worker worked each day for or through the hiring entity in the six months preceding the date the food sector worker took COVID-19 supplemental paid sick leave. If the food sector worker has worked for the hiring entity less than six months, this calculation is instead made over the entire period the food sector worker has worked for the hiring entity.

The total number of hours of COVID-19 supplemental paid sick leave to which a food sector worker is entitled pursuant to the above shall be in addition to any paid sick leave that may be available to the food sector worker under California Labor Code §246.

Rate of pay

Each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the highest of:

- The food sector worker's regular rate of pay for the food sector worker's last pay period
- The state minimum wage

  OR

- The local minimum wage to which the food sector worker is entitled

In no event is a hiring entity required to pay more than $511 per day and $5,110 in the aggregate over the period this Executive Order is in effect.

Employer notice requirements

By April 23, 2020, the California Labor Commissioner was instructed to make publicly available a model notice of California Labor Code §247. For purposes of COVID-19 supplemental paid sick leave only, if a hiring entity's food sector workers do not frequent a workplace, the hiring entity may satisfy the notice requirement of Labor Code § 247(a) by disseminating notice through electronic means, such as by electronic mail.

The notice is now available here.

Los Angeles orders paid leave for COVID-19 absences

Under Public Order of the city of Los Angeles, employers are required to provide employees with supplemental paid leave due to COVID-19 if the employee was employed with the same employer from February 3, 2020, to March 4, 2020, and the employee is unable to telework, as follows:

- An employee who works at least 40 hours per week or is classified as a full-time employee by the employer must be paid 80 hours of supplemental paid sick leave. Supplemental paid sick leave must be calculated based on an employee's average two-week pay over the period of February 3, 2020, through March 4, 2020.
- An employee who works less than 40 hours per week and is not classified as a full-time employee by the employer must receive supplemental paid sick leave in an amount no greater than the employee's average two-week pay over the period of February 3, 2020, through March 4, 2020.
- In no event is an employer required to provide to an employee supplemental paid sick leave in excess of $511 per day and $5,110 in the aggregate. Employees of joint employers are only entitled to the total aggregate amount of leave specified for employees of one employer.

Covered employers

The order applies to business that have either:

- 500 or more employees within the city of Los Angeles
- 2,000 or more employees within the US

Various exemptions are listed in the Public Order.

Covered employees

For purposes of the order, an employee is any individual who performs any work within the geographic boundaries of the city of Los Angeles and an employer is a person covered under Section of the California Labor Code, including a corporate officer or director, who directly through an agent or any other person, including a temporary help service or agency, employs or exercises control over the payment of wages.

Qualified reasons for COVID-19 supplemental paid leave

An employer is required to provide supplemental paid sick leave upon the oral or written request of an employee if:

- The employee takes time off due to COVID-19 infection or because a public health official or health care provider requires or recommends the employee isolate or self-quarantine to prevent the spread of COVID-19.
- The employee takes time off work because the employee is at least 65 years old or has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease or weakened immune system.
- The employee takes time off work because the employee needs to care for a family member who is not sick but who public health officials or health care providers have required or recommended isolation or self-quarantine.

  OR

- The employee takes time off work because the employee needs to provide care for a family member whose senior care provider or whose school or child care provider caring for a child under the age of 18 temporarily ceases operations in response to a public health or other public officials' recommendation. This provision is only applicable to an employee who is unable to secure a reasonable alternative caregiver.

An employer may not require a doctor's note or other documentation for the use of supplemental paid sick leave.

Other provisions

Update: May 14, 2020

San Francisco extends business registration fee deadline due to COVID-19

In response to the growing financial hardship imposed on taxpayers in the City and County of San Francisco, California (San Francisco or City) by the COVID-19 pandemic, the City's Office of the Treasurer & Tax Collector (Office) announced that it extended the San Francisco business registration fee deadline by four months to September 30, 2020.

The following information pertains only to the San Francisco fiscal year beginning July 1, 2020, through June 30, 2021.

San Francisco's Business and Tax Regulations Code generally requires every person engaging in business within the City, regardless of whether the business or person is subject to City taxation, to register within 15 days after commencing business within the City.

San Francisco requires an annual business registration fee. A taxpayer must renew its business registration every year by May 31 for the fiscal year beginning July 1 of that calendar year through June 30 of the following year (e.g., renew May 31, 2020, for the fiscal year beginning July 1, 2020, through June 30, 2021).

Given the current hardships that City taxpayers face due to the COVID-19 pandemic, however, the Office is extending the 2021 business registration fee deadline by four months to September 30, 2020, from May 31, 2020.

The Office noted that the extended deadline will lead to $49 million in deferrals for 89,000 businesses, so it is encouraging all businesses that can register and pay their fees on time to do so in an effort to provide revenue to keep the City's government running and to maintain vital city services.

The City Business Registration Fee may be filed online on the Office's website.

California temporarily suspends the 60-day notice requirement under the California WARN Act for businesses affected by COVID-19

The California Employment Development Department (EDD) has announced that under Executive Order N-31-20, the 60-day notice requirement under the California Worker Adjustment and Retraining Notification (WARN) is temporarily suspended.

In frequently asked questions, the EDD explained that the temporary suspension was granted because of the recognition that California employers have had to rapidly close down their businesses to prevent or mitigate the effects of the COVID-19 but have not been able to give their employees the usual 60-days' notice.

The EDD cautions that the Executive Order does not suspend the California WARN Act in its entirety, nor does it suspend the law for all covered employers; it only suspends the California 60-day notice requirement for employers that satisfy the following requirements:

- The employer's mass layoff, relocation or termination is caused by COVID-19-related "business circumstances that were not reasonably foreseeable at the time that notice would have been required."
- The employer must provide written notice that satisfies the following requirements:
  - Give as much notice as is practicable (i.e., reasonably possible) at the time notice is given.
  - Provide a brief statement as to why the 60-day notification period could not be met.
  - Include the following information in the notice to each affected employee:
    - A statement as to whether the planned action is expected to be permanent or temporary and, if the entire location is to be closed, a statement to that effect
    - The expected date when the plant closing or mass layoff will commence and the expected date when the individual employee will be separated
    - An indication of whether or not bumping rights exist
    - The name and telephone number of a company official to contact for further information
    - The following statement: "If you have lost your job or been laid off temporarily, you may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at labor.ca.gov/coronavirus2019."
    - The notice may include additional information useful to the employees such

as if the planned action is expected to be temporary and the estimated duration if known.

- Include the following information in the notices separately provided to the EDD, the Local Workforce Development Board and the chief elected official of each city and county government within which the termination, relocation or mass layoff occurs:
  - Name and address of the employment site where the closing or mass layoff will occur
  - Name and phone number of a company official to contact for further information
  - Statement as to whether the planned action is expected to be permanent or temporary and, if the entire location is to be closed, a statement to that effect
  - Expected date of the first separation and the anticipated schedule for subsequent separations
  - Job titles of positions to be affected, and the number of employees to be laid off in each job classification
  - In the case of layoffs occurring at multiple locations, a breakdown of the number and job titles of affected employees at each location
  - An indication of whether or not bumping rights exist
  - Name of each union representing affected employees, if any
  - Name and address of the chief elected officer of each union, if applicable
  - The notice may include additional information useful to the employees such as if the planned action is expected to be temporary and the estimated duration if known.

For more information see the EDD website, Labor & Workforce Development Agency — Coronavirus 2019 (COVID-19) Resources for Employers and Workers.

San Francisco cancels requirement to submit 2019 Annual Reporting Form under the Health Care Security Ordinance

The City of San Francisco has announced that consistent with the Mayor's February 25, 2020 Emergency Proclamation, it is canceling the employer requirement to submit the *2019 Annual Reporting Form* pursuant to the Health Care Security Ordinance and the Fair Chance Ordinance. The city emphasizes that the cancellation means only that the *2019 Annual Reporting Form* need not be submitted. Employers must continue to make health care expenditures on behalf of their covered employees by making city option payments and/or paying for health insurance.

The city also states that the Health Care Security Ordinance (HCSO), along with all other San Francisco labor laws, remains in full effect. The HCSO requires that employers make health care expenditures (e.g., health insurance, City Option payments) on behalf of their workers. HCSO-mandated health care expenditures are not a tax, and therefore there are no deferrals for these expenditures.

The San Francisco Office of Labor Standards Enforcement expects that all covered employers will continue to fully comply with their legal obligation to make full payments within 30 days of the end of each quarter. The deadline for the first quarter 2020 expenditures is April 30, 2020.

For business assistance resources during the coronavirus outbreak, go to https://oewd.org/assistance-guidance-businesses-and-workers-impacted-covid-19.

Colorado

Filing extensions and payment deferrals

Colorado will waive interest and penalties for late filing and payment of first-quarter 2020 state unemployment insurance tax due to COVID-19

According to the Colorado Department of Labor and Employment COVID-19 Frequently Asked Questions (FAQs), employers affected by COVID-19 and unable to file the first quarter 2020 state unemployment insurance (SUI) return and pay the associated contributions by the April 30, 2020, due date will not be charged interest and penalties for failure to timely file and pay.

Question: I am unable to submit my quarterly unemployment reports and premium payment because me or my family members are in quarantine or my business operations are severely affected by the COVID-19 pandemic. What do I do?

Answer: The Unemployment Insurance Division will consider your reports timely and waive late fees or interest accrued. Contact us at cdle_employer_services@state.co.us or +1 303 318 9100 and submit the reports when you can.

For more information on the Department's response to COVID-19, go here.

Unemployment insurance benefits

Colorado governor issues order that employers not be charged for COVID-19 UI benefits and expedites payment of benefits to claimants

Colorado Governor Jared Polis recently issued Executive Order 2020-012, ordering that employer unemployment insurance (UI) accounts not be charged for UI benefits paid to workers as a result of COVID-19.

The order also waives the one-week waiting period for benefits and requires that the Department of Labor & Employment expedite claim processing and payment of COVID-19 UI benefits to claimants. The governor provided $1 million to the Department from the state's emergency fund to accomplish these goals.

The Department released information regarding the filing for UI benefits by affected workers, including frequently asked questions.

Paid leave

Update: June 30, 2020

Colorado bill to require employers to provide paid sick leave for reasons other than COVID-19

The Colorado state legislature passed SB 20-205 that, if enacted, will require employers to provide paid sick leave to employees effective January 1, 2021. Colorado Governor Jared Polis took the lead on Colorado paid sick leave by issuing temporary emergency paid sick time during the COVID-19 pandemic through his Colorado Health Emergency Leave Pay (HELP). The bill was submitted for the governor's signature on June 29, 2020.

Note that the most recent version of the bill as posted to the state legislative website reflects that a House amendment limited the paid leave requirement to employers with more than 15 employees. It is unknown at this time whether this amendment made it through to the final conference committee approved bill as passed on June 15, 2020, although a news source is reporting that the requirement to provide paid sick leave is delayed for employers of 15 or fewer employees until 2022. (*Lexology.com, 6-17-2020.*)

The bill expands the current requirement that certain employers provide paid sick leave to employees ill due to COVID-19. The bill also provides that as of the effective date of the bill through December 31, 2020, employers are required to provide each of their employees paid sick leave for reasons related to the COVID-19 pandemic in the amounts and for the purposes specified in the federal Emergency Paid Sick Leave Act in the Families First Coronavirus Response Act. (*EY Payroll Newsflashes Vol. 21, #082, 3-20-2020 and #218, 5-7-2020.*)

Paid sick leave law provisions

Effective January 1, 2021, employees will begin to accrue sick leave at a rate of one hour for every 30 hours worked, up to a yearly maximum of 48 hours. Employees will immediately be able to begin using their accrued sick leave as it is accrued. Unused paid sick leave will be carryover to subsequent calendar years.

Employees may use accrued paid sick leave to be absent from work for the following purposes:

- The employee has a mental or physical illness, injury or health condition; needs a medical diagnosis, care or treatment related to such illness, injury or condition; or needs to obtain preventive medical care.
- The employee needs to care for a family member who has a mental or physical illness, injury or health condition; needs a medical diagnosis, care or treatment related to such illness, injury or condition; or needs to obtain preventive medical care.
- The employee or family member has been the victim of domestic abuse, sexual assault or harassment and needs to be absent from work for purposes related to such crime.
- A public official has ordered the closure of the school or place of care of the employee's child or of the employee's place of business due to a public health emergency, necessitating the employee's absence from work.

Employers may choose to "front load" sick leave, providing employees with the total amount of required sick leave at the beginning of the year rather than waiting for the employee to accrue the hours.

An employee's unused sick leave must be carried over to the next year; however, an employer may limit the use of sick leave to 48 hours per calendar year.

Employers are not required to pay employees for unused sick leave upon termination, resignation, retirement or other separation from employment. However, if a former employee is rehired by the same employer within six months of the separation, the employer must reinstate any paid sick leave that the employee had accrued but not used prior to the separation.

Employers with a pre-existing sick leave policy are not required to provide any additional sick leave if the employer's plan meets or exceeds the requirements under the new law.

Paid sick leave must be paid at the same rate of pay the employee is paid for working hours or at the state minimum wage, whichever is greater.

Employers are required to notify each employee in writing of their right to paid sick leave by displaying a poster in the workplace that will be developed by the Colorado Department of Labor and Employment. The Department will develop a model notice to satisfy the requirement of providing written notice to each employee.

For a two-year period, employers must retain records documenting, by employee, the hours worked, paid sick leave accrued and paid sick leave used and make such records available to the Department. The Department must adopt rules to administer the paid sick leave law.

In addition to the paid sick leave accrued by an employee, the bill requires an employer to provide its employees an additional amount of paid sick leave during a public health emergency in an amount based on the number of hours the employee works.

Colorado governor expands paid sick leave requirement for employees affected by COVID-19

Effective April 27, 2020, the Colorado Health Emergency Leave with Pay Rules ("Colorado HELP" 7 CCR 1103- 10) were updated to expand the paid sick leave mandate to more businesses. The update also expands the number of days of required pay from four full days of pay to two weeks (up to 80 hours) at two-thirds pay and the circumstances under which businesses must provide paid leave.

The updated rules are effective for 30 days or longer if the state of emergency declared by Governor Polis continues, up to a maximum of 120 days after amended adoption of the rules.

Workers are covered regardless of pay rate or method. The daily pay during the paid leave is either the workers' established daily rate or, if their pay fluctuates, their average daily pay for the past month.

Businesses are required, as of April 27, 2020, to provide paid leave to individuals who are suffering from COVID-19, flu-like or other respiratory illness symptoms and are being tested for COVID-19, and those who are quarantined or isolated due to instructions from a health provider or authorized government official if the employer or its employees are engaged in the following services:

- Leisure and hospitality
- Retail stores (as of April 27, 2020; those retail stores that sell groceries were covered as of March 26, 2020)
- Real estate sales and leasing (as of April 27, 2020)
- Offices and office work (as of April 27, 2020)
- Elective medical, dental and health services (as of April 27, 2020)
- Personal care services (as of April 27, 2020; defined as hair, beauty, spas, massage, tattoos, pet care or substantially similar services)
- Food and beverage manufacturing (as of April 3, 2020)
- Food services
- Child care
- Education, including transportation, food service and related work with educational establishments
- Home health, if working with elderly, disabled, ill or otherwise high-risk individuals
- Nursing homes
- Community living facilities

Emergency regulations previously only required four days of leave from limited industries

Effective March 11, 2020, the previously issued emergency rules temporarily required employers in certain industries to provide four days of paid sick leave to employees with flu-like symptoms while awaiting COVID-19 testing.

The original rules required four days of paid sick leave to employees being tested for COVID-19 in the following industries: leisure and hospitality; food services; child care; education, including transportation, food service, and related work at educational establishments; home health, if working with elderly, disabled, ill or otherwise high-risk individuals; and nursing homes and community living facilities.

Employers that already provide paid sick leave that meets or exceeds the Colorado requirements do not need to provide additional paid leave.

Penalties of $100 per day per employee may be assessed to employers that fail to pay sick leave as required.

See the Colorado Department of Labor and Employment's website for frequently asked questions regarding the updated emergency rules.

Connecticut

Filing extensions and payment deferrals

Connecticut Department of Revenue Services launches new Taxpayer Assistance Program for those unable to meet filing and payment deadlines

Although the Connecticut Department of Revenue Services (DRS) has not extended the filing and payment deadlines for income tax withholding, it announced that it has launched a new Priority One Taxpayer Assistance Program designed specifically to help business and individual taxpayers that were unable to meet their filing and payment obligations due to COVID-19 and are consequently subject to DRS collection action.

Any taxpayer who is the subject of a payment plan, bank warrant, wage execution or other levy by DRS and needs relief or assistance because of the impact of COVID-19 can contact DRS directly to speak to a tax professional.

DRS has established the following hotline and email dedicated to Priority One questions:

- DRS Priority One Hotline: +1 860 541 7650 (Monday to Friday, 8:30 a.m.–4:30 p.m.; to speak to a DRS representative or to leave a voicemail)
- Taxpayers may also contact DRS via the email at the following address: DRSPriorityOne_CollectionsAssist@po.state.ct.us

In order to assist DRS in evaluating email inquiries, taxpayers are encouraged to provide as much information as possible about their situation and the relief that is being sought.

More information is available at DRS Priority One Web Guidance.

Unemployment insurance benefits

Connecticut COVID-19 UI benefits will not be charged to employer accounts

According to the Connecticut Department of Labor, contributory employer unemployment insurance (UI) accounts will not be charged with COVID-19 UI benefits. This is the result of Governor Ned Lamont's Executive Order No. 7W, issued on April 9, 2020. (*Frequently asked questions about coronavirus (COVID-19) for workers and employers, updated April 14, 2020*.)

Under the governor's order, Section 31-225a(c)(1) of the Connecticut General Statutes is modified to additionally provide, "(L) No base period contributing employer's account shall be charged with respect to benefits paid to a claimant due to partial or total unemployment that the Commissioner of Labor or his designee determines are attributable to COVID-19, including but not limited to benefits paid to a claimant who, through no fault of his or her own, becomes either partially or fully unemployed during the public health and civil preparedness emergency declared on March 10, 2020, and any period of extension or renewal. The Commissioner of Labor may issue any implementing orders that he deems necessary to effectuate this order.

Subsequently, the Department updated its frequently asked questions as follows:

Question: I am a contributory employer for UI purposes. What does the Governor's Executive Order 7W mean for me?

Answer: As a contributory (taxable) employer there will be no liability (charges) to employers based on COVID-19 related unemployment claims. We will be working through the implementation of the Executive Order over the following weeks.

Question: I have furloughed my employees due to COVID-19. Why am I receiving Notices of Potential Liabilities for everyone?

Answer: The Department must notify an employer when their employees receive unemployment benefits. If the individuals are unemployed due to COVID-19, you do not have to return the document. If they separated from your company for any other reason, you have the right to protest the charges on the document by checking the appropriate box, entering a date and returning it to us by the due date.

Note: If you are a contributory (taxable) employer, there will be no liability (charges) to employers based on COVID-19-related unemployment claims. We will be working through the implementation of the Executive Order over the following weeks.

Work search requirements waived for workers filing COVID-19 UI benefit claims; state does not have a one-week waiting period

The Department announced that the requirement that workers applying for new UI benefits directly impacted by the COVID-19 pandemic be actively searching for work is suspended.

The announcement states that UI benefits are available to workers whose employer needs to temporarily shut down or slow down business. Employees who are furloughed by the emergency but expect to return to work can access up to at least six weeks of benefits. Employers reducing hours but not furloughing employees can partner with CTDOL's Shared Work program, which allows employers to reduce employees' work schedules by 10% to 60% and supplement lost wages with UI benefits.

Connecticut UI law already excluded the one-week waiting period.

On April 14, 2020, the governor announced that new software improvements to the Department's UI benefit claim system will reduce the time COVID-19 UI benefit claimants have been waiting for their claims to be processed. As a result, the anticipated six-week turnaround period will be reduced to one week or less.

For more information on the Department's response to COVID-19, see the Department's website.

Delaware*

Unemployment insurance benefits*

Update: August 15, 2020

Delaware won't charge employer accounts for COVID-19 UI benefits

Delaware Secretary of Labor Cerron Cade recently issued an emergency order that provides that employers will not be charged for COVID-19 UI benefits retroactive to March 16, 2020, and through the end of the state's COVID-19 emergency order (most recently extended for the fifth time on August 5, 2020, with no expiration date).

Work search requirements reinstated; employees must return to work when notified by employer unless good cause can be shown

Under the same emergency order, the secretary removed the emergency regulation that provided for the waiver of work search requirements, although the Delaware Department of Labor website (see here and here) still shows that the work search waiver continues through the end of the COVID-19 state of emergency. As a result, individuals collecting COVID-19 UI benefits may soon be required to be able and available for work and conduct searches for work to continue to be eligible for UI benefits.

The Department has released guidance for individuals receiving COVID-19 UI benefits on how a refusal to return to work when contacted by their employer will affect their UI benefit eligibility.

According to the guidance:

Question: Do I have to report that I refused my employer's offer to return to work?

Answer: Yes. If your employer has called you back and you did not return to work, you must report that you have refused an offer to work when filing your Weekly Certification. You will have an opportunity to provide more information about your reason for not returning to work and whether that reason constitutes good cause for refusing to return to work during the investigation.

Question: Are there any scenarios where I refuse to return to work and may still qualify for unemployment benefits?

Answer: Claimants who can show good cause to refuse to return to work may still be ineligible for unemployment benefits if they are unable to work or unavailable to work because of medical reasons, child care reasons, or family care reasons, even if those reasons are related to COVID-19. In such circumstances, claims will be evaluated for eligibility for Pandemic Unemployment Assistance benefits.

The guidance instructs employers to report job refusals on the Department's website. (*Department news release, 7-22-2020.*)

Ernst & Young LLP insights

Due to the lateness of the order providing for non-charge of COVID-19 UI benefits, employers should review benefit charge statements to confirm the Department removes these charges from their experience accounts

District of Columbia

Filing extensions and payment deferrals

District of Columbia granted waiver of penalty for late unemployment tax filings, payments and UI claims information

The District of Columbia Department of Employment Security updated its Frequently Asked Questions to add that employers affected by COVID-19 and late in filing state unemployment insurance (SUI) tax returns, paying taxes and responding to requests for information regarding UI claims may receive a waiver of penalties.

The question and answer states:

Question: What if I am late in filing tax reports, paying taxes or responding timely to requests for information as a result of COVID-19?

Answer: On a case-by-case basis, financial penalties assessed to delinquent employers may be waived if the delays are a result of COVID-19 impacts.

For more information on how to submit District of Columbia SUI tax returns and payments, go to the Department's website.

Unemployment insurance benefits

District of Columbia provides UI benefits for employees impacted by COVID-19; employer accounts will not be charged

On March 24, 2020, District of Columbia Mayor Muriel Bowser ordered the closure of all nonessential businesses in the District and restricted attendance at mass gatherings to fewer than 10 individuals. Employees of shutdown businesses may work from home if feasible. See Order 2020-053 for the definition of "essential business." The order is in effect from March 25, 2020 through April 24, 2020. (*News release*.)

The Council of the District of Columbia recently enacted an emergency bill (DC Act 23-247) that provides unemployment benefits (UI) to individuals affected by COVID-19 and provides District employers with noncharge of these benefits. (*Council news release, March 17, 2020*.)

Under the Act, employer accounts will not be charged with the UI benefits that workers affected by COVID-19 will collect. Workers are eligible for UI benefits regardless of whether the employer has provided a date for the affected employee's return to or the employee has a reasonable expectation of continued employment with the current employer.

Workers will not be required to follow the District's work search requirements that non-COVID-19 claimants must follow to continue to be eligible. Claimants must, however, be otherwise eligible for UI benefits. For more on filing a UI claim, go here. See also the District's chart of available benefits for COVID-19 affected workers.

Under the Act, the term "affected employee" includes:

- An employee who has been quarantined or isolated by a District or federal agency
- An employee who has self-quarantined or self-isolated as recommended by a medical professional or a District or federal agency
- An employee of an employer that has ceased or reduced operations due to an order or guidance from the mayor or District agency, or that has ceased or reduced operations due to a reduction in business revenue that resulted from the COVID-19 crisis

According to the Council's news release, the law also:

- Prohibits evictions of residential and commercial tenants as well as late fees
- Prohibits utility shut-offs for non-payment
- Extends public benefit programs
- Creates a small business grant program to assist nonprofit organizations and small contractors that do not qualify for unemployment insurance
- Places limits on price gouging and stockpiling
- Delays retail sales tax payments to the government by stores, restaurants and other businesses
- Extends deadlines/expirations of corporate tax filings, driver's licenses professional licenses, etc.
- Delays the submission date for the mayor's budget to May 6, 2020

See the District's Department of Employment Services news release.

For more on the District's response to COVID-19, go here.

Teleworker nexus and income tax withholding

District of Columbia will not assert nexus for employees temporarily working from home in the District due to COVID-19

The District of Columbia Office of Tax and Revenue (OTR) announced that it will not assert nexus for purposes of corporation franchise tax or unincorporated business franchise tax solely because employees are working temporarily from home within the District during the period of the mayor's COVID-19 emergency declaration. The assertion of nexus will also not be made solely because of property (computers, computer equipment or similar) used by employees to work from home under these circumstances.

On March 11, 2020, the District's mayor declared a public emergency and a public health emergency caused by COVID-19. The mayor extended that emergency declaration through April 24, 2020. (Mayor's Order 2020-050.)

For additional information, please contact OTR's Customer Service Center at e-services.otr@dc.gov or +1 202 759 1946.

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This OTR's notice does not mention the applicability of District of Columbia unemployment insurance pursuant to workers temporarily working within the District due to COVID-19. However, unemployment insurance typically applies in only one jurisdiction based the federal four-prong test. For more information see EY *Tax Alert* 2020-0531.

This guidance does not change the requirement that employers with business operations in the District of Columbia are required to withhold District of Columbia income tax on the wages of resident employees, regardless of where those wages were earned.

This announcement, does, however, bring much-needed relief to District of Columbia employers that otherwise could have been forced to pay corporation franchise tax or unincorporated business franchise tax merely because employees are temporarily working from home within the District due to the COVID-19 emergency.

Paid leave

District of Columbia employees may use accrued paid sick leave for COVID-19

Under District of Columbia emergency legislation (*DC Act 23-247*), District of Columbia employees affected by COVID-19 may choose to use their accrued paid sick leave that employers are required to provide under the Accrued Sick and Safe Leave Act of 2008 and Earned Sick and Safe Leave Amendment Act of 2013.

Under the paid sick leave law, employers with 100 or more employees must allow employees to earn one hour per 37 hours worked, up to 7 paid sick leave days a year; employers with 25 to 99 or more employees must allow employees to earn one hour per 43 hours worked, up to 5 paid sick leave days a year; and employers with fewer than 25 employees must allow employees to earn one hour per 87 hours worked, up to 3 paid sick leave days a year

The emergency COVID-19 Act provides that the one-year employment requirement and 1,000-hour work requirement under the paid sick leave law does not apply to an employee who has been ordered or recommended to quarantine or isolate by a medical professional or District or federal agency.

Note that the new DC Paid Family and Medical Leave program, to which employers have been making contributions since second quarter 2019, is not scheduled to be available to claimants until July 2020. (See EY *Payroll Newsflash* Vol. 20, #133, 9-9-2019 and the DC Paid Family Leave website.)

For more information on the District's paid sick leave law, go here and here.

Florida

Filing extensions and payment deferrals

Florida allows for partial deferral of SUI contributions through the DOR's installment plan

Although the Florida Department of Revenue hasn't extended the first quarter 2020 state unemployment insurance (SUI) tax reporting and payment deadline, Florida employers may elect to remit one-fourth of the first-quarter SUI tax liability, plus a $5 installment plan fee, by April 30, 2020, and then remit the remaining amount due in three additional installments. No interest will be charged on the deferred amounts. Contribution and wage reports for first quarter 2020 are still due on April 30, 2020. (*Florida Department of Revenue COVID-19 frequently asked questions; question 5.*)

According to the Department's website, employers may make installment payments for the first three quarters of a tax year. To qualify, the Form RT-6, *Employer's Quarterly Report*, UI wage data and installment payment must be submitted on time each quarter. An employer who chooses to pay in installments must pay a one-time installment fee of $5per calendar year, with the report for the quarter in which the election for installments is made. Both electronic and paper filers are eligible to pay in installments.

Employers are instructed to divide the first-quarter SUI tax due into four equal payments, the second quarter into three equal payments, and the third quarter into two equal payments. There is no installment option for the fourth quarter. Employers may choose the installment option for any or all of the first three quarters. They are not required to file an application or fill out any extra paperwork to pay by installments.

Employers that submit the $5 installment fee and the minimum amount due will receive a notice from the Department confirming their placement into the plan. The notice will include a payment schedule and, if paper reports were filed, installment coupons.

If the employer fails to include the required $5 fee or the minimum amount due, it will be notified that it was not placed into the plan and that full payment is due immediately. Electronic filers will not receive installment coupons. The Department offers an electronic due date reminder service to help employers to file on time. Paper filers can also subscribe to this service.

A law change in 2014 made the installment payment option permanent.

Use the online calculator to compute your installment payments.

Employers that need further assistance in meeting their tax obligations should contact the Department at +1 850 488 6800 or send an email to COVID19TAXHELP@floridarevenue.com and provide the following:

- Employer name, phone number and email address
- Account information (i.e., federal employer identification number)
- Your relationship to the business

The Department will discuss your situation and help determine how best to resolve the tax issue with you.

See the Department's website for more information on how it is handling COVID-19 issues.

Unemployment insurance benefits

Update: June 1, 2020

Florida confirms COVID-19 UI benefits will not be charged against employer accounts

The Florida Department of Economic Opportunity confirmed on its employer COVID-19 webpage that contributory employer unemployment insurance (UI) accounts will not be charged for UI benefits paid as a direct result of COVID-19. As a result, contributory employers will not see these benefits affect the computation of their 2021 state UI tax rates.

Employers participating in the Department's short-time compensation (workshare) program will also not be charged with COVID-19-related UI benefits. For more on the Department's short-time compensation program, go here.

Had the Department not provided for the non-charge UI benefits, employers would have seen their tax rates increase dramatically because the Department uses the benefit-ratio formula, comparing UI benefit charges directly against taxable wages for a three-year period (ending June 30, 2020, for calendar year 2021 rate calculation).

The Department's website indicates that reimbursing employers (those nonprofit and governmental employers that reimburse the state dollar-for-dollar for UI benefits) will continue to be charged with COVID-19 UI benefits.

According to the Department's website under "Important Updates and Information":

"The Unemployment Compensation Trust Fund, which pays Reemployment Assistance benefits to eligible unemployed workers, is funded by Reemployment taxes paid by employers. There are two types of employers, contributory and reimbursing. Contributory employers may be relieved of benefit charges associated with COVID-19. This means that Reemployment Assistance benefits that former employees receive because they were separated from work as a direct result of COVID-19 may not be used in computing the employer's future Reemployment tax rate. This exception also applies to contributory employers who are participating in the Short-Time Compensation Program, but the exception does not apply to reimbursing employers. Contributory employers will receive a Notice of Benefits Paid (Form RT-1) and reimbursing employers will receive a Reimbursement Invoice (Form RT-29) on

a quarterly basis, which shows the debits and credits to the employer's account for benefits paid to their former employees. Contributory employers should follow the protest instructions contained within Form RT-1 if they disagree with the charges. Even though contributory employers may be relieved of charges for employment separations that were a direct result of COVID-19, they still need to respond to the Notice of Claim."

As we reported, Florida's Governor Ron DeSantis previously directed the Department to temporarily waive certain provisions of the state's UI law to provide for flexibility as outlined by the U.S. Department of Labor to support workers and businesses impacted by the COVID-19 pandemic. Specifically, the directive waived the requirement that UI benefit recipients search for work and stipulates that COVID-19 UI benefits are not charged to employers' accounts. (*EY Payroll Newsflash Vol. 21, #098, 3-25-2020.*)

Work search requirements and one-week waiting period waived for workers filing COVID-19 UI benefit claims

In Executive Order 20-104, the governor ordered that the "actively-seeking work" requirement of Florida UI law be suspended as long as the state of emergency declared in Executive Order 20-52 continues. Executive Order 20-114, issued on May 8, 2020, extends the state of emergency for 60 days. As a result, the Department announced that the governor directed the Department to continue waiving the work search and work registration requirements for claimants through June 13, 2020. Additionally, the waiting week requirement will continue to be waived through August 1, 2020. Note, however, that the FAQs shown below and the My Florida Open for Business website do not reflect the extension.

Claimants are required to return to the Florida CONNECT system every two weeks to request their UI benefits or "claim their weeks." Federal law requires that claimants confirm that they are still unemployed and acknowledge that they are able and available for work. Claimants must request their UI benefit payment for each week available.

In its FAQs for employees, the Department indicates that workers filing for UI benefits for reasons related to COVID-19 may be granted a waiver from the weekly requirement to search for work and the one-week waiting period, as follows:

Question: I heard the waiting week for Reemployment Assistance has been waived, what does this mean?

Answer: Governor DeSantis waived the requirement to wait a week to receive Reemployment Assistance benefits beginning March 29, 2020, through May 30, 2020. The waiting week has been waived so eligible Floridians may receive the support they need to help recover from the current economic impacts of COVID-19. Previously, after your claim was filed and accepted, the state of Florida required a "waiting week" during which no benefits could be paid.

Question: Governor DeSantis waived the waiting week, why haven't I gotten paid?

Answer: Due to the "waiting week" being waived, Floridians will be eligible for benefits for the first week of unemployment in which they would not have previously been eligible. Your claim must be processed before the waiting week can be paid to determine if you are eligible for those benefits. You will also have to claim your first two weeks of benefits before the waiting week can be paid. This requirement is waived for the period of March 29, 2020, through May 30, 2020.

Question: I heard work registration requirement is waived, what does that mean?

Answer: Governor DeSantis has waived the work registration requirement for individuals filing an application for benefits from March 15, 2020, until May 30, 2020. If you file an application during this time period, you will not be required to complete the work registration in Employ Florida. You do not have to complete the registration if your application is filed between March 15, 2020, and May 30, 2020. You may be prompted to register in Employ Florida or may receive a message on the Reemployment Assistance system; however, you do not have to register. If you completed your application prior to March 15, 2020, you must complete the online work registration.

Question: I heard work search requirements were waived, what does this mean?

Answer: Governor DeSantis has waived the work search requirement for individuals filing an application for benefits from March 15, 2020, until May 30, 2020. When completing the application, you will be asked questions about your ability and availability to look for work for the weeks of unemployment you are claiming. If you did not search for work due to the waiver, you may select "no" when asked if you looked for work that week. After selecting no, proceed through the next steps in the process. If you answered that you did not search for work, you will not be asked to complete a work search log. However, you will be asked additional questions that need to be answered to proceed to the next step in the process. Example questions may include: why did you not search for work; did you not have transportation; did you not have child care; or were you out of the area? If you did search for work, you may be asked to complete a work search log.

Question: I heard week certification requirements "claiming weeks" is waived, what does that mean?

Answer: In order to better serve you, Governor DeSantis suspended the biweekly reporting requirement until May 9, 2020. However, to comply with federal law, weeks beginning May 10, 2020, claimants will be required to return to the CONNECT system every two weeks to request their benefits or "claim their weeks." In doing so, claimants will confirm that they are still unemployed and acknowledge that they are able and available for work should it be offered.

For information on the Department's response to COVID-19, go here.

Florida governor directs that UI benefits be available for employees impacted by COVID-19; employer accounts will not be charged for benefits

The Florida Department of Health announced that Governor Ron DeSantis directed the Florida Department of Economic Opportunity (DEO) to temporarily waive certain provisions of the state's unemployment insurance (UI) law to provide for flexibility as outlined by the U.S. Department of Labor to support workers and businesses impacted by the COVID-19 pandemic. Specifically, the directive waives the requirement that UI benefit recipients search for work and stipulates that COVID-19 UI benefits are not charged to employers' accounts.

Details of Governor DeSantis' UI directive

In response to the federal Families First Coronavirus Response Act that allows states to suspend certain UI claimant requirements pursuant to the COVID-19 emergency, Governor DeSantis issued the following directives to DEO:

- Waive job search requirements for reemployment assistance.
- Do not require a UI claimant to register with the state job search portal to actively seek employment.
- Waive penalties to employers that are the result of their accounts being "charged" for every employee that is laid off. The governor stated that waiving this penalty will eliminate any perverse incentive an employer may have to keep an employee on the payroll but with dramatically reduced or deferred hours, thereby preventing them from seeking unemployment assistance.

Georgia

Unemployment insurance benefits

Georgia's emergency rule expands the availability of UI benefits for workers affected by COVID-19

The Georgia Department of Labor has issued emergency rules that expand the unemployment insurance (UI) benefit program to allow workers as they return to work to earn up to $300 in wages per week (up from $50 per week) without causing a reduction in their weekly UI benefit amount. It also allows workers to collect the additional $600 in federal pandemic unemployment compensation under the federal CARES Act. Any amount earned over $300 will be deducted from a claimant's weekly benefit amount.

In addition, the emergency rules temporarily expand the maximum number of weeks a worker may collect regular UI benefits in a benefit year to 26 weeks, up from 14 weeks. This temporarily replaces the previous maximum that could vary from 14 to 20 weeks under the method of determining the maximum based on seasonal adjusted unemployment rates.

Georgia employers will not be charged for partial UI benefits resulting from COVID-19 provided they file partial UI claims

The Georgia Department of Labor (GDOL) released updated COVID-19 Frequently Asked Questions (FAQs) by Employers to its COVID-19 webpage. The updated guidance states that employers will not be charged with partial state unemployment insurance (UI) benefits attributable to COVID-19, provided they file a partial UI benefit claim. UI benefits resulting from claims filed by workers will be charged to the employer's account and employers will be required to reimburse the Department for the full amount of the UI benefits paid to employees.

In addition, the updated document gives further details on the requirement that employers file partial UI claims for their employees affected by COVID-19.

The FAQs regarding noncharge of partial UI benefits for COVID-19 states:

Will my DOL account be charged for the benefits?

You will not be charged for benefits paid on partial claims that you submit because of COVID-19. However, you will be charged for claims filed by your employees, and you will be required to reimburse GDOL for the total amount of benefits paid on individual-initiated claims.

Will these claims affect my UI tax rate?

The employer-filed partial claims will not affect your tax rate. Claims filed by your employees may affect your tax rate.

Requirement that employers file partial UI claims for their workers affected by COVID-19

The Department adopted Emergency Rule 300-2-4-0.5, effective March 16, 2020, that mandates all Georgia employers to file partial claims for UI benefits online on behalf of their employees for any week during which an employee (full-time/part-time) works less than full time due to a partial or total company shutdown caused by the COVID-19 public health emergency. Any employer found to be in violation of this rule will be required to reimburse the Department for the full amount of UI benefits paid to the employee.

The Department's updated FAQs for Employers provides additional information on this requirement, as follows:

Why do I have to file partial claims? Why can't my employees file for themselves?

Your filing partial claims is the fastest way for your employees to receive unemployment insurance (UI) benefits. When individuals file claims, the Georgia Department of Labor (GDOL) has to determine that they are not working due to no fault of their own. When employers file partial claims, the employer is affirming the employee is not working due to a lack of work and benefits can be paid immediately.

It is important for you to know that an emergency GDOL Employment Security Law Rule 300-2-4-0.5 Partial Claims was re-adopted on March 19, 2020, mandating employers to file partial claims online on behalf of their full- and part-time employees who work less than full time due to a partial or total company shutdown caused by the COVID-19 emergency. Employers who refuse to file partial claims are in violation of the rule and will be required to reimburse GDOL for the full amount of benefits paid to their employees.

Note: Employees who voluntarily choose to not come to work must file their own claims.

Which employees can I file for?

You may submit partial claims for full- and part-time employees who are temporarily laid off or whose hours have been temporarily reduced because of a lack of work due to COVID-19. Employees must be expected to return to work when the COVID-19 emergency ends. They must also be United States citizens or non-citizens who are authorized to work in the US.

Do not submit claims for employees who:

- Are on scheduled/customary vacation, scheduled/ customary plant shut down, or scheduled/customary plan closure (O.C.G.A. Section 34-8-195)
- Employed by a temporary agency and are currently working at your place of business
- Were employed in another state in the last 18 months
- Were employed with the federal government or on active military service in the last 18 months
- Are 1099 employees. are voluntarily out of work (e.g., quits, requested leaves of absence, self-quarantined)
- Have been permanently separated from your company

Can I file partial claims for employees who have self-quarantined for fear of exposure to COVID-19?

No. Employees who voluntarily choose not to go to work must file their own claims.

Can I file for employees who have COVID-19 or have been exposed to the virus?

If you directed the employee to not return to work because of their exposure to COVID-19, you may file a claim on their behalf. If the individual voluntarily chooses not to report to work, he/she must file their own claim. GDOL will determine eligibility of benefits for such claims on a case-by-case basis.

Can I submit a mass separation notice?

Yes. Mass separation is intended for employers who are permanently separating 25 or more employees on the same day for the same reason. If you are filing employer, then it is not necessary to submit a mass separation notice.

See the Department's updated COVID-19 Frequently Asked Questions (FAQs) by Employers for more information.

See the Department's COVID-19 webpage for more information.

Teleworker nexus and income tax withholding

Georgia provides guidance concerning the assertion of nexus and income tax withholding for employees temporarily working in the state due to COVID-19

In its frequently asked questions (FAQs) concerning tax relief and COVID-19, the Georgia Department of Revenue announced that it will temporarily not impose nexus for work at home within the state that is directly due to the COVID-19 emergency. The Department also provides guidance concerning the income tax withholding requirements that apply.

Nexus

The Department will not use temporary work from home within the state that is directly connected with the COVID-19 emergency as the basis for establishing Georgia nexus or for exceeding the protections under P.L. 86-272 for the employer of the teleworker.

Income tax withholding

If the employee is temporarily working in Georgia due to COVID-19, the wages the employee earns during this time frame will not be considered Georgia income and not subject to Georgia income tax or withholding. The Department makes the following stipulations:

- If the employee remains in Georgia after the temporary remote work requirement has ended, the normal rules for determining nexus, the employee's wages and the employer's income tax withholding obligation will apply.
- Wages paid to a nonresident employee who normally works in Georgia but who is temporarily working in another state, under the circumstances described above, would be considered Georgia wages and the employer should continue to withhold Georgia state income tax.

Limitations of the guidance

These provisions are temporary and apply for the period where:

- There is an official work-from-home order issued by an applicable federal, state or local government unit.

  OR

- Pursuant to the order of a physician in relation to the COVID-19 outbreak or due to an actual diagnosis of COVID-19, the employee is working at home. Additionally, the subsequent 14 days are included in the time period to allow for a return to normal work locations.

Hawaii

Filing extensions and payment deferrals

Hawaii will waive interest and penalties for late SUI returns and contributions

According to the Hawaii Department of Labor and Industrial Relations, while the first-quarter 2020 state unemployment insurance (SUI) contribution and wage report is still due April 30, 2020, employers unable to make their full or partial SUI tax payment for the first quarter will not be charged penalties or interest for failure to pay timely if payment is made by May 31, 2020.

Employers unable to pay by May 31, 2020, may set up a payment plan. (*COVID-19: employer unemployment insurance FAQs; governor's executive order 20-02*.)

Hawaii Governor David Ige's Executive Order 20-02 instructed the Department to extend SUI deadlines to the extent necessary for the duration of the COVID-19 emergency.

For more information on the Department's response to COVID-19, see the Department's website.

Unemployment insurance benefits

Hawaii COVID-19 UI benefit wages will not be charged to employer accounts

The Hawaii Department of Labor and Industrial Relations announced that state unemployment insurance (UI) benefit paid to workers due to COVID-19 will not be charged against employer accounts and waived the one-week waiting period and work search requirements that normally apply to claimants.

Per the Department's frequently asked questions (FAQs) for employers about UI and COVID-19:

Question: Will my rating be affected because my employees filed for UI?

Answer: Benefits paid due to COVID-19 will not be charged to contributory employers.

Work search requirements waived for workers filing COVID-19 UI benefit claims, one-week waiting period

According to the Department's FAQs for COVID-19 claimants, workers are not required to search for work or serve a waiting period while collecting UI benefits due to COVID-19.

For more information on the Department's response to COVID-19, see the Department's website.

Idaho

Unemployment insurance benefits

Idaho employers will not be charged for UI benefits related to COVID-19

The Idaho Department of Labor updated its COVID-19 employer webpage to reflect, as ordered by Governor Brad Little, that state unemployment insurance (UI) benefits in connection with COVID-19 will not be charged against contributory employer accounts. Nonprofit and government entities that have elected to reimburse the Department for UI benefits continue to be charged for COVID-19 state UI benefits. (*Governor's news release, March 27, 2020.*)

The Department's frequently asked questions for employers have been updated to state the following:

Question: If an employee receives unemployment benefits as a result of a coronavirus-related business shutdown, will my unemployment insurance account be charged?

Answer: It depends. Part of Governor Little's emergency proclamation provides that experience-rated employers (most businesses) will not be charged for unemployment claims attributed to COVID-19. There is no change to cost-reimbursed employers. Cost-reimbursed employers include non-profit and government employers. Information about tax relief for employers from the IRS is available here: https://www.irs.gov/coronavirus.

The governor also ordered that workers affected by COVID-19 and filing for UI benefits will not be required to search for work or serve a one-week waiting period, retroactive to March 8, 2020.

The governor's news release states the following:

For unemployment insurance claimants, the proclamation does the following things:

- Makes it easier for claimants to be considered as job-attached if they have been laid off due to COVID-19-related reasons. An employer must provide reasonable assurance of a return to work and the claimant must be able and available for suitable work.
- Considers claimants have met the available-for-work criteria if they are isolated and unavailable to work at the request of a medical professional, their employer or their local health district and they will be returning to their employer.
- Provides parties an additional 14 days to appeal claims decisions beyond the normal 14 days.

For employers:

- Businesses that pay a quarterly unemployment tax will not be charged when employees are laid off due to coronavirus.
- Parties will be given an additional 14 days to appeal claims decisions beyond the normal 14 days.

The unemployment provisions are in effect as of March 8, 2020.

The Department's website has been updated to reflect the following information on UI benefits:

Question: Will my employees be required to look for work if I had to temporarily or permanently shut down operations for work because of coronavirus (COVID-19)?

Answer: It depends. If they are unemployed due to COVID-19-related reasons and you are plan on having them return to work, they are not required to register for work or seek work. They will need to answer "yes" to the question asking if they are returning to work within 16 weeks on the UI application. If they are not returning with you, they will be required to complete two work search activities per week.

Click here for more information.

Question: Is the waiting period waived?

Answer: Yes. The governor's emergency proclamation waived the waiting week for claims filed on or after March 8, 2020, until further notice. There are no provisions to waive the waiting week for claims filed prior to March 8, 2020.

See the Department's website for more information for employers regarding the Department's response to COVID-19.

Bonuses and rebates

Update July 3, 2020

Idaho employers may apply for bonuses to be paid to employees who return to work from COVID-19 shutdowns

To encourage workers to return to work as businesses reopen following the COVID-19 shutdown, Idaho Governor Brad Little ordered the creation of the *Idaho Return to Work* program that provides bonuses of up to $1,500 for employees currently receiving unemployment insurance (UI) benefits due to COVID-19 and who return to work.

The Idaho State Tax Commission that administers the program issued guidance for employers on how to apply for the bonus on behalf their employees starting July 13, 2020. (*Executive order 2020-12; news release, Idaho State Tax Commission*.)

Under the Governor's order, the worker must meet all the following requirements:

- The worker filed for UI benefits during the COVID-19 emergency on or after March 1, 2020.
- The worker returned to work for a nongovernmental employer no later than July 1, 2020.
- The worker makes $75,000 or less annually.
- The worker meets the part-time (20 hours) or full-time (30 hours) thresholds in the four weeks immediately following the return to work.
- The position for which the worker returned to work is intended to be an ongoing position beyond the four-week period.
- The worker has not previously received a return-to-work bonus.

According to the Idaho Rebounds website, a recent study revealed that more than 60% of US workers furloughed or laid off due to the COVID-19 emergency are, through state and federal programs, earning more while on UI benefits than they would have earned continuing to work for their employers. The Governor is offering this one-time bonus to offset the loss of UI benefits caused by the return to work.

Idaho has set aside $100 million in federal coronavirus relief funds to cover the cost of the bonuses. The bonuses, which must be applied for electronically by the workers' employers, will be awarded on a first-come, first-served basis until the $100 million is exhausted.

Details

One-time cash bonuses of $1,500 for full-time work (defined as a minimum of 30 hours per week for the four weeks following the return to work) and $750 for part-time work (defined as a minimum of 20 hours per week for the four weeks following the return to work) are available to workers after they return to work.

Eligible employees need not have worked for the applying employer prior to the COVID-19 emergency. In other words, the employee receiving the bonus may be a new hire.

Submissions to the Tax Commission start at noon on July 13, 2020, for workers who returned to work after collecting UI benefits from May 1, 2020, through June 14, 2020.

A second wave of applications will open on July 20, 2020, for employees who return to work through July 1, 2020.

Applications will be accepted through August 7, 2020, but note as reported above that once the $100 million in federal funds is exhausted, bonuses will cease.

Employers must apply for the bonuses on behalf of employees electronically over the Tax Commission's Taxpayer Access Point (TAP) system; paper applications will not be accepted.

Businesses and third-party service providers that do not currently have a TAP account are encouraged to start the registration process immediately so their account is established in time to apply for the bonuses.

Employers eligible to apply for the bonus on behalf of an employee must be one that issues Forms W-2 to employees directly or through a third-party service provider.

Note that the Idaho Rebounds website indicates that for employees to be eligible for the bonus, they must be Idaho residents who worked for an Idaho employer in 2020.

To be eligible for the bonus, an employee must have a valid Social Security number issued to them by the Social Security Administration. Employees who have been issued an Individual Taxpayer Identification Number (ITIN) are not eligible for the bonus.

Employees who work for two or more employers are only eligible for one bonus. The bonus amount will be based on the job where the employee works the highest number of hours per week.

The website states that employers can help the application approval process go quicker by reporting new and returning employees to the Idaho Department of Labor's new hire reporting center.

The state anticipates issuance of the bonus to the employee approximately one week after the application is approved.

For more information, send an email to ReboundIdahoBusinessGrants@tax.idaho.gov or call +1 833 492 0068.

Ernst & Young LLP insights

As previously reported (*EY Tax Alert 2020-1472*), Representative Kevin Brady, ranking Republican member on the House Ways and Means Committee introduced H.R. 7066, *Reopening America by Supporting Workers and Businesses Act of 2020*, that, like Idaho's program, would offer a bonus to employees receiving UI benefits who return to work.

Under the Brady bill, the bonus amount would be $1,200, lower than the $1,500 offered by Idaho. This federal bill has seen no movement in the House since it was first referred to the House Committee on Ways and Means on June 1, 2020.

White House economic advisor Larry Kudlow told Fox News on May 27, 2020, that the Trump Administration is open to the back-to-work bonus for the unemployed who return to work.

Senator Rob Portman (R., Ohio) has made a similar proposal, though his bonus would be $450 per week.

Given the national interest for return-to-work bonuses, it is likely that other conservative states may join Idaho in offering a state bonus program.

Illinois

Filing extensions and payment deferrals

Illinois employers unable to file timely monthly or quarterly SUI wage reports may request an extension

According to the Illinois Department of Employment Security COVID-19 Frequently Asked Questions (FAQs) for Employers, although the filing deadline for state unemployment insurance (SUI) returns has not been extended, employers affected by COVID-19 and unable to file monthly or quarterly SUI wage reports may request an extension (30 days for quarterly returns, 15 days for monthly).

To receive an extension, the employer must state a reason for the request (e.g., short of staff due to COVID-19 stay-at-home orders). Employers are encouraged to file their requests for extension via the MyTax website.

Unemployment insurance benefits

Update: July 7, 2020

Illinois COVID-19 UI benefits will not be charged to employer accounts

Recently enacted HB 2455 provides that Illinois employer accounts will not be charged with unemployment insurance (UI) benefits paid to workers that are directly or indirectly attributable to COVID-19. The noncharge provision applies 100% to contributory employers and 50% to reimbursing employers and is effective retroactively to March 15, 2020, through December 31, 2020.

The employer must be able to show that the workers' UI benefits are directly or indirectly attributable to COVID-19.

New law allows certain educational employees to collect UI benefits this year

The legislation also allows non-professional academic employees (e.g., custodian, teacher's aide, cafeteria worker, bus driver, security staff, clerical worker) at a public or private school, college or university to collect UI benefits during the summer months, vacation breaks and holidays during 2020 from March 15, 2020, to January 2, 2021. Educational employers will be noncharged in the same way as for contributory or reimbursing employers as explained above. For more information, see the Illinois Department of Employment Security's website.

Work search requirements and one-week waiting period are waived for workers filing COVID-19 UI benefit claims

The legislation waives the one-week waiting period for worker UI benefits related to COVID-19, effective retroactively to March 8, 2020.

Under emergency rules adopted by the Illinois Department of Employment Security, an individual unemployed due to COVID-19 is not required to register with the employment service to actively seek work as long as the individual is prepared to return to work once the employer reopens. See these FAQs for more information.

Employers should report workers who refuse to return to work, using this form filed over the Department's electronic system.

Ernst & Young LLP insights

Due to the lateness of the legislation providing for the noncharge of COVID-19 UI benefits, employers should review benefit charge statements to be sure the Department removes these charges from their experience account.

Update: May 18, 2020

Illinois urged to implement state UI law providing for a state workshare program by issuing the necessary regulations

Illinois state unemployment insurance (UI) law (820 ILCS 405/502) allows the Illinois Department of Employment Security (IDES) to implement a state short-time compensation (STC) program (also referred to as workshare) through state regulations. The law was enacted in late 2014 (SB 3530) to take advantage of federal grants available under the Middle Class Tax Relief and Job Creation Act of 2012. However, the implementing regulations were never issued and the state's STC program remains inactive to this date.

A recent white paper released by the Illinois Economic Policy Institute urges the state to implement the STC program in consideration of the economic impact of COVID-19. The sponsor of SB 3530, Senator Steve Stadelman, is also urging Illinois Governor J.B. Pritzker to direct his Administration to implement the program.

State aid provided under the CARES Act to states with a workshare program

The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 provides temporary 100% federal financing of UI benefits through December 31, 2020, when paid under a preexisting state STC program that complies with section §3306(v) of the Federal Unemployment Tax Act (FUTA), as amended by the CARES Act.

States without a preexisting STC program in their laws may enter into an agreement with the U.S. Department of Labor (DOL) to operate a temporary federal STC program, for which the states will receive federal reimbursement equaling one-half of the UI benefit costs through December 31, 2020.

The CARES Act also provides $100 million in grants to support states in implementing and administering STC programs and enrolling employers, including conducting outreach to employers to promote the use of STC. The DOL will provide assistance and guidance to states implementing STC programs. States must request these grants before December 31, 2023.

Illinois IDES urged to issue emergency regulations to implement the state's workshare program

A recent white paper released by the Illinois Economic Policy Institute urges the IDES to implement the STC program to address the economic impact of COVID-19 on the state.

The sponsor of the 2014 legislation who added the STC program to the state's UI law, Senator Stadelman, is also urging Governor Pritzker's Administration to get the needed rules written to implement the program. According to the senator's April 21, 2020, weekly news bulletin:

"At a Thursday news conference, Gov. J.B. Pritzker said he supports the work-share program. Stadelman is now urging the Pritzker administration to write the rules needed for workshare to go into full effect."

Ernst & Young LLP insights

We have been corresponding with Senator Stadelman's office in connection with this matter. According to a representative of the senator's office, IDES resource constraints due to COVID-19 are holding up movement on the implementing regulations. IDES was unavailable for comment.

Teleworker nexus and income tax withholding

Update: May 21, 2020

Illinois provides income tax withholding guidance for employees working temporarily in the state due to COVID-19

The Illinois Department of Revenue issued FY 2020-29 explaining the Illinois income tax withholding requirements that apply when employees who normally work in another state temporarily work from home within Illinois due to the COVID-19 emergency. The guidance states that employee wages are subject to Illinois income tax and withholding if the nonresident employee performed their normal duties within the state for more than 30 working days. If an Illinois resident employee has performed work for more than 30 working days from their home in Illinois for an out-of-state employer, the employer may be required to register with the Illinois Department of Revenue (IDOR) and withhold Illinois income tax from the wages of those employees.

The Department will waive penalties and interest for out-of-state employers who fail to withhold Illinois income taxes for Illinois employees if the sole reason for the Illinois withholding obligation is temporary work within the state due to the COVID-19 emergency.

The Department also notes that if employees do not have Illinois income tax withheld by their employers, they could potentially owe Illinois income tax and be subject to estimated tax payment requirements. Estimated tax payments are required if employees reasonably expect their tax liability to exceed $1,000 after subtracting their Illinois withholding, pass-through withholding and various tax credits. For more information on estimated tax payments for individuals, see Form IL-1040-ES, *Estimated Income Tax Payments for Individuals*.

The Department reminds employers that to confirm the proper amount of Illinois income tax withholding, employees should complete and return to their employers, Form IL-W-4, *Employee's and other Payee's Illinois Withholding Allowance Certificate and Instructions*.

Other provisions

Update: June 1, 2020

Chicago ordinance contains COVID-19 anti-retaliation provision and expands covered employees for paid leave

On May 20, 2020, the Chicago City Council approved an ordinance that protects employees from employer retaliation for obeying the mayor's order in connection with COVID-19 and makes corrections to the city's paid leave and minimum requirements by expanding the workers covered by those requirements.

Protection from employer retaliation for complying with COVID-19 orders

An employer is prohibited from demoting or terminating a covered employee for obeying orders issued by the mayor, the Illinois governor, the Chicago Department of Public Health or a health care provider pursuant to COVID-19 as follows:

- Stay at home to minimize the transmission of COVID-19
- Remain at home while experiencing COVID-19 symptoms or sick with COVID-19
- Obey a quarantine order issued to the covered employee
- Obey an isolation order issued to the covered employee
- Obey an order issued by the Commissioner of Health regarding the duties of hospitals and other congregate facilities

An employer has an affirmative defense pursuant to violations of these requirements if it relied on a reasonable interpretation of an order and, upon learning of the violation, it cured the violation within 30 days.

Chicago's paid leave ordinance

Under Chicago's paid leave requirement, any covered employee who works at least 80 hours for an employer within any 120-day period is eligible to use accrued paid sick leave by the 180th calendar day following the commencement of employment, regardless of the number of employees the employer has.

When the city's ordinance was amended effective July 1, 2020, groups were erroneously removed what are covered by the paid leave ordinance. The ordinance adopted on May 20, 2020, adds the following as covered employees:

- Outside salespersons
- Members of a religious corporation or organization
- Students at and employed by an accredited Illinois college or university
- Motor carriers regulated by the U.S. Secretary of Transportation or State of Illinois

Employers must give employees a notice about the paid leave requirements. Accordingly, the added covered employees above must receive notice effective July 1, 2020, with their first paycheck that they are subject to the paid leave ordinance.

Frequently asked questions about Chicago's paid leave ordinance, updated May 20, 2020, are available here.

Illinois governor prohibits garnishment and wage deduction orders during COVID-19 emergency

Illinois Governor J.B. Pritzker issued Executive Order 2020-25 that for the duration of the Illinois COVID-19 disaster declaration suspends garnishment and wage deduction summons allowed under Sections 5/12-705, 5/12-805, and 5/2-1402 of the Illinois Code of Civil Procedure, 735 ILCS 5/12-705, 735 ILCS 5/12-805, and 735 ILCS 5/2-1402.

The Executive Order notes that the suspension does not apply to domestic support obligations, including child support and spousal maintenance obligations.

The Executive Order also does not relieve a debtor of any liability pursuant to the amount owed.

Ernst & Young LLP insights

Illinois employers receiving new garnishment orders during the period of the Illinois COVID-19 disaster declaration will need to discuss the appropriate procedures with their legal advisors.

Indiana

Filing extensions and payment deferrals

Indiana extends first-quarter 2020 tax filing and payment deadline for employers affected by COVID-19

The Indiana Department of Workforce Development (DWD) announced that employers unable to timely file their first-quarter 2020 state unemployment insurance (UI) contribution and wage report and pay the corresponding payment had until May 31, 2020, to file and pay without interest and penalty. (*DWD frequently asked questions (FAQs) for employers*.)

The DWD's FAQs state:

Question: Is DWD going to waive penalties and interest for late filing of quarterly wage reports and for contribution payments first quarter 2020?

Answer: Yes. DWD will waive penalties and interest for 31 days. Reports and payments made on or before May 31, 2020 will not be assessed any penalty or interest.

See the DWD's website for more information regarding the Department's response to COVID-19.

Unemployment insurance benefits

Indiana makes UI benefits available for COVID-19; employers' accounts will not be charged

Under an emergency order recently issued by Indiana Governor Eric Holcomb, Indiana employer accounts of contributory employers will not be charged for unemployment insurance (UI) benefits received by workers affected by COVID-19. Nonprofit companies and government entities that have elected to reimburse the Indiana Department of Workforce Development (DWD) will be charged with COVID-19 benefits as normal. (*Executive Order 20-05*.)

Under the order, the governor stated:

"The DWD shall not assess certain experience rate penalties to employers as a result of employees receiving unemployment benefits related to COVID-19."

On March 26, 2020, the DWD updated its frequently asked questions for employers regarding COVID-19 to include the following:

Question: If I lay people off due to COVID-19, will it affect my merit rate/tax rate next year?

Answer: Layoffs due to COVID-19 will not be charged to contributory employers but will be mutualized to the entire contributory employer pool. More information regarding this will be sent to employers soon. Layoffs by reimbursable employers will be charged to the employer dollar-for-dollar, in the same manner they have always been charged.

The governor also ordered (*Executive Order 20-12*) that Indiana claimants unemployed due to COVID-19 not be required to serve a one-week waiting period before collecting benefits. The waiver is retroactive to the week of March 8, 2020. Covered/otherwise eligible workers involuntarily unemployed due to COVID-19 are eligible for UI benefits. For these workers, the requirement that they actively search for work each week to receive benefits is waived. However, claimants still must be "able and available for work," meaning that they must be ready to return to work once able.

See the DWD's frequently asked questions for claimants for more information.

See the DWD's website for more information regarding the Department's response to COVID-19.

Teleworker nexus and income tax withholding

Indiana will not assert nexus for employees temporarily working from home in the state due to COVID-19

The Indiana Department of Revenue announced that under certain circumstances in connection with COVID-19, it will not assert nexus or that the protections of the federal Interstate Income Act of 1959 (P.L. 86-272) have been exceeded due to a temporary remote work assignment within the state.

This relief applies only for the period that:

- There is an official work-from-home order issued by an applicable federal, state or local government unit.
- There is an order of a physician in connection with the COVID-19 outbreak or an actual diagnosis of COVID-19, plus 14 days to allow for return to normal work locations.

The Department cautions that if the employee remains in Indiana after the temporary remote work requirement has ended, nexus may be established for that employer.

Ernst & Young LLP insights

This guidance does not change the requirement that employers with business operations in Indiana (other than employees temporarily working from home under the limitations set forth by the Department) are required to withhold Indiana state income tax on the wages of resident employees, regardless of where those wages were earned.

This announcement, does, however, bring much-needed relief to Indiana employers that otherwise could have been forced to incur other business taxes (e.g., sales & use, unemployment insurance) merely because employees are temporarily working from home within Indiana due to the COVID-19 emergency.

Iowa

Filing extensions and payment deferrals

Iowa extends one income tax withholding deposit due date

As a result of an order signed by Director of Revenue Kraig Paulsen, the Iowa Department of Revenue announced that it extended one income tax withholding deposit due date for certain taxpayers. The extension is designed to provide flexibility to disrupted businesses in connection with COVID-19. (*News release, Iowa Department of Revenue, March 2020.*)

The order extends the income tax withholding deposit due date for the period ending March 15, 2020, from March 25, 2020, to the new deposit due date April 10, 2020. It applies to Iowa residents or other taxpayers doing business in Iowa who remit income tax withholding on a semimonthly basis.

No late-filing or underpayment penalties apply for qualifying taxpayers that comply with the extended filing and payment deadlines pursuant to the order. Interest on unpaid taxes covered by this order were due beginning on April 11, 2020.

Taxpayers and tax professionals who need assistance can contact the Department by email at idr@iowa.gov or call the taxpayer services phone line at +1 515 281 3114 or +1 800 367 3388.

See the Department's website for more information on the Department's response to COVID-19.

Iowa delays due date of due of first-quarter SUI tax payments for small employers

Iowa Governor Kim Reynolds announced that state unemployment insurance (SUI) tax payments for the 2020 first quarter, normally due April 30, 2020, were delayed until the end of 2020 second quarter, due July 31, 2020. The tax payment extension applied only to employers with 50 or fewer employees. Employers were required to notify the Iowa Workforce Development (IWD) of their intent to delay payment by Friday, April 24, 2020 at 4:30 pm CDT.

In addition, to qualify for the SUI tax payment extension, the employer must be current on all quarterly tax payments before the first quarter of 2020 regardless of whether or not it is seeking an extension of the 2020 first-quarter tax payment.

All employers were required to file the Quarterly Employers Contribution and Payroll Report electronically by 4:30 on April 24 to avoid a penalty.

No interest or penalties will accrue for delayed payments for the eligible group.

To take advantage of the tax payment extension, qualified employers were instructed to contact the Iowa Unemployment Insurance Tax division at +1 888 848 7442 or send an email to Q1tax@iwd.iowa.gov. The IWD recommended sending an email versus a phone call due to the high call volume during this time.

Iowa extends Small Business Relief Program for the deferral of state sales and/or withholding tax

The Iowa Department of Revenue announced that its Small Business Relief Program that originally ran from March 23, 2020, to April 30, 2020, is extended for a second round from May 1, 2020, through June 30, 2020. (See EY Tax Alert 2020-0951 for information about the first round of the deferral program.)

Businesses that have already submitted an application and were accepted for the program for round 1 will not need to reapply for round 2. New applicants will be notified by mail.

The second round of program has different terms:

- Only payments are deferred.
- Sales tax and withholding tax returns must be timely filed on or before the due date. If tax returns are not timely filed, you will be disqualified from the program and late payment and filing penalties will apply.
- Each payment included in the new program is deferred for 30 days. Penalties will apply and interest will begin to accrue if payment is not made by the end of the 30-day deferral period.
- Payments deferred for round 1 for the period including March 20, 2020, and April 30, 2020, are still deferred for 60 days as previously announced.

Information about the program can be found at tax.iowa.gov/COVID-19. The page contains the application, details about eligibility, important dates and answers to frequently asked questions.

Unemployment insurance benefits

Update: July 8, 2020

Iowa takes steps to avoid higher employer UI taxes due to COVID-19 UI benefit payouts

On July 2, 2020, Governor Kim Reynolds announced in a press release that she is allocating $490 million of the $1.25 billion of federal funds the state received under Coronavirus Aid, Relief, and Economic Security (CARES) Act towards the state's unemployment insurance (UI) trust fund. This transfer of funds will help to continue to pay UI benefits and will also help to avert an increase in employer UI tax rates in 2021 due to the rise in claims in connection with COVID-19.

The governor states that the $490 million deposit will allow the state to remain at Tax Table 7 for 2021, unchanged from 2019 and 2020. Under Tax Table 7, the range of employer UI rates is 0.0% to 7.5%, the second lowest allowed by law.

The move is expected to save Iowa employers over $400 million in UI taxes.

Individual employer UI experience will also not be adversely impacted by the payment of COVID-19 benefits because from the onset, Iowa employer UI accounts have not been charged for these benefits.

In her press release, Governor Reynolds stated that she wants to minimize the pandemic's impact on employers so they can focus on growing and reinvesting in Iowa.

Ernst & Young LLP insights

By transferring CARES Act funds into the Iowa UI trust fund, the state has also avoided, at least for now, the need to obtain a federal UI loan, which, if not timely repaid, could result in increased federal unemployment insurance (FUTA) taxes for employers through the FUTA credit reduction.

As we previously reported (EY Tax Alert 2020-1724), as of July 1, 2020, 13 jurisdictions (California, Colorado, Delaware, Hawaii, Illinois, Kentucky, Massachusetts, Minnesota, New York, Ohio, Texas, the Virgin Islands and West Virginia) have applied for, and been approved to receive federal unemployment insurance (UI) Title XII advances (UI loans). Connecticut had previously received approval for a UI loan but has since been removed the list. (Title XII Advance Activities Schedule, UI Department of Treasury website.)

As of July 1, 2020, California, Illinois, Kentucky, Massachusetts, New York, Ohio and Texas currently have outstanding federal UI loan balances. Virgin Islands continues to carry a federal loan balance on a loan that has existed since 2009. (U.S. Department of Labor UI trust fund loans.)

Iowa employer accounts will not be charged for COVID-19 UI benefits until the state's UI trust fund falls to a certain level

Iowa Governor Kim Reynolds announced that certain provisions of the state's unemployment insurance (UI) law will be waived to make UI benefits available to employees affected by the COVID-19 emergency and that UI benefits paid to employees in connection with the COVID-19 emergency will not be charged to employers' accounts. See the following page, however, for a policy change that could limit employer non-charge for COVID-19 UI benefits.

Specifically, Governor Reynolds announced the following provisions pursuant to COVID-19 UI benefits:

- If employees are laid off due to COVID-19 or have to stay home to self-isolate, care for family members or due to illness related to COVID-19, they can receive unemployment benefits, provided they meet all other eligibility requirements. Those requirements essentially include working for wages from an employer that claims the individual as an employee in 6 of the last 18 months and who earned at least $2,500 in the same time period. More specific explanation of benefit eligibility can be found at: https://www.iowaworkforcedevelopment.gov/2019-unemployment-insurance-claimant-handbook
- UI claimants can expect to receive payment within 7 to 10 days after the date the claim is filed.
- UI claims that are filed and identified as a direct or indirect result of COVID-19 will not be charged to employers. Fact-finding interviews for these claims will be waived and not be held although employers will be notified of claims received.
- Iowa Workforce Development (IWD) will process unemployment insurance payments to ensure payment will continue to be paid in a timely manner.

According to the IWD website, fact finding interviews for COVID-19 UI claims will not be held although employers will be notified of claims received.

IWD links non-charge for COVID-19 UI benefits to size of state's UI trust fund

Note, however, that the IWD's FAQs for employers states the following regarding non-charge:

Question: If an employee receives unemployment benefits as a result of a COVID-19 related business shutdown, will the employer's unemployment taxes increase?

Answer: All unemployment claims filed and paid as a result of COVID-19 will have the charges waived for employers for a time. At this time, IWD is allowing non-charging to employers until the Iowa Unemployment Insurance trust fund drops below $950 million. At that time, IWD will begin charging employers to maintain the integrity of the Trust Fund. IWD will announce when this occurs on its web page.

Note: At this time, IWD is not charging employers for claims made by their employees due to COVID-19-related unemployment. IWD has established a trigger for the balance of the Unemployment Insurance Trust Fund at which point it will be necessary to begin to charge employers' accounts for respective unemployment claims. The trigger is set at $950 million and the trust fund balance is currently at $1.10 billion or $180 million over that trigger of $950 million. This decision was made to assist with the state's recovery by minimizing any increases it may face in the unemployment tax rate which is based in large part on the trust fund balance. CARES Act claims for the self-employed and the $600 weekly benefit will not be paid from the trust fund. (Update — April 9, 2020.)

IWD encourages employers to consider Iowa's shared work program

The IWD is encouraging employers that must reduce work hours to consider a shared work program. According to IWD's FAQs for employers, employers will not be charged with the UI benefits paid as the result of an approved work share plan:

Question: We may need to reduce work hours; what options do we have?

Answer: Employers experiencing a slowdown in their businesses or services as a result of the COVID-19 impact on the economy may apply for the Voluntary Shared Work Program. This program allows employers to seek an alternative to layoffs — retaining their trained employees by reducing their hours and wages that can be partially offset with unemployment insurance benefits. Visit https://www.iowaworkforcedevelopment.gov/voluntary-shared-work-frequently-asked-questions to learn more about its benefits for employers and employees, and how to apply. Employers in an approved Voluntary Shared Work plan will not be charged for the benefits paid out. If you reduce hours or have a temporary layoff, workers will be eligible for partial or full unemployment insurance benefits.

Work search requirements are waived for COVID-19-related claims; state does not have a waiting week requirement

IWD's COVID-19 website states that workers filing for COVID-19 UI benefits are not required to meet work search or work availability requirements.

Note that unlike in most states, Iowa UI law does not have a provision that requires UI claimants serve a one-week waiting period to collect state UI benefits.

Access the COVID-19 unemployment insurance resources here.

Iowa businesses asked to report employees who refuse to return to work after COVID-19 furlough

Iowa Workforce Development (IWD) announced that businesses should report employees who refuse to return to work without good reason, or who quit their jobs, as soon as possible.

The request is in connection with the IWD's notice that Iowa employees placed on a temporary layoff related to COVID-19 but who refuse to return to work when recalled by their employer will lose unemployment insurance (UI) benefits.

An exception to the loss of UI benefit rules applies in the following circumstances:

- The employee tested positive for COVID-19 and is experiencing symptoms.
- The employee recovered from COVID-19 but it caused medical complications rendering him/her unable to perform essential job duties.
- A member of the employee's household has been diagnosed with COVID-19.
- The employee is providing care for a member of the household diagnosed with COVID-19.
- The employee does not have child care due to COVID-19 reasons.

  OR

- The employee does not have transportation to the place of work due to COVID-19.

Employees in any of these positions are strongly encouraged to work with their employer in the best way to handle the situation to return to work.

For more information, go to http://www.iowaworkforcedevelopment.gov.

Teleworker nexus and income tax withholding

Update: May 29, 2020

Iowa provides guidance on nexus and income tax withholding for employees temporarily working within and outside of the state due to COVID-19

The Iowa Department of Revenue updated its COVID-19 frequently asked questions (FAQs) for income tax to provide guidance concerning the assertion of nexus and income tax withholding for employees temporarily working within and outside of the state due to the COVID-19 emergency.

Nexus for corporate income tax

Iowa corporate income tax is normally imposed on all corporations "doing business" within the state or deriving income from sources within Iowa. Accordingly, having employees working within the state meets the definition of "doing business" in Iowa and subjects the business to Iowa corporate income tax unless an exception applies under Public Law 86-272.

However, in consideration of the fact that due to the COVID-19 emergency, workers are required or strongly encouraged by state and federal governments to remain at home and limit social contact, the Department does not take the position that the presence of employees who normally work outside of Iowa but who are now working remotely from within the state solely as a result of the COVID-19 emergency represents the same type of business activity that would normally subject a business to Iowa corporate income tax. Accordingly, while Iowa's state of emergency in response to COVID-19, or similar declared state of emergency remains in effect, the Department will not consider the presence of one or more employees working remotely from within Iowa solely due to COVID-19, by itself, sufficient business activity within the state to establish Iowa corporate income tax nexus, provided the employees were not working in Iowa before the COVID-19 emergency. The Department also does not hold that such presence by non-sales employees due to COVID-19, by itself, would cause a business to lose the protections of Public Law 86-272.

The position only applies to states of emergency declared in response to COVID-19 and does not extend to other facts and circumstances.

Income tax and withholding

Iowa personal income tax and withholding requirements are not modified by the COVID-19 emergency. Compensation for personal services rendered within Iowa is subject to Iowa income tax unless that income is exempted by a specific provision of Iowa law. Generally, an employer maintaining an office or transacting business within this state is required to withhold Iowa income tax from the wages paid to those employees.

Iowa residents are subject to personal income tax on their entire income, wherever earned; therefore, an Iowa resident's income tax return filing requirements should not be affected by temporary telecommuting in Iowa or another state. Nonresidents of Iowa who normally work in Iowa but are temporarily telecommuting in another state, or who normally work outside of Iowa but are temporarily telecommuting in Iowa, may need to adjust their income apportionment or their Iowa income tax return filing requirement.

Note, however, that Illinois residents working in Iowa are not subject to Iowa income tax or income tax withholding because Iowa has a reciprocal agreement with Illinois. Similarly, Iowa residents working temporarily in Illinois are not subject to Illinois income tax or withholding. For more information, see the Iowa-Illinois Reciprocal Agreement.

Kansas*

Unemployment insurance benefits*

Update: August 15, 2020

Kansas won't charge employer accounts for COVID-19 UI benefits or add the fund-building surcharge to 2021 tax rates; annual statement of benefit charges to be delayed

In the 2020 Kansas special session, state law makers passed HB 2016 providing that contributory employers will not be charged for unemployment insurance (UI) benefits attributable directly to COVID-19. The bill does not give an expiration date for the waiver of COVID-19 UI benefit charges nor does it extend the provision to reimbursing employers (governmental employers and charities). (*HB 2016 enacted on June 9.*)

Annual notice of benefit charges to be delayed

According to a representative of the Kansas Department of Labor, the annual Form K-CNS 403, Notice of Benefit Charges, usually issued each August for the most recent fiscal year ending June 30, will be delayed while the Department confirms that the statement reflects the removal of COVID-19 UI benefit charges. (Email response to inquiry.)

Fund-building surcharge won't apply to 2021 tax rates

Also provided under the law, for calendar year 2021, Kansas state UI tax rates for experience-rated employers will be based on the standard rate schedule under Kansas UI law. As a result, there will not be an additional fund-building solvency adjustment applied to employer 2021 UI tax rates.

State workshare program change

The law also eliminates the provision of UI law that prohibits negative-balanced employers from participating in shared work plans as long as this does not adversely impact the ability of the state to qualify for federal reimbursement of shared work UI benefits during 2020.

Work search requirements and one-week waiting period waived

HB 2016 codifies the waiver of work search requirements during a disaster emergency proclaimed by the governor and in response to the spread of COVID-19. The law also waives the one-week waiting period for workers collecting COVID-19 UI benefits from April 5, 2020, to December 26, 2020. See the Department's fact sheet for more information on COVID-19 UI benefit eligibility.

Further, HB 2016 requires Kansas employers to provide employees with notification of the availability of UI benefits at the time of separation from employment or reduction in hours.

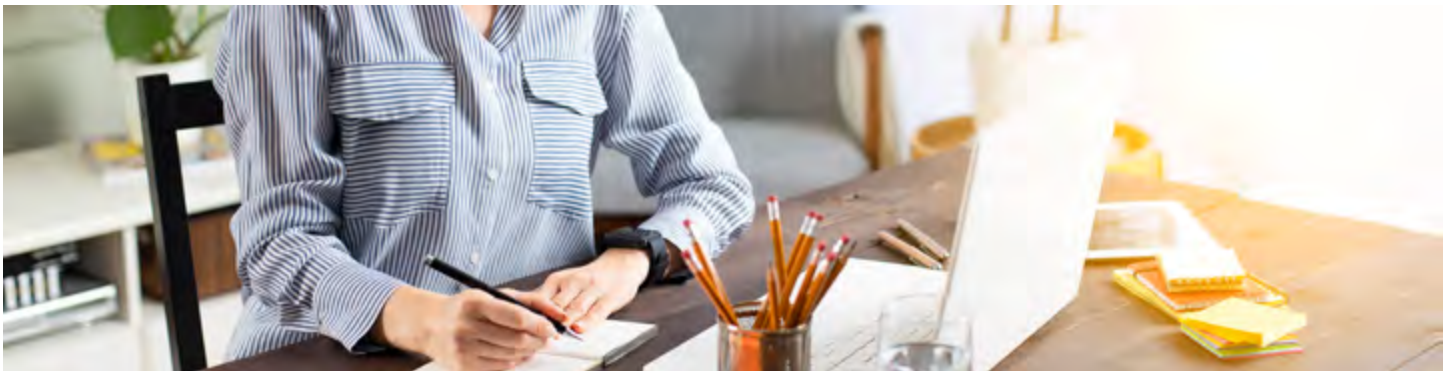
Now that businesses are reopening, the Department requests that employers report on Form K-BEN 3118, *Job Refusal Statement*, when workers collecting COVID-19 UI benefits refuse to return to work when contacted. These workers may be found ineligible for continued collection of UI benefits except under certain circumstances that could, on a case-by-case basis, be considered good cause to refuse work.

For more information on the Department's response to COVID-19, go here.

Ernst & Young LLP insights

Previously enacted SB 27 temporarily extends the duration of UI benefits filed on or after January 1, 2020, to a maximum of 26 weeks of benefits instead of the maximum of 16 weeks under the previous law, which restricted the number of weeks for which a worker could claim UI benefits to 16 weeks, 20 weeks or 26 weeks if the Kansas UI benefit rate was less than 4.5%, at least 4.5% but less than 6%, or at least 6%, respectively. (*Department news release*.)

Due to the lateness of the legislation providing for the non-charge of COVID-19 UI benefits, employers should review the annual benefit charge statement once issued to confirm the Department removes these charges from their experience accounts.



Kentucky

Filing extensions and payment deferrals

Kentucky legislation allows for the extension of SUI contribution due dates

Recently enacted legislation (SB 150) allows the governor to delay the due date for employer quarterly UI contributions without the imposition of any penalties or interest against an employer. The governor and the Kentucky Office of Unemployment Insurance had not yet, as of the time of this alert, issued guidance regarding this provision's effect on the first-quarter 2020 UI return and contributions.

For more information regarding the Office's response to COVID-19, go here.

Unemployment insurance benefits

Kentucky COVID-19 UI benefits will not be charged to employer accounts; notice required to separated employees

Governor Andy Beshear recently ordered that Kentucky employer accounts not be charged with workers' unemployment insurance (UI) benefits attributable to COVID-19. (*Governor's COVID-19 website*.)

The Kentucky Office of Unemployment is ordered to not allocate charges to employer accounts for individuals paid UI benefits for reasons related to COVID-19. The Office is instructed to separately account for these charges so that Kentucky can seek a waiver and reimbursement from the federal government.

Recently enacted legislation (SB 150) implements the governor's UI benefit order. (*Governor's news release*.)

Employer notice to separating employees

The order also directs the Office to require employers to provide notification of the availability of UI benefits to employees at the time of separation from employment due to COVID-19. The Office has not yet posted information to its website regarding this new requirement.

On March 23, 2020, Governor Beshear announced changes in mass layoff parameters. Any employer with at least 50 employees who is laying off at least 15 employees is encouraged to file a UI benefit claim on behalf of their employees through the e-claims process.

Work search requirements and one-week waiting period are waived for workers filing COVID-19 UI benefit claims

The order and SB 150 direct the Office to waive the one-week waiting period and the work search requirements for worker UI benefits related to COVID-19. The order also requires the Office to apply flexibility to the able and available to work requirements.

SB 150 provides for adoption of an alternative base period to determine if a worker unemployed due to COVID-19 or due to restrictions imposed by the governor's executive orders issued during the COVID-19 state of emergency has earned enough wages to qualify for UI benefits.

UI Office authorized to apply flexibility or waiver of certain UI provisions

The governor's order and SB 150 authorize the Office to use flexibility or waive law provisions regarding:

- Finding good cause for leaving work due to a reasonable risk of exposure to infection (i.e., self-quarantine) or to care for a family member affected by COVID-19.
- Expanding coverage to the self-employed and otherwise uninsured individuals who have suffered job loss due to COVID-19.
- Allowing workers who have not been terminated or separated from employment but have experienced a reduction in work hours of more than 10% but less than 60% with no reduction in hourly rate to be eligible for COVID-19 UI benefits to compensate for their temporary loss of income.

For more information regarding the Office's response to COVID-19, go here.

Teleworker nexus and income tax withholding*

Update: July 17, 2020

Kentucky issues guidance concerning income tax withholding and nexus for employees temporarily working in Kentucky due to COVID-19

The Kentucky Department of Revenue has published frequently asked questions (FAQs) concerning the income tax withholding requirements and the assertion of nexus for employees temporarily working in the state due to the COVID-19 emergency.

The guidance is limited to state personal income and state business taxes because the Department does not administer license, occupational or other excise taxes imposed by local Kentucky taxing jurisdictions.

Income tax withholding

The requirements for Kentucky income tax withholding remain unchanged by restrictions related to the COVID-19 emergency.

Regulation 103 KAR 18:010 requires that every employer incorporated in Kentucky, qualified to do business in Kentucky, doing business in Kentucky or subject to the jurisdiction of Kentucky in any manner is subject to the state's income tax withholding and reporting requirements.

Wages paid to a Kentucky resident are subject to income tax and income tax withholding on wages paid for services provided both within and outside of the state.

Wages paid to a Kentucky nonresident are subject to income tax and income tax withholding for services provided within the state with the exception of employees who are residents of those states with which Kentucky has a reciprocal agreement and who have completed and submitted to the employer Form 42A804, *Kentucky's Withholding Certificate*. Form 42A804 must be retained in the employer's files. (*Withholding Kentucky income tax: Instructions for employers, rev. February 2019, pg. 1*)

Kentucky has a reciprocal agreement with Illinois, Indiana, Michigan, Ohio, Virginia, West Virginia and Wisconsin. For Virginia, the employee must commute daily for the reciprocal agreement to apply and for Ohio, the employee cannot be a shareholder employee with 20% or greater direct or indirect equity investment in an S corporation.

Assertion of nexus

The Department will continue reviewing state income tax nexus determinations on a case-by-case basis.

Louisiana

Filing extensions and payment deferrals*

Update: July 23, 2020

Louisiana law waives penalty and interest for late income tax withholding tax returns and payments due to COVID-19

Louisiana Governor John Bel Edwards has signed into law HB37 that effective July 1, 2020, authorizes the Louisiana Department of Revenue to waive all interest and penalties for the late filing of any tax return or the late payment of any tax due with an original due date occurring during the period March 11, 2020, and July 15, 2020. The provision includes income tax withholding returns and payments.

The interest and penalty waiver applies if the health of the taxpayer or the taxpayer's tax preparer was affected by COVID-19 on or after March 11, 2020, and on or before July 15, 2020.

This relief does do not apply to any tax return filed or any payment made after November 15, 2020.

Taxpayers will request relief through an application to be made available by the Louisiana Department of Revenue.

Ernst & Young LLP insights

This legislation brings welcome relief to businesses that were late in filing and making deposits of income tax withholding because the Louisiana Department of Revenue did not offer an extension on these filing and tax payment due dates in connection with COVID-19.

Note the interest and penalty waiver does not apply to Louisiana state unemployment insurance (SUI) returns and contributions. According to a Louisiana Workforce Commission (LWC) website, to further assist Louisiana employers during the COVID-19 national emergency, the due date for the second-quarter 2020 SUI wage and tax reports and SUI tax payment is deferred to September 15, 2020.

LWC extended the filing deadline for the first-quarter 2020 SUI returns and payment to June 30, 2020, with interest and penalties applicable beginning July 1, 2020. (Employer electronic reporting portal.)

Update: June 30, 2020

Louisiana second-quarter 2020 SUI tax return deadline extended for COVID-19

According to a Louisiana Workforce Commission (LWC) representative, to further assist Louisiana employers during the COVID-19 national emergency, the due date for the second-quarter 2020 state unemployment insurance (SUI) wage and tax reports and SUI tax payment will be deferred to September 15, 2020. (*Email response to inquiry, June 18, 2020*.)

LWC previously extended the filing deadline for the first-quarter 2020 SUI returns and payment to June 30, 2020. This deadline remains at June 30, 2020, with interest and penalties to be applied beginning July 1, 2020. (*Employer electronic reporting portal; EY Payroll Newsflash Vol. 21, #086, 3-21-2020*.)

According to the representative, the employer portal will soon be updated to reflect the extended deadline for second-quarter 2020.

For more information regarding the LWC response to COVID-19, go here. For employer questions, send an email to EmployerServices@lwc.la.gov or call +1 866 783 5567.

Louisiana postpones due date of first-quarter state unemployment insurance payments to June 2020

The Louisiana Workforce Commission (LWC) announced that due to challenges arising from COVID-19 it would allow for the deferment of payment of Louisiana unemployment insurance taxes for the first quarter of 2020 to June 1–30, 2020.

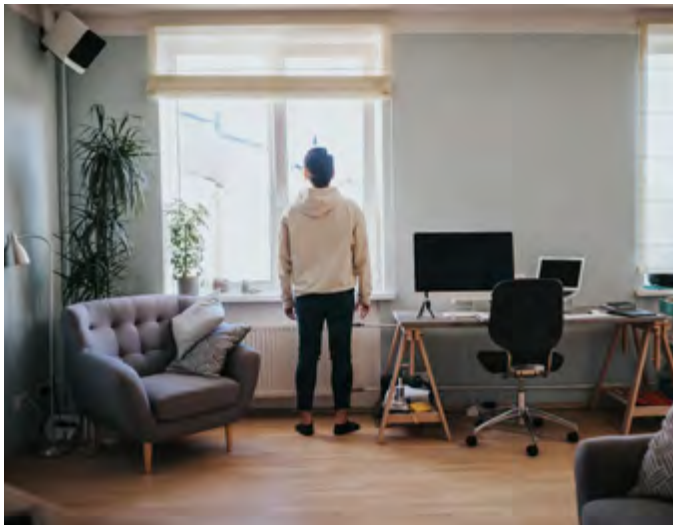
While the payment deadline is deferred, employers were required to file the first-quarter 2020 *Wage and Tax Report* by the April 1–30, 2020 deadline.

The Commission explains that this tax payment deferral is in line with how the U.S. Internal Revenue Service is handling federal income tax returns, with the filing of returns still due by April 15, but payment of any income taxes due extended for 90 days.

If employers chose to defer payment of their first quarter quarterly unemployment taxes, no penalty or interest will be assessed provided payment is made in full by June 30, 2020.

The quarterly wage and tax report is submitted as usual through our web-based LAWATS portal, https://laors2.laworks.net/lawats/.

For questions, contact the Employer Help Center at +1 225 326 6999, or email UITax@lwc.la.gov.



Unemployment insurance benefits

Louisiana proclamation directs that UI benefits be available for employees impacted by COVID-19, employer accounts will not be charged for benefits

Louisiana Governor John Bel Edwards issued Proclamation JBE 20-27 to temporarily waive the state's unemployment insurance (UI) law in order to make UI benefits available to employees affected by the COVID-19 emergency. The Proclamation waives the work search requirement, the one-week waiting period for receiving UI benefits and directs that COVID-19 UI benefits not be charged to employers' accounts.

The relief provided by the proclamation differs from that provided by many other states in that it specifically requires that employees receiving COVID-19-related UI benefits continue to be able and available for work.

Details of Proclamation JBE 20-27

Proclamation JBE 20-27 provides temporary relief from the state's UI law provisions pursuant to the COVID-19 emergency as follows:

- **When COVID-19 UI benefits apply.** An emergency-related claim for purposes of the temporary waiver of certain UI provisions means claims for UI filed by persons whose unemployment is directly due to the impact of COVID-19 or due to their inability to get to their job or worksite because they are sick, isolated or quarantined, caring for a sick family member, or when an employees' child's school is closed as determined by the administrator of the state's unemployment compensation program (i.e., the executive director of the Louisiana Workforce Commission).
- **Noncharging of employer UI account for COVID-19 related benefits.** La. R.S. 23:1533, which provides for claimants' benefits to be charged against base period employers for purposes of their UI tax experience rating and the protesting of such charges by employers, shall be suspended for emergency-related claims made during the effective period of the proclamation. La. R.S. 23:1552, which provides for the charging of claimants' benefits to certain employers, is also suspended for emergency-related claims made during the effective period of the proclamation.
- **UI claimant requirements.** La. R.S. 23:1600(2) and (3) is suspended while the Proclamation is in effect for emergency-related claims to the extent that they require claimants to register and search for work, but the requirements in La. R.S. 23:1600(2) that claimants continue to report at an employment office in the manner prescribed by the administrator, and in La. R.S. 23:1600(3) that claimants be able to work and be available for work, are not waived. The requirement to continue to report at an employment office, which is accomplished through either an automated telephone system or the internet, is not impractical and avoids overpayments, which claimants would be liable to repay.

Access the COVID-19 unemployment insurance resources here.

Bonuses and rebates*

Update: July 23, 2020

Louisiana offers time-sensitive opportunity for employees to obtain hazard pay rebates for COVID-19

Under HB70 signed into law by Louisiana Governor John Bel Edwards, eligible Louisiana resident employees may apply for a hazard pay rebate of $250 for essential services provided during the COVID-19 emergency. Independent contractors, self-employed individuals and gig workers may also be eligible for the rebate if all the eligibility requirements are met.

The program is administered by the Louisiana Department of Revenue (DOR).

Louisiana residents must act quickly

The rebates are currently limited to the first 200,000 applicants. While additional funding may become available later, there is no guarantee that each applicant will receive a disbursement, as rebates are approved on a first-come, first-serve basis. Accordingly, the DOR urges all eligible workers to apply for their rebate as soon as possible.

Eligibility requirements

According to a press release issued by the DOR, the $250 rebate is a one-time rebate for eligible workers earning $50,000 per year or less and who spent at least 200 hours responding to or mitigating the COVID-19 crisis from March 22, 2020, through May 14, 2020.

To be eligible for the rebate, an applicant must meet all the following requirements:

- Submits an application to the Department between July 15 and October 31, 2020
- Is a Louisiana resident individual
- Was employed on or after March 11, 2020, in one of the jobs listed in the eligible job categories listed below
- Was required by his or her employer to provide in-person services outside of the applicant's home and was in contact with customers, patients or the general public for at least 200 hours between March 22, 2020, and May 14, 2020.

Call center personnel or persons whose jobs are conducted exclusively via telephone, computer or other remote or virtual means are not eligible for the rebate.

Eligible job categories

The job categories eligible for the rebate include the following:

- Nurses, assistants, aides, medical residents, pharmacy staff, phlebotomists, respiratory therapists and workers providing direct patient care in inpatient and outpatient dialysis facilities
- Housekeeping, laundry services, food services and waste management personnel in hospitals and health care facilities
- Long-term care facility personnel, outpatient care workers, home care workers, personal assistance providers, home health providers, home-delivered meal providers and child care service providers
- Emergency medical services personnel, fire and rescue personnel, law enforcement personnel, and public health epidemiologists
- Bus drivers
- Retail fuel service personnel
- Sanitation personnel; residential, commercial and industrial solid waste and hazardous waste removal personnel; storage and disposal personnel
- Grocery store, convenience store and food assistance program personnel
- Mortuary service providers
- Veterinary service staff

How to apply

Workers are encouraged to submit their applications electronically by visiting http://frontlineworkers.la.gov/. Alternatively, workers may submit their application via a printed form downloaded from the DOR's website and mail it to the address on the form.

Once the application is submitted, the DOR will review the applicant's information and verify it against available employment and tax return data.

For expedited rebate payments, applicants are requested to submit employer pay stubs for the pay periods from March 22, 2020, through May 14, 2020.

Before issuing a rebate, the DOR may send a request by mail for additional information. The applicant should review the letter carefully and respond as soon as possible to avoid unnecessary delays.

Workers may request direct deposit of the rebate by completing the required banking information on the application. If banking information is not provided, unreadable or incomplete, the rebate will be issued by paper check.

For more information

For more information about the rebate program, go to the DOR's website.

Ernst & Young LLP insights

Employers that employ workers in the eligible job categories might consider notifying their eligible employees about this rebate opportunity.

Maine

Unemployment insurance benefits

Maine legislation provides UI benefits for employees impacted by COVID-19; employer accounts will not be charged for benefits

The Maine Department of Labor announced that under emergency legislation requested by Governor Janet Mills, the state's unemployment insurance (UI) law is enhanced to provide for flexibility as outlined by the U.S. Department of Labor to support workers and businesses impacted by the COVID-19 pandemic. The temporary measures provided by the legislation will help relieve the financial burden of temporary layoffs, isolation and medically necessary quarantine by making unemployment benefits available to individuals whose employment has been interrupted by COVID-19.

Under the legislation, any benefits paid under these provisions would not affect the employer's experience rating record.

The emergency legislation temporarily revises the UI benefit eligibility requirements to include situations not typically covered, such as:

- An employer temporarily ceases operation due to COVID-19
- An individual is quarantined with the expectation of returning to work once the quarantine is over.

The legislation also waives the work search requirement for individuals still connected to their employer and waives the one-week waiting period so that benefits will be available sooner.

Employer and employee frequently asked questions are available here.

Maine unemployment insurance information for employers is available here.

Maryland

Filing extensions and payment deferrals

Maryland extends income tax withholding return and payment due dates

The Maryland Comptroller announced that the withholding tax extension due to COVID-19, originally announced March 18, 2020, is now further extended to July 15, 2020. Any income tax withholding payments due for periods including February, March, April and May 2020 may be submitted by July 15, 2020, without incurring interest or penalties.

Employers should not combine withholding for separate reporting periods into a single return. Instead, they are instructed to file the separate returns reflecting the tax withheld for each filing period as if they had been filed according to their original due dates.

In Tax Alert 4-14-20B, the Comptroller explains that Maryland employer withholding requirements are not affected by the current shift from working on the employer's premises to teleworking because taxability is determined by the employee's physical presence.

The Comptroller had announced an extension to June 1, 2020, for tax withholding returns and payments due in March, April and May 2020.

For more information email to taxpayerrelief@marylandtaxes.gov or call +1 410 260 4020.

See the Comptroller's frequently asked questions, as updated on April 14, 2020.

Unemployment insurance benefits*

Update: July 23, 2020

Maryland will not charge COVID-19 UI benefits to employer accounts

Maryland legislation (H1663) signed into law by Governor Larry Hogan establishes that individuals are not required to be separated from employment to be eligible for Maryland unemployment insurance (UI) benefits and that employers are prohibited from terminating an employee solely on the basis that the employee is isolated or quarantined due to COVID-19. The legislation also contains a footnote concerning the noncharging of employer accounts for COVID-19 UI benefits.

Eligibility for COVID-19 UI benefits

Individuals are entitled to UI benefits if they are not separated from employment if the following applies:

- The individual's employer temporarily ceases operations due to COVID-19, preventing employees from coming to work.
- The individual is quarantined due to COVID-19 with the expectation of returning to work after the quarantine is over.
- The individual leaves employment due to a risk of exposure or infection of COVID-19 or to care for a family member due to COVID-19.

These provisions are effective March 19, 2020, and expire on April 30, 2021.

Charging of COVID-19 UI benefits to employer accounts

There is no specific provision within H1663 concerning the charging of COVID-19 benefits to experienced-rated employer accounts; however, in the fiscal notes to H1663 it states that under Chapter 733 of 2017 (codified in MD Code § 8-611) the Secretary of Labor is authorized to waive the benefit charges against the earned rating record of an experienced-rated employer if:

- The benefits are paid to the claimant during a period in which the claimant is temporarily unemployed because the employer shut down due to a natural disaster.
- The governor declared a state of emergency due to the natural disaster.

If the Secretary of Labor waives the benefit charges under Chapter 733, the waiver may only be in effect until four months after the natural disaster or the date the employer reopens, whichever is earlier.

The Maryland Department of Labor (DOL) advised that Chapter 733 applies to the current COVID-19 emergency. Accordingly, the provision of not charging experienced-rated employers with COVID-19 UI benefits is effective starting with the date of the governor's emergency order, or March 5, 2020, and ending the earlier of July 5, 2020, or the date the employer reopens.

As of the date of this alert, the DOL has not included it its frequently asked questions (FAQs) information concerning the extent that employer UI accounts will be charged for COVID-19 UI benefits. Pursuant to this vital matter, it is hoped that the DOL will soon confirm and clarify.

For more information about Maryland's COVID-19 UI benefits, go here.

Teleworker nexus and income tax withholding*

Maryland issues guidance on employer withholding requirements for teleworking due to COVID-19

On May 4, 2020, the Office of the Comptroller of Maryland issued updated guidance to address withholding questions it received concerning temporary telework within the state due to COVID-19. (*For the previous guidance, see EY Tax Alert 2020-1067*.)

Resident income tax withholding

The guidance states that Maryland employer withholding requirements are not affected by the current shift from working on the employer's premises to teleworking because taxability is determined by the employee's physical presence. Generally, Maryland state income tax and state income tax withholding applies to employees domiciled in Maryland, statutory residents of Maryland (except that active-duty military and the spouses of active duty military are not deemed statutory residents when their presence in Maryland is solely the result of military orders) and nonresident employees receiving Maryland-sourced income.

Nonresident income tax withholding

Income is deemed Maryland-sourced when it is compensation for services performed within Maryland, and as such, Maryland nonresident income tax and withholding apply. An exception applies to wages, salaries, tips and commission for work performed in Maryland by residents of Pennsylvania, Virginia, Washington, D.C. and West Virginia because Maryland has a reciprocal agreement with these states.

Note also that Maryland income tax withholding is not required if the employee's annual compensation is less than $5,000. (*May 2019 Maryland Employer Withholding Guide (p. 5)*.)

Delaware has not entered into a reciprocal agreement with Maryland; therefore, compensation paid to a Maryland nonresident who is teleworking in Maryland is Maryland-sourced income, and therefore, subject to Maryland state income tax and withholding.

The assertion of nexus

The Office does not intend to change or alter the facts and circumstances it has consistently used to determine nexus or income sourcing. As has always been the case, the Office reviews and considers the specific facts and circumstances of each taxpayer in making a fair determination. In doing so going forward, the Office understands that many businesses have been required or otherwise found it necessary during the COVID-19 health emergency to temporarily alter their workplace model and deployment of their employees. Consequently, the Office will recognize the temporary nature of a business' interim workplace model and employee deployment in light of and during the current health emergency and will not use these temporary measures to impose business nexus, to alter the sourcing of business income or to impose additional withholding requirements on the employer.

Frequently asked questions

The guidance includes answers to the following frequently asked questions (FAQs).

FAQ 1: My business is based in Virginia with offices in Maryland and Washington, D.C. Both of my employees are Maryland residents. Generally, one works in the Maryland office and the other in the Washington, D.C., office. Both are presently teleworking in Maryland. Do I have a Maryland withholding requirement?

Yes. Your employees are Maryland residents and are subject to tax on all income earned.

FAQ 2: My business is based in Maryland with offices in Virginia and Washington, D.C. Both of my employees are Maryland residents. One works in the Maryland office and the other in the Washington, D.C. office. Do I have a Maryland withholding requirement?

Yes. Your employees are Maryland residents and are subject to tax on all income earned.

FAQ 3: My business is based in Virginia with offices in Maryland and Washington, D.C. Both of my employees are Virginia residents. Generally, one works in the Maryland office and the other in the Washington, D.C. office. Both are teleworking in Virginia. Do I have a Maryland withholding requirement?

No. Your employees are not Maryland residents and they are not performing services in the state. Even if they were providing services in Maryland, they would be exempt from withholding due to Maryland's reciprocal agreement with Virginia.

FAQ 4: My business is based in Delaware with an office in Maryland. My employee resides in Delaware but generally works in the Maryland office. He is currently teleworking in Delaware. Do I have a Maryland withholding requirement?

Yes. Delaware has not entered into a reciprocal agreement with Maryland. You have a withholding requirement for the wages paid as compensation for services rendered in the Maryland office because it is Maryland-sourced income, but no withholding requirement for the wages paid as compensation during the time your employee is teleworking.

FAQ 5: My business is based in Delaware with an office in Maryland. My employee resides in Delaware but generally works in the Maryland office. He is currently teleworking in Maryland. Do I have a Maryland withholding requirement?

Yes. Delaware has not entered into a reciprocal agreement with Maryland. You have a withholding requirement for the wages paid as compensation for services rendered in the Maryland office and those paid for services rendered while teleworking in Maryland.

Massachusetts

Filing extensions and payment deferrals

Massachusetts extends SUI tax filing and payment deadlines

The Massachusetts Department of Unemployment Assistance announced that employers impacted by COVID-19 could request an up-to-60-day grace period to file quarterly state unemployment insurance (SUI) tax and wage reports and pay SUI contributions. (*Massachusetts COVID-19 guidance and directives website*.)

For more information on how to submit Massachusetts SUI tax returns and payments, go to the Department's website.

Unemployment insurance benefits

Massachusetts COVID-19 UI benefits will not be charged to employer accounts

The Massachusetts Division of Unemployment Assistance (DUA) announced that contributory employer accounts will not be charged with workers' unemployment insurance (UI) benefits attributable to COVID-19. (*Employer notice, April 2020*.)

In addition, nonprofit organizations and government employers that chose to reimburse the state for UI benefits will only be required to reimburse the state for 50% of COVID-19 UI benefits.

One-week waiting period and work search requirements waived for workers filing COVID-19 UI benefit claims

Recently enacted legislation (SB 2599, Chapter 40) waives the one-week waiting period for COVID-19 UI benefits. Workers filing for COVID-19 UI benefits will be paid for the first week of unemployment if their UI benefit claim was filed on or after March 10, 2020.

According to the employer notice, workers will be considered unemployed due to lack of work regardless of whether the individual's workplace is partially or completely shut down or if the individual needs to stay home for any reason related to COVID-19.

To fulfill the DUA requirements to be able, available and actively seeking work, workers need only take reasonable measures to maintain contact with their employer and to be available for hours offered by the employer.

Workers will be presumed to be eligible for eight weeks of "standby status." In those instances, the employer need not respond that the claimant is on standby. In cases where it is necessary, employers may request the DUA extend standby status for longer than eight weeks.

Good cause for missing hearings/appeals deadlines due to COVID-19

Emergency regulations permit the DUA to excuse missed deadlines during the processing of a claim, such as responding to fact-finding questionnaires and requesting an appeal, if the reason for failing to meet the deadline is due to COVID-19. (*DUA website*.)

The DUA will grant good cause waivers to both workers and employers for missing deadlines for hearings and other appeals.

For more information, see the DUA's COVID-19 webpage and the DUA's employer frequently asked questions.

See the state's COVID-19 website for more information.

Teleworker nexus and income tax withholding*

Update: July 23, 2020

Massachusetts updates guidance concerning income tax withholding, paid family and medical leave insurance and nexus for employees working temporarily in the state due to COVID-19

In TIR 20-10, the Massachusetts Department of Revenue announced that it has updated its guidance concerning income tax withholding, the assertion of nexus and the requirement for participation in the Massachusetts Paid Family and Medical Leave (PFML) program when employees are temporarily working in the state due to COVID-19.

TIR-20-10 supersedes earlier guidance provided in TIR-20-5. (*See EY Tax Alert 2020-1081*.)

Effective date

The guidance in TIR-20-10 is effective from March 10, 2020, and until the earlier of December 31, 2020, or 90 days after the state of emergency in Massachusetts is lifted. As of that date, this special relief no longer applies and the presence of an employee in Massachusetts, even if due solely to COVID-19, will result in the imposition of the general rules under Massachusetts law.

Income tax withholding

The presence of one or more employees working remotely in Massachusetts will not, by itself, create a Massachusetts state income tax withholding obligation, provided the remote work is related to:

- A government order issued in response to COVID-19
- A remote work policy adopted by an employer in good faith compliance with federal or state government guidance or public health recommendations relating to COVID-19

Or

- The worker's compliance with quarantine, isolation directions relating to a COVID-19 diagnosis or suspected diagnosis, or advice of a physician relating to COVID-19 exposure (collectively, "Pandemic-Related Circumstances") (See 830 CMR 62.5A.3.)

Assertion of nexus for sales and use tax and corporate excise tax

One or more employees working remotely in Massachusetts solely due to COVID-19, including the presence of business property reasonably needed for such persons' use while working remotely, will not subject a business to a sales and use tax collection obligation or to the corporate excise (or corporate apportionment adjustments) by reason of that fact.

Businesses claiming a nexus exemption due to COVID-19 are required to maintain written records sufficient to substantiate the existence of a COVID-19-related circumstance with respect to the employee(s) triggering the exemption.

Paid Family and Medical Leave

Under the Massachusetts PFML program, businesses are required to collect and remit PFML contributions on behalf of individuals who perform services in Massachusetts.

An individual who previously performed services outside of Massachusetts and was not subject to PFML will not become subject to PFML solely because the individual is temporarily working from home in Massachusetts due to COVID-19. Likewise, an individual who previously performed services in Massachusetts but is temporarily working from home outside of Massachusetts solely due to COVID-19 continues to be subject to the PFML rules.

The Executive Office of Labor and Workforce Development intends to issue additional guidance regarding the application of the PFML rules once the rules in this TIR cease to be in effect.

Massachusetts will not assert nexus solely because employees are working in the state due to COVID-19; income tax withholding guidelines provided

In TIR-20-5, the Massachusetts Department of Revenue announced that it will not assert nexus for sales and use and corporate excise tax solely because employees are working in the state temporarily due to COVID-19 and in emergency regulations updating 830 CMR 6.5A.3, the Department provides guidance concerning income tax withholding for employees working temporarily in the state due to COVID-19.

Income tax withholding on wages paid to employees working in the state due to COVID-19

To minimize disruption for employers and employees during the COVID-19 state of emergency, the Department has issued emergency regulations that set forth the income tax withholding requirements that will apply pursuant to employees temporarily working in the state due to COVID-19.

These emergency regulations are effective for the period beginning March 10, 2020, and end on the date on which the Massachusetts governor gives notice that the state of emergency declared in Executive Order 591 is no longer in effect.

- **Nonresident income tax withholding.** Under the normal rules, income derived within Massachusetts from employment within the state is sourced to Massachusetts and subject to Massachusetts income tax and income tax withholding (*M.G.L. c. 62, §5A(a)*.)

  Accordingly, all compensation received for personal services performed by a nonresident, who, immediately prior to the Massachusetts COVID-19 emergency, was an employee engaged in performing services in the state, and who during such emergency is performing services from a location outside of Massachusetts due solely to COVID-19, will continue to be treated as Massachusetts source income subject to Massachusetts personal income tax and income tax withholding. (*M.G.L. c. 62B, §2*.)

  Note that Massachusetts has not entered into a reciprocal agreement with any other states, accordingly, there is no exception to the nonresident income tax withholding requirement.

- **Resident income tax withholding.** A resident employee suddenly working in Massachusetts due to COVID-19 who continues to incur an income tax liability in another state due to that state's sourcing rule will be eligible for a credit for income taxes paid to that other state (M.G.L. c. 62, § 6(a).) Accordingly, the employer of such employee is not obligated to withhold Massachusetts resident income tax to the extent the employer remains required to withhold nonresident income tax with respect to the employee in such other state.

Waiver of nexus for sales and use and corporate excise tax.

- **Sales and use tax.** In general, a vendor has nexus for sales and use tax collection purposes if it is engaged in business in the Commonwealth. (*M.G.L. c. 64H, §1*.) Generally, a vendor is engaged in business in the Commonwealth if it has a physical presence in Massachusetts, including having one or more of its employees in Massachusetts, or if it makes sufficient sales into Massachusetts in a calendar year. (*M.G.L. c. 64H, §34(a)*.)

  However, for the duration of the COVID-19 Massachusetts state of emergency, the Department announced that the presence of one or more employees who previously worked in another state but, solely due to the COVID-19 pandemic, are working remotely from Massachusetts, will not in and of itself trigger nexus for sales and use tax collection purposes.

- **Corporate excise tax.** A business corporation is generally subject to an excise due under M.G.L. c. 63 when it does business in Massachusetts. (*M.G.L. c. 63, §§1 and 39*.) A business corporation is generally considered to be doing business in Massachusetts when it has one or more employees conducting business activities on its behalf in Massachusetts. (*830 CMR 63.39.1(3)(b)(5), (5)(b)(3)*.)

However, for the duration of the COVID-19 Massachusetts state of emergency, the Department will not consider the presence of one or more employees working remotely from Massachusetts solely due to the COVID-19 to be sufficient in and of itself to establish corporate nexus. In addition, such presence will not, of itself, cause a corporation to lose the protections of Public Law 86-272.

- **Apportionment.** In general, if a business corporation has income from business activity that is taxable both in Massachusetts and in another state, part of its net income derived from business carried on in Massachusetts is determined by multiplying all of its taxable net income by the three-factor apportionment percentage as provided in M.G.L. c. 63, §38(c)-(g) and 830 CMR 63.38.1. That percentage is a fraction, the numerator of which generally consists of a property factor, payroll factor and sales factor, and the denominator of which is the total number of factors utilized in the numerator. The payroll factor is a fraction, the numerator of which is the total amount paid for compensation in Massachusetts during the taxable year by the taxpayer and the denominator of which is the total amount paid for compensation everywhere during the taxable year. (*830 CMR 63.38.1(8)*.)

  However, the Department will not consider the presence of one or more employees working remotely from Massachusetts solely due COVID-19 to be sufficient in and of itself to establish corporate nexus. Accordingly, for the duration of the COVID-19 state of emergency, services performed by such an employee in Massachusetts will not be considered to increase the numerator of the employer's payroll factor for corporate apportionment purposes.

Ernst & Young LLP insights

The Department's guidance does not mention the applicability of Massachusetts unemployment insurance pursuant to workers temporarily working within the state due to COVID-19. However, unemployment insurance typically applies in only one jurisdiction based on the federal four-prong test. For more information, see our EY Tax Alert 2020-0531.

Other provisions*

Update: July 22, 2020

Massachusetts does not adopt the favorable federal income tax treatment of employer-paid student loans under the CARES Act

In TIR 20-9 the Massachusetts Department of Revenue explains its adoption of several provisions contained under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act for Massachusetts personal income tax purposes.

In general, Massachusetts conforms to the personal income tax provisions of the CARES Act except as it relates to the employer payment of employees' student loans. The Department explains that it conforms to IRC §127 and IRC §221 as amended and in effect on January 1, 2005. Consequently, qualified education loan payments made by an employer are not excluded from an employee's Massachusetts gross income. Likewise, Massachusetts does not conform to the disallowance of the deduction for interest paid by an employee on such loans.

Background

Under federal law, IRC §127 allows for exclusion from federal taxable wages up to $5,250 per year of employer-provided educational assistance that is not related to the employee's current job.

Section 2206 of the CARES Act amends IRC §127 to temporarily treat an employer's payment of the principal or interest on an employee's student loan as excludable employer-provided educational assistance. To be excluded, the payments must be made after March 27, 2020, and before January 1, 2021.

The income exclusion, including the loan payments, remains capped at $5,250 per year.

Michigan

Filing extensions and payment deferrals

Update: June 5, 2020

Michigan Treasury Department offers installment payment option for withholding tax payments delayed due to COVID-19

The Michigan Treasury Department issued an announcement that business taxpayers that have deferred paying their sales, use and withholding (SUW) taxes due to the COVID-19 pandemic can now participate in an installment payment option to satisfy their outstanding tax balance.

The installment payment option is not available to accelerated SUW tax filers. Also, business taxpayers that participate in the installment payment option are not eligible for the discount given to those businesses that file their outstanding SUW tax returns and pay their outstanding tax balances in full when due.

As we previously reported, the extension to June 22, 2020, includes the sales, use and withholding returns and taxes previously announced extended to May 20, 2020 (monthly or quarterly sales, use and withholding return and taxes due on February 20, 2020, March 20, 2020 and April 20, 2020).

Installment payments

Business taxpayers scheduled to make SUW tax payments for the February, March, April and May tax periods on June 22, 2020 — including quarterly filers — may either pay their outstanding balance in its entirety or pay their outstanding balance in monthly/quarterly payments. Penalties and interest will be waived on the deferred payments.

To take advantage of the installment payment option, monthly filers should submit their outstanding returns for February, March, April and May 2020 tax periods by June 22, 2020, to establish their installment balance. Monthly filers can then make six monthly payments on that balance from June to November 2020. Quarterly filers should submit their outstanding first quarter return 2020 by June 22, 2020, to establish their installment balance. Quarterly filers can then make three payments on that balance in June, September and November 2020.

To ensure accurate reporting of the payments, each installment payment must be submitted separately from any tax payment otherwise due in that tax period. Taxpayers must follow the payment instructions as outlined in the Treasury Department's notice.

See also the FAQs regarding the installment payment option. Businesses do not need to contact or submit any documentation to the Department to participate in the installment plan.

For the SUW tax deadline in July 2020 and deadlines through the remainder of the year, businesses must file their monthly or quarterly SUW returns and submit their payments as normally scheduled.

Businesses with questions should inquire through self-service options using Michigan Treasury Online or go to www.michigan.gov/askSUW.

For information on the Department's response to COVID-19, go here.

Update: May 21, 2020

Michigan grants additional 31-day extension for filing income tax withholding returns due March through May 2020 for COVID-19

The Michigan Treasury Department announced that it has further extended the deadline for monthly or quarterly sales, use and withholding return and taxes. Any monthly or quarterly payment or return due on May 20, 2020, may be submitted to the Department without penalty or interest by June 20, 2020.

This includes the sales, use and withholding returns and taxes previously announced extended to May 20, 2020 (monthly or quarterly sales, use and withholding return and taxes due on March 20, 2020, and April 20, 2020). (*EY Payroll Newsflash Vol. 21, 159, 4-15-2020*.)

This extension is the result of Governor Gretchen Whitmer's Executive Orders 2020-67 and 2020-68, which extended the declaration of both a state of emergency and state of disaster for COVID-19.

Business taxpayers are encouraged to remit tax and file returns as of the original due date if able to do so. However, penalty and interest for any failure to do so will automatically be waived in accordance with the Department's notice.

The waiver is limited to sales, use and withholding returns and payments currently due on May 20, 2020. Any payment or return otherwise due after that date will not be eligible for the current waiver. The waiver is not available for accelerated sales, use or withholding tax filers. Those taxpayers should continue to file returns and remit any tax due as of the original due dates.

The Department will provide more information in the future for business taxpayers who desire additional repayment options.

Business taxpayers with questions should inquire through self-service options using Michigan Treasury Online or go to www.michigan.gov/askSUW.

For information on the Department's response to COVID-19, go here.

Michigan grants additional 30-day extension for filing income tax withholding returns due in March and April

The Michigan Treasury Department announced that as a result of Executive Order 2020-33, which declared both a state of emergency and state of disaster for COVID-19, penalties and interest for the late payment of tax or the late filing of any monthly or quarterly sales, use and withholding return due on April 20, 2020, will be waived if these returns and payments are submitted to the Department by May 20, 2020.

Additionally, business taxpayers scheduled to make sales, use and withholding tax payments and file returns for March and April or for the first quarter of 2020 can postpone filing and payment requirements until May 20, 2020, without penalties or interest. However, the waiver is not available for accelerated sales, use or withholding tax filers. (*Email, April 14, 2020*.)

This waiver extends the previous 30-day waiver of penalty and interest for payments or returns due on March 20, 2020. Taxpayers originally required to remit sales, use and withholding tax and file returns on March 20, 2020, therefore have until May 20, 2020, to remit tax and file returns without penalty and interest.

For information on the Department's response to COVID-19, go here.

Detroit extends due date of the city's income tax withholding returns

The Michigan Department of the Treasury announced the city of Detroit employer withholding tax deadline for the March 2020 monthly and quarterly return was extended to May 15, 2020.

Employers withholding city of Detroit income tax are required to file City of Detroit Income Tax Withholding Monthly/Quarterly returns either monthly ($1,200 or more withheld per year) or quarterly ($1,199 or less withheld per year) and the City of Detroit Income Tax Withholding annual reconciliation.

Monthly returns are normally due on the 15th day of the month following the month in which the tax was withheld, and quarterly returns are normally due on the 15th day of the month following each quarter.

Unemployment insurance benefits

Michigan UI benefits for COVID-19 will not be charged to employer accounts

Michigan Governor Gretchen Whitmer has declared a state of emergency due to recent COVID-19 cases in the state (*Executive Order No. 2020-4*) and, as has happened in several other states, issued an executive order shutting down certain businesses to slow the progression of the virus.

Executive Order 2020-9 effective Monday, March 16, 2020, through March 30, 2020, shuts down the following places: restaurants, cafes, coffee houses, bars, taverns, brewpubs, distilleries, clubs, movie theaters, indoor and outdoor performance venues, gymnasiums, fitness centers, recreation centers, indoor sports facilities, indoor exercise facilities, exercise studios, spas and casinos. Businesses are allowed to provide food and beverages using delivery service, window service, walk-up service, drive-through service or drive-up service.

Executive Order No. 2020-10 provides that until April 14, 2020, at 11:59 pm, an employer will not be charged for UI benefits if their employees become unemployed because of an executive order requiring them to close or limit operations.

The order also expands the state's work share program. Michigan's Unemployment Insurance Agency (UIA) may approve a shared-work plan, regardless of whether the employer's reserve in the employer's experience account as of the most recent computation date preceding the date of the employer's application is a positive number. More information about work share can be found here.

Individuals affected by COVID-19 may collect UI benefits

Executive Order No. 2020-10 also declares that state unemployment insurance (UI) provisions of law are suspended to allow individuals unable to work due to COVID-19 self-isolation or self-quarantine due to being immunocompromised, displaying the symptoms of COVID-19, having contact in the last 14 days with someone with a confirmed diagnosis of COVID-19, the need to care for someone with a confirmed diagnosis of COVID-19, or a family care responsibility as a result of a government directive.

Under the governor's order, UI benefits will be extended to:

- Workers who have an unanticipated family care responsibility, including those who have child care responsibilities due to school closures, or those who are forced to care for loved ones who become ill.
- Workers who are sick, quarantined or immunocompromised and who do not have access to paid family and medical leave or are laid off.
- First responders in the public health community who become ill or are quarantined due to exposure to COVID-19. (*Governor's news release*.)

Effective immediately, and continuing through April 14, 2020, an individual must be considered to have left work involuntarily for medical reasons if they leave work because of the reasons shown above. The order also provides that an individual must be deemed laid off if they became unemployed for these reasons. An exception is if the individual is already on sick leave or is receiving a disability benefit.

An individual filing for UI benefits for COVID-19 reasons must file a claim for unemployment benefits within 28 days of the last day worked (temporarily changed from 14 days) to be considered to have filed on time. Eligible individuals filing an initial claim by April 14, 2020 will be eligible for up to 26 weeks of UI benefits in the benefit year (temporarily increased from 20 weeks). The normal in-person registration and work search requirements are suspended (the executive order states that the employer of an individual deemed laid off must seek a registration and work search waiver from the UIA.

Eligible employees should apply for UI benefits online at Michigan.gov/UIA or by calling +1 866 500 0017.

The state is also seeking solutions for self-employed workers and independent contractors who traditionally do not have access to unemployment insurance.

State labor department releases guidance for employers contemplating layoffs

On March 18, 2020, the Michigan Department of Labor and Economic Opportunity issued guidance to employers that provides alternatives to layoff during the COVID-19 emergency.

- **Use the UIA's work share program** to reduce employee hours rather than layoffs. Go to the UIA's website for more information.
- **Temporary leave vs. termination.** While waiting for President Trump to sign legislation providing for UI assistance to states, the Department urges employers to place employees on temporary leave and advise the workers that they expect to have work available within 120 days as opposed to termination. There is no additional cost to employers; employees remain eligible for UI benefits through the state; and employees may remain eligible for potential federal assistance.

Steps provided by the Department for employers placing employers on temporary unpaid leave:

- Do not terminate the employee – specify a temporary/ indefinite leave with return to work expected that is within 120 days.
- Do not create a contractual obligation to bring the employee back to work – let the employee know that the situation is fluid and subject to change.
- Provide the employee with a formal Unemployment Compensation Notice. Employers will need to provide their Employer Account Number and Federal Identification Number.
- Communicate to the employee about their rights. Under Governor Whitmer's recent Executive Order, workers who are placed on leave; are unable to work because they are sick, quarantined, immunocompromised; or have an unanticipated family care responsibility are eligible for unemployment insurance benefits.
- Ensure employers are provided information on how to obtain unemployment insurance benefits. A fact sheet on claiming benefit when affected by COVID-19 can be found here.
- Get each employee's up-to-date contact information.
- Let employees know if you will be putting updated information on the entity's website or intranet, if applicable.
- Appoint a single individual or limited number of individuals who will field questions, and communicate that information to employees.
- Keep a tally of all questions and answers. Periodically share with employees.

The state is monitoring issues related to continued medical insurance coverage and will update accordingly.

Elimination of certain unemployment costs to employers

Under the governor's order, an employer or employing unit must not be charged for unemployment benefits if their employees become unemployed because of an executive order requiring them to close or limit operations.

Teleworker nexus and income tax withholding

Michigan employees are exempt from nonresident city income tax during the period they work from home outside of their normal work location (relevant to COVID-19)

On April 1, 2020, the Michigan Department of Treasury published telecommuting frequently asked questions to address questions about the applicability of Michigan city income tax when employees are temporarily working from home outside of their normal work location. The guidance comes at a time when many employees are working from home due to the COVID-19 emergency.

The Department confirms that if employees are temporarily working from home outside of the Michigan city where they normally perform services, nonresident income tax does not apply in the Michigan city where those employees normally work.

The Department provided the following example:

Bill lives in Grand Ledge and primarily works from his office in Lansing. His income is generally taxable by the city of Lansing. On occasion, Bill works (telecommutes) from his home in Grand Ledge. The income Bill earns from the hours he works from his home is not taxable by the city of Lansing.

Documentation is required

Michigan nonresident city income tax returns include a schedule for nonresidents to allocate wages between taxable city income and nontaxable city income, based either on days worked or hours worked.

Employees are instructed to keep a work log of the days worked outside the city. Employers should provide employees with a letter showing the dates employees were directed to work from home. Employees are not required to submit the work log and employer letter with a city income tax return; however, they should still retain the documents as they may be required to furnish them at the request of the Michigan city tax administrator.

Authority

The Department explains that there is no provision in the City Income Tax Act (CITA) permitting cities to tax wages earned outside of the city.

CITA defines "compensation" as:

"... salary, pay or emolument given as compensation or wages for work done or services rendered, in cash or in kind, and includes but is not limited to the following: salaries, wages, bonuses, commissions, fees, tips, incentive payments, severance pay, vacation pay and sick pay." MCL 141.604(2)

Nonresidents are taxed on:

"... salary, bonus, wage, commission, and other compensation for services rendered as an employee for work done or services performed *in the city*..." MCL 141.613(a)

Therefore, the Department concludes, nonresidents of a city that imposes a city income tax under the City Income Tax Act are not subject to city income tax on compensation earned while telecommuting from a location that is physically outside of the city.

A list of the 19 Michigan cities that impose a city income tax and the rates that apply is available on the Department's website here.

Other provisions

Michigan Department of Treasury stops student loan garnishments until September 30, 2020, due to COVID-19

The Michigan Department of Treasury announced that to provide assistance during the COVID-19 emergency, collection activities on delinquent Federal Family Education Loan Program (FFELP) student loans made by a financial institution and serviced by the Michigan Guaranty Agency will be halted until September 30, 2020.

Additionally, the state Treasury Department has stopped all Michigan wage garnishments and offsets to pay outstanding FFELP student loans serviced by the Michigan Guaranty Agency, also through September 30, 2020.

Finally, borrowers who are currently in repayment agreements will not be penalized if a payment is missed through September 30, 2020.

Individuals who have FFELP loans serviced by the Michigan Guaranty Agency and are encountering repayment issues are encouraged to call +1 800 642 5626 where service representatives can discuss payment options with borrowers.

To learn more about state student finance programs, go to www.michigan.gov/mistudentaid.

More information about the Michigan Guaranty Agency is available at www.michigan.gov/mgaloan.

Oakland County orders employers to screen their employees for COVID-19

The Oakland County, Michigan Health Division announced that under an emergency order, essential businesses are required to screen all employees for illness and exposure to COVID-19, and establish a social distancing protocol for customers and employees to reduce the transmission of the coronavirus.

The order builds on Governor Gretchen Whitmer's "Stay home, stay safe" order.

For more information visit the Oakland County website here.

Ernst & Young LLP insights

Employers should be certain to confirm the workplace restrictions and requirements that apply in each locality where employees work so that they are in compliance with all COVID-19 directives such as that just announced by Oakland County, Michigan.

Minnesota

Filing extensions and payment deferrals

Minnesota employers may request abatement of penalty and interest for late filing of income tax withholding returns

According to the Minnesota Department of Revenue COVID-19 webpage, although the filing deadline for state income tax withholding (SITW) returns and payments are not extended, employers unable to timely file and pay may request an abatement of interest and penalties if they have reasonable cause, such as the adverse impacts of COVID-19.

Guidelines for abatement of penalty and interest

After receipt of a notice of penalties, employers may ask the Department to abate late-payment or late-filing penalties or interest if they adversely affected by COVID-19.

Circumstances that may support a business's request for an abatement include if you:

- Cannot take care of your affairs for a time because you or a member of your immediate family become seriously ill.
- Become unable to pay your debts as they become due because you have a significant loss of income.
- Lose your job, or your business has to close, which makes paying the tax an undue hardship.
- Have a significant interruption of your business or employment and cannot manage it with insurance or other financial resources.
- Have a history of filing and paying your taxes on time.
- Make any partial payments of tax on or near the due date.
- Pay any underpayment of tax as soon as you:
  - Are financially able to
  - Become aware of the underpayment

A business must show that there is reasonable cause for filing or paying late; generally, resulting from circumstances beyond the business's control or from a first-time occurrence. Note, however, that under Minnesota tax law (Minnesota Statute 270C.34) that interest is rarely abated.

The business must send a written request within 60 days of the date on the first notice of penalty the Department has mailed to the business. Businesses do not need to pay tax or interest before requesting an abatement if the request is timely made.

The request must include:

- A statement that the business is requesting an abatement.
- The business representative's name and contact information.
- The business name.
- The business Federal Employer Identification Number (FEIN) or Minnesota Tax ID Number.
- The tax types and periods included in the request.
- The reason the Department should abate the penalty.
- Supporting documentation.

See the Department's abatement webpage for where to send the request.

The Department will notify you by mail of its decision on your abatement request. If you don't receive the Department's decision within 45 days of request, contact the Department by email (see the webpage for the contact form) or by calling +1 651 556 3000 or +1 800 657 3666.

If the Department has not responded within 60 days, you may appeal to the Minnesota Tax Court.

Unemployment insurance benefits

Minnesota employers will not be charged for UI benefits related to COVID-19

In March, Minnesota Governor Tim Walz issued Executive Order 20-05 requiring that employers not be charged with unemployment insurance (UI) benefits resulting from COVID-19. As a result, recently enacted state legislation (HF 4531) provides retroactively to March 1, 2020, and ending December 31, 2020, that employers will not be charged for UI benefits for COVID-19. The Minnesota UI agency updated its COVID-19 employer webpage to reflect the legislation.

According to the agency's website:

If your business has been affected by COVID-19, you may see related activity in your employer account:

- You do not have to notify us or raise an issue to be relieved of charges related to COVID-19.
- Any unemployment benefits your workers collect as a result of COVID-19 will not be used in computing your future UI tax rate.
- You may see in your account that we have already removed some benefit charges due to COVID-19.
- Do not worry if you still see some benefit charges associated with COVID-19. We will review your account again before we calculate your 2021 tax rate.
- Continue to "raise an issue" about any matters that are not related to COVID-19.

Law also waives the one-week waiting period and work search requirements for workers filing COVID-19 UI benefit claims

Under HF 4531, the agency will waive work search requirements and the waiting week for those UI benefit claimants affected by COVID-19, retroactive to March 1, 2020. Information for workers on filing UI benefits is available here.

The legislation also waives the usual five-week benefit limitation for business owners who had previously elected coverage and have become unemployed as a result of COVID-19.

For more information regarding the agency's response to COVID-19, go here.

Teleworker nexus and income tax withholding

Minnesota provides nexus relief for employees working from home temporarily in the state due to COVID-19

The Minnesota Department of Revenue announced in its COVID-19 FAQs for businesses that the Department will not seek to establish nexus for any business tax solely because an employee is temporarily working from home due to the COVID-19 pandemic.

Ernst & Young LLP insights

This guidance does not change the requirement that Minnesota employers are required to withhold resident income tax from all wages earned within the state if there are business operations within the state other than temporary teleworkers working from home due to COVID-19. The guidance also does not relieve an employer from the obligation to withhold nonresident income tax for wages paid for services performed within the state except for nonresidents who are residents of the reciprocal agreement states of Michigan and North Dakota.

This announcement, does, however, bring much-needed relief to Minnesota employers that otherwise could have been forced to pay business taxes (e.g., sales and use tax, unemployment insurance) merely because employees are temporarily working from home within the state due to the COVID-19 emergency.

Mississippi

Filing extensions and payment deferrals

Update: May 14, 2020

Mississippi extends 2020 first-quarter SUI payment deadlines for contributory and reimbursing employers due to COVID-19; collection activities temporarily suspended

Mississippi Governor Tate Reeves recently ordered that the first-quarter 2020 state unemployment insurance (SUI) contribution deadline be extended to July 31, 2020, for both contributory and reimbursing employers. As a result, employers that were unable to pay these SUI contribution or UI benefit reimbursements by the April 30, 2020, deadline due to COVID-19 will not be charged with late-payment penalties.

The deadline for filing first-quarter 2020 SUI wage reports is not extended; however, employers affected by COVID-19 will not be charged penalties for late filing of the reports if filed by July 31, 2020.

According to the Mississippi Department of Employment Security (MDES) updated COVID-19 website:

8. Normally, employer contributions are due before the last day of each quarter. However, due to the COVID-19 emergency, first-quarter contributions will not be due until July 31, 2020.
9. Normally, employers must timely file wage reports and timely pay contributions or suffer penalties. However, employers affected by COVID-19 will not be penalized for any late filed reports or late contribution payments until June 27, 2020.

MDES collection activity measures suspended

Under the governor's executive order, and effective retroactively from March 1, 2020, to June 27, 2020, the MDES will suspend all collection activity measures including, but not limited to, interception of state tax refunds, payment agreements, enrollment of MDES liens, MDES tax garnishments and MDES claimant overpayment garnishments. In addition, interest will not accrue from April 1, 2020, to June 27, 2020. The suspension applies only to MDES collection activities and does not apply to other agency actions (e.g., child support orders).

According to the Mississippi Department of Employment Security (MDES) updated COVID-19 website:

Normally, MDES has the right to pursue collection activities for any individual or business that owes money to MDES. We can do this through methods such as garnishments on individuals, bank levies on businesses, both state and federal tax refund intercepts, payment agreements, and the enrollment of liens (among other things). However, due to the COVID-19 emergency, MDES will not attempt to collect any money previously owed to MDES by individuals or businesses until June 27, 2020 (although employers still need to file contributions during this time). Please note that this does not apply to any garnishments for other businesses or agencies (such as child support payments to the Mississippi Department of Human Services). This only applies to actions by MDES to collect MDES debts.

Mississippi announces extension for income tax withholding payments for COVID-19

In Notice 2020-01 the Mississippi Department of Revenue announced that it was extending the due date of income tax withholding payments for April through May 15, 2020. The decision to offer this relief was made in consultation with Governor Tate Reeves and the Mississippi legislative leadership.

The Department also announced that the deadline to file and pay the 2019 individual income tax, corporate income tax and estimated tax payments is also extended until May 15, 2020. Penalty and interest did not accrue on the extension period through May 15, 2020.

The Department explained that the extension did not apply to sales tax, use tax or any other tax types. Accordingly, these returns should be filed and paid on the normal due date.

The extension did not apply to payments on prior liabilities; however, the Department would consider an extension of time to file and pay on a case-by-case basis.

These requests should be directed to the Department's customer service line at +1 601 923 7700.

Unemployment insurance benefits

Update: May 15, 2020

Mississippi COVID-19 UI benefits will not be charged to employer accounts; notice required to separated employees

Mississippi Governor Tate Reeves recently ordered that Mississippi employer accounts not be charged with workers' unemployment insurance (UI) benefits attributable to COVID-19. The noncharge provision applies to both contributory and reimbursing employers and is effective retroactively to March 8, 2020, to June 27, 2020.

Note that federal law provides reimbursement to the states of up to only 50% of UI benefits paid to the employees of reimbursing employers with refund to the reimbursing employer available after 100% of the UI benefits are paid over to the state. (*See the U.S. Department of Labor PROGRAM LETTER No. 18-20*.)

According to the Mississippi Department of Employment Security (MDES) updated COVID-19 website:

7. Normally, employers' accounts are charged for any benefits paid to employees in their base period who are laid off or terminated through no fault of their own. However, due to the COVID-19 emergency, employers' accounts will not be charged for benefits paid to an individual who is unemployed due to a COVID-19-related situation from March 8, 2020, through June 27, 2020.

Employer notices to separating employees and UI agency

The order requires employers to provide notification of the availability of UI benefits to employees at the time of separation from employment due to COVID-19.

Employers are reminded that the requirement to notify the MDES within 10 days of a worker's refusal to return to their employment when offered suitable work has not changed due to COVID-19.

Work search requirements and one-week waiting period are waived for workers filing COVID-19 UI benefit claims

The order directs the MDES to waive the one-week waiting period for worker UI benefits related to COVID-19, effective retroactively to March 8, 2020, through December 26, 2020. The order also waives the work search; able, available and actively seeking employment and work registration requirements from March 8, 2020, to June 27, 2020.

Claimant UI benefit overpayment garnishments are suspended from March 1, 2020, through June 27, 2020. Also, the offset of future UI benefits due to overpayments will be reduced to 25% from March 29, 2020, to June 27, 2020. These waiver provisions do not apply to child support garnishments or offsets.

For UI benefit claims filed from March 8, 2020, to June 27, 2020, the MDES is directed to base workers' UI benefit eligibility on the separation from the most recent employer and not the worker's other base period employer(s). Eligibility will not be affected by prior job separations from previous employers.

Order expands the amount of wages workers are allowed to earn before UI benefits are affected

The order expands the UI benefit program to allow workers as they return to work to earn up to $200 in wages per week (up from $40 per week) without causing a reduction in their weekly UI benefit amount. Any amount earned over $200 will be deducted from a claimant's weekly benefit amount.

According to the Department's COVID-19 website, this provision does the following:

6. Normally, if you are working part time (less than 35 hours a week) and are making less than your weekly benefit amount, you are still allowed to receive partial benefits. To calculate this, MDES adds $40.00 to your weekly benefit amount, then subtracts your wages for the week to determine your partial benefits. For example, if you earn $200.00, and your weekly benefit amount is $235.00, MDES will subtract $200.00 from $275.00 (your weekly benefit amount plus the $40.00 earning allowance) to give you a partial benefit amount of $75.00. However, due to the COVID-19 Emergency, that credit amount is increased to $200.00 for claims filed from May 3, 2020, to June 27, 2020. This means that if you are receiving wages in the amount of $200.00, and your weekly benefit amount is $235.00, MDES will subtract $200.00 from $435.00 (your weekly benefit amount plus the $200.00 allowance), which allows you to receive the full benefit amount of $235.00. For any week you are eligible for regular state unemployment insurance benefits, you would also qualify for Federal Pandemic Unemployment Compensation (FPUC) in the amount of $600 in addition to any benefits or partial benefits you receive during this time.

Teleworker nexus and income tax withholding

Mississippi will not require income tax withholding on wages paid to employees at temporary telework locations due to COVID-19

The Mississippi Department of Revenue announced on March 26, 2020, that during the period of the COVID-19 national emergency, it will not impose nexus or alter apportionment of income for any business while its employees are temporarily on telework assignments within the state.

Mississippi does require that income tax be withheld from wages paid to all Mississippi residents regardless of where they work if the employer has business operations (nexus) within the state. Pursuant to the Department's announcement, the state will not assert nexus merely because an employee is temporarily on a telework assignment within the state due to COVID-19.

The announcement brings much-needed relief to Mississippi employers that could have been forced to incur other business taxes (e.g., sales and use, unemployment insurance) merely because employees are temporarily working from home within Mississippi due to the COVID-19 emergency.

Missouri

Filing extensions and payment deferrals

Missouri delays due date of 2020 first-quarter SUI tax payments

The Missouri Department of Labor and Industrial Relations announced that due to the ongoing COVID-19 emergency, the 2020 first-quarter employer state unemployment insurance contributions normally due April 30, 2020, could be paid as late as June 1, 2020.

Contribution and wage reports for the first quarter 2020 continued to be due by April 30, 2020.

Unemployment insurance benefits

Update: June 30, 2020

Missouri announces that UI benefits paid under a workshare program will not be charged to employer accounts through December 26, 2020

The Missouri Department of Labor & Industrial Relations announced that unemployment benefits (UI) paid to workers under an approved shared work plan will not be charged against employers' accounts through December 26, 2020. (*News release, June 17, 2020*.)

Missouri has had a shared work program for more than 30 years, and employers are typically charged with the UI benefits paid to employees under the program. However, the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act provides that states are allowed the option to waive UI benefit charges to employer accounts through December 2020.

As the state's stay-at-home orders are relaxed and companies are transitioning to full operations, the shared work program allows employers to divide available work among a group of employees that continue to work a reduced schedule. This allows affected employees to retain their jobs and employee benefits while collecting prorated UI benefits to supplement lost wages. Additionally, through July 25, 2020, employees that are eligible for even $1 per week of UI benefits receive the additional federally funded $600 supplement each week they receive prorated UI benefits.

To participate in the shared work program, an employer must complete an application for the affected unit within the company and submit it to the Missouri Division of Employment Security. Certain program requirements must be met for approval, including that:

- There is an "affected unit" of three or more employees.
- The normal weekly hours of work and corresponding wages for a participating employee are reduced in the plan by not less than 20% and no more than 40%.
- The plan applies to at least 10% of the employees in the affected unit.
- The employer certifies that the fringe benefits provided will remain the same as if their normal hours had not been reduced, or to the same extent as other employees not participating in the shared work program.
- The employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of a layoff that would affect at least 10% of the employees in the affected unit and that would result in an equivalent reduction in work hours.
- The employer has submitted all quarterly SUI contribution and wage reports required to be filed for all past and current periods and has paid all SUI taxes due for all past and current periods.

Other requirements apply to employers and workers after approval. For more information, go here.

UI benefit charging for non-shared-work employers resumes July 5, 2020

As we reported, the Department had previously announced that due to the reopening of state businesses, effective July 5, 2020, the Department will once again begin charging employers with unemployment insurance (UI) benefits. The Department has been waiving UI benefit charges that are the result of COVID-19. (*News release, June 15, 2020; EY Payroll Newsflash Vol. 21, #263, 6-16-2020*.)

Also beginning the week of July 5, 2020, claimants will be required to resume work search requirements to continue to be eligible for UI benefits. The Department will also stop waiving the one-week waiting period for UI claims filed on or after July 5, 2020. Employers are encouraged to report employees who refuse to return to work when recalled or who are receiving pay through the Paycheck Protection Program (PPP).

For more information regarding the Department's response to COVID-19, go here.

For information about how we can help you evaluate and manage state workshare programs, go here.

Update: June 15, 2020

Missouri announces resumption of charging COVID-19 UI benefits to employers as well as the work search requirements and waiting period

The Missouri Department of Labor & Industrial Relations announced that due to the reopening of state businesses, effective July 5, 2020, the Department will once again begin charging employers with unemployment insurance (UI) benefits. As we reported, the Department has been waiving UI benefit charges that are the result of COVID-19. (*News release, June 15, 2020; EY Payroll Newsflash Vol. 21, #190, 4-25-2020*.)

Also beginning the week of July 5, 2020, claimants will be required to resume work search requirements to continue to be eligible for UI benefits. The Department will also stop waiving the one-week waiting period for UI claims filed on or after July 5, 2020.

Workshare program changes upcoming

Separate guidance related to the state's shared-work program and any continued waiver of employer UI charges will be provided by the Department.

Employers encouraged to report employees who refuse to return to work

As we reported, the Department encourages employers to report employees who refuse to return to work when recalled or who are receiving pay through the Paycheck Protection Program (PPP). To report, go to the Department's website and click on the "report employee work refusals" or "report PPP wages paid to employees" tabs. (*EY Payroll Newsflash Vol. 21, #243, 5-28-2020*.)

Work search requirements resume July 5, 2020

According to the Department, beginning with the week of July 5, 2020, individuals wishing to continue to receive UI benefits (including the $600 federal supplement available through July 25, 2020) will be required to perform work search activities that had been lifted for those that had filed a COVID-19 UI claim.

Work search activities are required for regular UI benefits, Pandemic Unemployment Assistance (PUA), Extended Benefits (EB) and Pandemic Emergency Unemployment Compensation (PEUC). Individuals with an employer-submitted recall date, in approved training and those employees on the shared-work program will be exempt from the work search requirement. All other claimants will be required to perform and report three work search activities per week to remain eligible for UI benefits. Union members with a hiring or referral hall may contact their hall three times per week or attend training for the required number of work search activities.

Qualified work search activities include, but are not limited to, filing an application (online or in-person) with an employer or through job posting sites or attending a job fair, job interview, reemployment service or skills workshop. Part-time employment performed during a week is credited on a per-day basis.

Also, for those individuals filing for UI benefits on or after July 5, 2020, a waiting week requirement will again be imposed. The waiting week is the first week of an UI benefit claim for which the individual is eligible for UI benefits, but for which the individual will not be paid benefits. Individuals who are approved for UI benefits may receive compensation for the waiting week as the last payment on the regular UI claim.

Due to state's UI benefit rate, the state extended benefit program is now in effect

As is the case with most other states, the Department announced that due to the state's UI benefit rate, it is offering the extended benefit (EB) program to individuals who have exhausted their previous state and federal UI benefits.

Missouri's 5.39% UI benefit rate triggered the state's 13-week EB period beginning the week of May 31, 2020. According to the Department, with the current UI benefit rate nationwide, 44 states (e.g., Texas) have triggered the EB program. According to a June 14, 2020, U.S. Department of Labor (DOL) report, 48 states have triggered the 13 weeks of EB.

Under federal law, the EB program offers up to an additional 13 weeks of benefits to individuals who have exhausted both their regular unemployment benefits and 13 weeks of the Pandemic Emergency Unemployment Compensation (PEUC) assistance.

According to the DOL, under the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) (Pub. L.116-127), and the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act) (Pub. L. 116- 136), the federal government will repay states for up to 100% of EB benefits paid between March 18, 2020, and December 31, 2020. The DOL gives states the option of not charging employer accounts with the federal-reimbursed portion of EB benefits; however, the DOL guidance provides that states may charge the employer with any or all of EB benefits if they elect to. (*DOL Unemployment insurance program letter (UIPL) 24-20, 5-14-2020.*)

Upon exhaustion of regular UI entitlement and PEUC entitlement, the Department will issue written notification to all individuals who are eligible to apply for the state EB program. The weekly UI benefit amount under the EB program is the same as what the individual received for regular UI benefits.

Missouri has not triggered the state EB program since 2009, and that program ended April 7, 2012.

For more information regarding the Department's response to COVID-19, go here.

Update: May 27, 2020

Missouri labor department provides method for reporting Paycheck Protection Program payments to employees

The Missouri Department of Labor & Industrial Relations, Division of Employment Security (Department), announced that employers participating in the federal Paycheck Protection Program (PPP) may, in order to protect their unemployment insurance (UI) accounts and the Missouri UI trust fund, report PPP wage payments made to employees electronically through a new portal or through their UInteract account.(*Email listserv, May 22, 2020*.)

Workers filing for UI benefits are required to report any earnings on a weekly basis, including employer wage payments made under PPP, to avoid being overpaid. Those workers who were back paid wages from their employers for the same time period for which they were requesting UI benefits should report the PPP earnings to the Department as soon as possible by calling +1 573 751 4058 and selecting the appropriate option. A Department UI benefit specialist will assist claimants in reporting PPP earnings.

According to the Department's COVID-19 website:

Question 16: Is there any assistance available to keep my employees on the payroll during this time? What is the Federal Paycheck Protection Program (PPP)?

Answer: The Federal Paycheck Protection Program (PPP) is a Small Business Administration (SBA) loan that helps businesses keep their workforce employed during the Coronavirus (COVID-19) crisis. For more information on which businesses qualify and other questions about this loan visit sba.gov. For other resources to help businesses, visit the Missouri Department of Health's page.

Question 17: I filed a Mass Claim for my employees and have received the PPP loan for those employees. What can I do now?

Answer: You will need to contact the Division of Employment Security (DES) by emailing DOLIR.MassClaims@labor.mo.gov or you can call +1 573 751 0436. DES will need a list of the employees that you are paying through the PPP loan. You will need to include the start date of when the employees will be getting paid.

Question 18: My employer notified me that they will be paying me through the PPP loan. Can I choose to receive unemployment instead of a paycheck from my employer? Can I still collect unemployment?

Answer: If your employer has chosen to receive the PPP loan to pay employees, you do not have the choice of receiving unemployment benefits rather than the paycheck from the employer. If your employer has notified you that you will be receiving paychecks through the PPP loan, you must report your gross earnings for the week. If you are being paid by your employer through the PPP and the amount is greater than what is allowed above your Weekly Benefit Amount (WBA) in unemployment, you would be considered employed, and therefore not eligible to receive unemployment benefits. Any unemployment payments made to you during the same time that you were being paid by your employer through the PPP loan would be considered overpaid and you will need to pay those benefits back to the Division.

Question 19: What do I do if I've already received unemployment benefits and my employer is back paying me through a PPP loan?

Answer: If you have already claimed unemployment for those weeks, you will need to report your earnings immediately to the DES by calling +1 573 751 4058 and select option 4. A specialist will assist you in reporting these earnings. Any unemployment that was paid to you, including the Federal Pandemic Unemployment Compensation (FPUC) payments, will need to be paid back by you for those weeks for which your employer was also paying you through the PPP. If you were overpaid, you will receive a letter from the DES with information on how to repay the unemployment funds that were incorrectly paid to you. If your earnings through the PPP loan are less than your WBA, you may be eligible for partial unemployment benefits. You are still required to report these earnings for each week the funds are specified to be paid. (Example: if you were paid on 4/22/2020 for the week of 4/12/2020 through 4/18/2020, you would need to report those earnings for the week ending 4/18/2020.)

Question 20: Can I claim unemployment if the amount my employer is paying me through the PPP loan is less than my Weekly Benefit Amount?

Answer: Yes, you can claim unemployment if the earnings you are receiving through the PPP loan are less than your WBA. You are required to report these earnings for each week the funds were specified to be paid. (Example: if you were paid on 4/22/2020 for the week of 4/12/2020 through 4/18/2020, you would need to report those earnings when you request your weekly payment for the week ending 4/18/2020.)

Question 21: What can happen if I do not report the wages from the PPP loan to the Division?

Answer: When the DES determines a claimant receiving unemployment insurance (UI) benefits failed to report earnings, the claimant will be required to repay those benefits. Some overpayments are the result of honest mistakes. However, if the claimant committed fraud in obtaining UI benefits, he/she can be assessed an additional monetary penalty, as well as possibly having his/her benefit rights canceled and being arrested, fined and imprisoned.

PPP provides loans to help small businesses retain employees during COVID-19 pandemic

The PPP is provided under the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) and extended under the Paycheck Protection Program and Health Care Enhancement Act. The PPP provides economic relief to businesses with fewer than 500 employees impacted by COVID-19 by making loans available through the Small Business Administration (SBA). Small businesses in the hospitality and food industry with more than one location could also be eligible if their individual locations employ fewer than 500 workers.

Under the Act, the full principal amount of these loans will be forgiven by the SBA if all employees of the borrower are kept on the payroll for eight weeks and the loan is used for payroll, rent, mortgage interest or utilities. The application window for loans under the program opened April 3, 2020, and remains available through June 30, 2020, or until the federal funds made available for this purpose are exhausted. (*April 2020 issue of Payroll Perspectives*.)

For more information on the PPP, see the SBA website.

Reopening employers should report workers who refuse to return to work

The Department asks employers, as they reopen, to report any workers collecting UI benefits who refuse to return to work. Workers who have been placed on a temporary layoff related to COVID-19 but refuse to return to work when recalled by their employer may lose UI benefits and have to repay any benefits received after the work refusal.

According to the Department's COVID-19 website:

Question 2: What if an employee refuses to return to work? Will they still be eligible for unemployment benefits?

Answer: Missourians who have been placed on a temporary layoff related to COVID-19 but refuse to return to work when recalled by their employer will lose unemployment benefits, except for certain circumstances including:

- If you have tested positive for COVID-19 and are experiencing symptoms
- If you have recovered but it caused medical complications rendering you unable to perform essential job duties

- If a member of your household has been diagnosed with COVID-19
- If you are providing care for a member of your household who was diagnosed with COVID-19
- If you do not have child care due to COVID-19 reasons

OR

- If you do not have transportation to your place of work because of COVID-19.

As we reported, UI benefits paid due to COVID-19 will not be charged against employer UI accounts. (*EY Payroll Newsflash Vol. 21, #190, 4-25-2020*.)

Missouri COVID-19 UI benefits will not be charged to employer accounts

According to the Missouri Department of Labor & Industrial Relations COVID-19 Frequently Asked Questions (FAQs), contributory employers will not be charged for unemployment insurance (UI) benefits collected by workers affected by COVID-19.

The Department suggests that employers consider the state's shared work program as an alternative to a layoff.

The one-week waiting period and work search requirements, under certain circumstances, are waived for workers filing COVID-19 UI benefit claims

The FAQs state that the Department will waive the one-week waiting period for worker UI benefits related to COVID-19 after the employer protest deadline has passed.

Question: Has Missouri waived the waiting week for those eligible to receive unemployment benefits due to the coronavirus?

Answer: Under the authority of Missouri EO20-4, the Missouri Department of Labor has waived any waiting week requirement served for all claims filed as a result of the coronavirus. That means, unlike prior to the order, eligible individuals will receive payment for the waiting week as their first payment and not have to wait until they have exhausted benefits to be paid for the waiting week. However, individuals will not get paid until after the protest period, which appears as a pending protest online.

The work search requirements for worker UI benefits related to COVID-19 are also waived under certain circumstances:

Question: Do I need to search for work if I am laid off due to COVID-19?

Answer: Weekly work search activities are not required for those who file their unemployment claim as a coronavirus-related claim. Work searches are typically not required when there is a recall date within eight weeks of the temporary layoff. If the recall date changes but is within the initial eight weeks from the last day worked, the employee must contact a Regional Claims Center representative to update the recall date. An employer may apply for approval of an extended recall and a work search waiver for employees of up to 16 weeks. For more information about the recall and extended work search waiver, please visit labor.mo.gov/DES/Employers/extended_waiver.

For more information regarding the Department's response to COVID-19, go here.

Teleworker nexus and income tax withholding*

St. Louis provides earnings tax guidance for teleworkers and their employers during the COVID-19 emergency

The St. Louis Collector of Revenue stated in recent guidance that employees who are working remotely in connection with the COVID-19 emergency should be treated as working in their original place of work for purposes of the city's earnings tax. Accordingly, St. Louis employers should continue to withhold the earnings tax for these employees in the same manner as they did prior to the temporary relocation of their employees.

The Collector justifies its guidance by explaining that the St. Louis Health Commissioner's order only required that all non-exempt St. Louis employers facilitate employees working remotely. There was no requirement that St. Louis employees work outside of the city nor was any individual required to work within their home inside of the city.

The guidance also stipulates that days worked outside of the city due to a temporary reassignment caused by COVID-19 or the acting Health Commissioner's Order may not be included in the non-residency deduction formula on Form E-1R when claiming a refund for tax year 2020.

Note that under normal circumstances, the Collector explains there is no requirement to withhold the St. Louis earnings tax from earnings of the city's residents if there is no business activity taking place within the city.

Montana

Unemployment insurance benefits

Montana Executive Order provides UI benefits for employees impacted by COVID-19; employer accounts will not be charged for benefits

Montana Governor Steve Bullock ordered the release of emergency rules to temporarily waive certain provisions of the state's unemployment insurance (UI) law to provide for flexibility as outlined by the U.S. Department of Labor to support workers and businesses impacted by the COVID-19 pandemic. Specifically, the Executive Order waives the requirement that UI benefit recipients search for work, eliminates the waiting week to be eligible for UI benefits and stipulates that COVID-19 UI benefits are not charged to employers' accounts. (*Montana Administrative Register 24-11-355*.)

According to the governor's press release, the emergency rules allow employees who are directed by their employer to leave work or not report to work due to COVID-19 to qualify as being temporarily laid off by the employer and eligible for UI benefits. Employees who are required to quarantine or who need to take care of a family member due to COVID-19 are also considered temporarily laid off and eligible for UI benefits.

Additionally, the emergency rules allow Montana Department of Labor and Industry to waive the one-week waiting period before receiving benefits to ensure Montanans don't experience a long gap without a paycheck.

To assist employers, individual UI benefit claims made in connection with COVID-19 will not be chargeable to a specific employer's account and the Department is given authority to extend the time employers have to file wage reports and pay unemployment insurance contributions if the delay is related to COVID-19.

Access the COVID-19 unemployment insurance resources here.

Nebraska*

Unemployment insurance benefits*

Update July 15, 2020

Nebraska reinstates requirement for individuals to register and search for work while collecting UI benefits

Nebraska Governor Pete Ricketts issued Executive Order 20-31 that effective July 12, 2020, the requirements that individuals receiving unemployment insurance (UI) benefits be registered for work and participate in an active search for work are reinstated.

In response to the COVID-19 emergency, Governor Ricketts issued Executive Order 20-04 that effective March 22, 2020, temporarily waives certain provisions of the state's UI law to provide for flexibility as outlined by the U.S. Department of Labor to support workers and businesses impacted by the COVID-19 emergency. Specifically, the Executive Order waived the requirement that UI benefit recipients search for work. The Executive Order also eliminates the waiting week to be eligible for UI benefits and stipulates that COVID-19 UI benefits are not charged to employers' accounts and these provisions continue to apply.

Governor Ricketts explained in Executive Order 20-31 that the work search requirement is being reinstated because Nebraska employers currently are listing over 30,000 jobs as available.

According to the Nebraska Department of Labor, work search activities are required for those receiving regular state UI benefits, Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC) and Extended Benefits (EB). Individuals with an employer-confirmed recall date within 112 days of their layoff, as well as those in approved training, union members with a hiring hall and those in a short-time compensation (workshare) program continue to be exempt from the work search requirements.

Nebraska's COVID-19 UI resources are available here.

Nebraska Executive Order provides UI benefits for employees impacted by COVID-19; employer accounts will not be charged for benefits

Nebraska Governor Pete Rickets has issued Executive Order 20-04 to temporarily waive certain provisions of the state's unemployment insurance (UI) law to provide for flexibility as outlined by the U.S. Department of Labor to support workers and businesses impacted by the COVID-19 pandemic. Specifically, the Executive Order waives the requirement that UI benefit recipients search for work, eliminates the waiting week to be eligible for UI benefits and stipulates that COVID-19 UI benefits are not charged to employers' accounts.

According to the Governor's press release, the Nebraska Department of Labor will continue to look at ways to streamline the process of filing for and receiving unemployment insurance benefits as the COVID-19 situation continues to evolve.

Executive Order details

The Executive Order provides the following provisions of temporary relief pursuant to COVID-19:

- Suspend certain provisions of subdivisions (22) and (33) of *Neb. Rev. Stat.* §48-602 and direct the Commissioner of Labor to treat workers in an unpaid status for any reason as a result of COVID-19 exposure or illness as being on a temporary layoff and attached to their employment.
- Suspend the provisions of subdivision (4) of *Neb. Rev. Stat.* §48-627 requiring an unpaid waiting week for any eligible individual
- Suspend the provisions of 219 NAC 4 (006) and provide that an individual is available for work as required by *Neb. Rev. Stat.* §48-627 if any limitation placed by the individual on his or her availability does not constitute a withdrawal from the labor market.
- Waive work search requirements otherwise required under *Neb. Rev. Stat.* §48-627 and 219 NAC 4 because compliance would be oppressive or inconsistent with the purpose of the Employment Security Law.

- Suspend certain provisions of {l)(b) of *Neb. Rev. Stat.* §48-652 and grant an employer relief from charging for benefits paid to individuals eligible for unemployment benefits solely as a result of COVID-19 exposure or illness.
- Suspend certain provisions of *Neb. Rev. Stat.* §48-681 and grant a contributory employer relief from charging for benefits paid to individuals eligible for short-time compensation benefits due to reduction in work as a direct result of COVID-19 exposure or illness.
- Suspend certain provisions of *Neb. Rev. Stat.* §§48-632 and 48-652 and grant employers relief from charging and appeal rights when an employer's failure to respond to requests for separation information within 10 days is reasonably attributable to absences or temporary separations resulting from COVID-19 exposure or illness.

Frequently asked questions about COVID-19 UI benefits are available here.

Teleworker nexus and income tax withholding

Update: May 21, 2020

Nebraska provides income tax withholding relief for employees working within and outside of the state temporarily due to COVID-19

The Nebraska Department of Revenue updated its frequently asked questions (FAQs) for COVID-19 to address the income tax withholding requirements that apply when employees are temporarily working from home from an alternate state.

The Department indicates that it will not require employers to change an employee's state as it was established prior to the COVID-19 emergency for Nebraska income tax withholding purposes provided the employees are telecommuting temporarily from a work location within or outside Nebraska due to the COVID-19 emergency. This special relief is available from the date the emergency was declared on March 13, 2020, and ending on January 1, 2021, unless the emergency is extended.

Nevada*

Unemployment insurance benefits*

Update: August 5, 2020

Nevada plans to relieve employer UI accounts of COVID-19 benefit charges; use of federal funding to bolster the UI trust fund under consideration

According to a media relations office representative of the Nevada Department of Employment, Training and Rehabilitation, employers will soon see their unemployment insurance (UI) relieved of COVID-19 benefit charges.

In an email response to our inquiry, the representative stated:

"The Department of Employment, Training and Rehabilitation is exploring options to provide relief of charges as outlined in the Families First Coronavirus Response Act (FFCRA). Affected employers will be notified of how charging relief will occur once the process for providing this relief is finalized."

See the U.S. Department of Labor's Unemployment Insurance Program Letter 13-10 for an explanation of the noncharging provisions under the FFCRA.

A recently updated notice on the Department's online Employer Self Service (ESS) system website also states that the first-quarter 2020 UI benefit charge statements for contributory employers and billing statements for reimbursing employers were posted online beginning May 22, 2020. Employers may view these statements within their ESS accounts. Once the Department has released its plan for non-charging employers with COVID-19 UI benefits, employers should carefully review future benefit statements to confirm COVID-19-related benefit charges are reversed for applicable workers.

Nevada could be planning to use a portion of federal funding to bolster the UI trust fund

Even if COVID-19 UI benefits are not charged to employer accounts, the effect of these benefits on the state's UI trust fund is expected to significantly increase employer tax rates through the use of higher tax rate schedules.

According to a document released by the governor's office in July 2020, the state may be considering the use of a portion of the federal funds provided under the CARES Act to bolster the state's UI trust fund, which has been dramatically affected by the amount of UI benefits paid out since the start of the COVID-19 emergency. (*Press release, governor's office, 7-13-2020.*)

Specifically, the document states:

"Since February 2020, more than one in four Nevada workers have been displaced statewide, pushing the state's unemployment rate to 30.1%, the highest level ever reported by any state in modern history and generating an UI caseload orders-of-magnitude higher than anything the state has witnessed previously. While other sections of the CARES Act include funding for certain UI costs, the funding and uses are limited. To the extent allowable … Nevada is reviewing options for additional support and improvement in the state's unemployment system with funds available."

Work search requirements and one-week waiting period waived for workers filing COVID-19 UI benefit claims; employers may report job refusals

Nevada Governor Steve Sisolak previously issued a news release that provides a waiver of work search requirements and the one-week waiting period for workers filing COVID-19 UI benefits. See the Department's website for more on these COVID-19 UI benefits provisions.

As businesses reopen and employees are called back to work, the Department reminds employers that Nevada law prohibits individuals from receiving UI benefits if they refuse to accept offers of suitable work, or quit work, without good cause.

Employers may provide information regarding employees who refuse to return to the workplace by email to the Department's Business Service Office at JOBBANKMPKWY@detr.nv.gov with the subject line "Work Refusals."

Information provided should include employer name, address, account number and contact person; the worker's full name and the last four numbers of the worker's Social Security Number; the date the employee was contacted and advised of a return to work date; and the reason the employee gave for not being able to return to work.

Ernst & Young LLP insights

Employers should carefully review future benefit charge statements to confirm the Department has properly removed COVID-19 UI benefit charges from their experience account.

New Hampshire

Unemployment insurance benefits*

Update: July 23, 2020

New Hampshire SUI taxable wage base to significantly increase due to COVID-19; emergency power surcharge is added for first time since 2010

The New Hampshire Department of Employment Security announced that as a result of the state's decreased UI trust fund balance due to COVID-19 UI benefits, employers will see an increase in their state unemployment insurance (SUI) tax rates for second- and third-quarter 2020

For second-quarter 2020, the fund balance reduction rate for positive-balanced and new employers decreased to 1% and negative-balanced employers saw an inverse rate surcharge of 0.5% added to their tax rate. These increases appeared on the employers' second-quarter 2020 SUI tax returns, due July 31, 2020.

For example, if a positive-balanced employer SUI tax rate for first-quarter 2020 was 1.2% (2.7% base rate – 1.5% fund balance reduction), its second-quarter 2020 SUI tax rate is 1.7% (2.7% base rate – 1% fund balance reduction). A negative-balanced employer that paid at 2.8% for first-quarter 2020 is paying at 3.3% for second-quarter 2020.

For third-quarter 2020, employers will see a further increase in their SUI tax rates as the fund balance reduction rate for positive-balanced employers and new employers is reduced to zero (0.0%), negative-balanced employers have an inverse rate surcharge of 1.5% added to their tax rates, and a 0.5% emergency power surcharge is added to all employer tax rates. These rate increases will be reflected on employers' third-quarter 2020 SUI tax returns, due October 31, 2020. Employers have not seen an emergency power surcharge added to their tax rates since 2010.

Also reflected on the third-quarter 2020 returns will be employers' fiscal year 2021 tax rates reflecting employer experience through fourth-quarter 2019. While these tax rates do not reflect the effect of COVID-19 UI benefits on their experience, employers are seeing the effect of COVID-19 on the state's UI trust fund through decreased fund balance reductions and the addition of inverse and emergency power surcharges.

New tax rate calculations should be issued in mid-August 2020

New Hampshire is one of four states (including New Jersey, Tennessee and Vermont) that assign SUI tax rates on a fiscal year, rather than a calendar year, basis. As a result, new tax rate calculations take effect as of July 1, 2020, and are effective through June 30, 2021, though rates may fluctuate each quarter depending on the size of the SUI trust fund for the previous quarter.

Traditionally, New Hampshire issues new fiscal year SUI basic tax rates in August of the tax year.

Information will also be available online for employers that are registered for the Department's Webtax electronic reporting system.

History

For fourth-quarter 2018 through first-quarter 2020, positive-balanced and new employers saw a 1.5% fund balance reduction applied to their base SUI tax rates. Negative-balanced employers, that by law are not eligible for the fund balance reduction, also saw lower rates when the 0.5% inverse rate surcharge was removed from their SUI tax rates for fourth-quarter 2018 through first-quarter 2020. Before fourth-quarter 2018, the last time the trust fund balance was at or above the $300 million threshold, providing employers with the 1.5% unemployment insurance tax reduction, was the third quarter 2002.

The second-quarter 2020 decrease in the fund balance reduction is the result of the UI trust fund balance falling below $300 million as of first-quarter 2020. The UI trust fund balance fell below $250 million for second-quarter 2020, resulting in the elimination of the fund balance reduction for third-quarter 2020 and the addition of the emergency power surcharge. Negative-balanced employers are further affected through the additional inverse rate surcharge.

As a result of the COVID-19 crisis, employers should be prepared for their SUI tax rates to continue to increase over the coming quarters, even though UI benefits for COVID-19 are not charged to their individual employer accounts and federal funds should be available to help bolster the state's UI trust fund.

State law provides for reductions when the UI trust fund is strong

A 0.5% reduction in the assigned SUI tax rate is allowed if the state SUI trust fund equals or exceeds $250 million throughout the preceding quarter; a 1% reduction is allowed if the trust fund equals or exceeds $275 million; and a 1.5% reduction is allowed if the trust fund equals or exceeds $300 million.

A fund balance reduction of 0.5% went into effect for fourth-quarter 2014, increased to 1% for first-quarter 2015, decreased to 0.5% for the second and third quarters 2015 and increased to 1% for fourth-quarter 2015 through third-quarter 2018. Prior to fourth-quarter 2014, a fund balance reduction had not been in effect since the fourth-quarter 2008.

Previous economic downturn caused SUI rates to increase

Due to the previous economic downturn, a 0.5% emergency surcharge was added to all employers' tax rates in 2009 to help increase the UI trust fund balance. A second 0.5% surcharge was added in 2010 as the effects of the economic downturn continued to impact the state.

New Hampshire borrowed briefly from the federal government in March 2010 when the trust fund was temporarily insolvent, but the loan was repaid before the end of the same year. The first 0.5% surcharge was removed beginning October 1, 2012, and the second surcharge was removed as of fourth-quarter 2013.

Inverse rate surcharge

A 1.5% inverse rate surcharge was added to negative-balanced employers' tax rates beginning first-quarter 2010, decreasing to 1% for fourth-quarter 2014, to 0.5% for first-quarter 2015, increasing back to 1% for the second and third quarters 2015, and decreasing to 0.5% for fourth-quarter 2015 through third-quarter 2018.

For more information on SUI taxes in New Hampshire, see the Department's website.

New Hampshire COVID-19 UI benefits will not be charged to employer accounts

Under New Hampshire Governor Chris Sununu's Emergency Order 2020-05, employer accounts will not be charged with workers' unemployment insurance (UI) benefits attributable to COVID-19. In addition, nonprofit and government employers that have chosen to reimburse the state dollar-for-dollar for UI benefits will not be required to reimburse the state for COVID-19 UI benefits.

Work search requirements and one-week waiting period are waived for workers filing COVID-19 UI benefit claims

Emergency Order 2020-04 waives the one-week waiting period for workers filing for COVID-19 UI benefits.

In addition, according to the New Hampshire Department of Employment Security website, due to the governor's declaration of a state of emergency (Executive Orders 2020-04 and 2020-05), the work search requirements are also waived for worker UI benefits related to COVID-19.

Self-employed individuals also eligible for state UI benefits

Emergency Order 2020-05 also provided that self-employed individuals and other workers not normally eligible for UI benefits are eligible under the following circumstances:

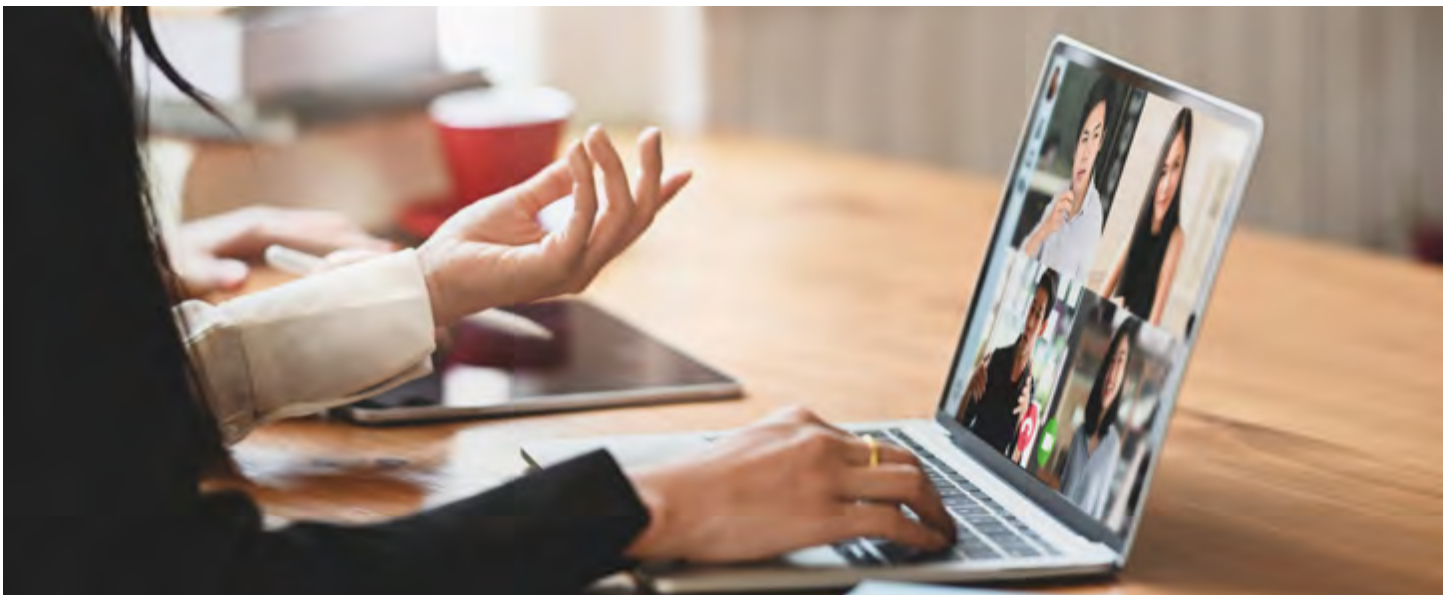
The individual's partial or total unemployment was necessary because:

- The individual has a current diagnosis of COVID-19.
- The individual is quarantined (including self-imposed quarantine), at the instruction of a health care provider, employer or government official to prevent the spread of COVID-19.
- The individual is caring for a family member or dependent who has COVID-19 or is under a quarantine related to COVID-19.

  OR

- The individual is caring for a family member or dependent who is unable to care for themselves due to the COVID-19 related closing of their school, child care facility or other care program.

For more information regarding state COVID-19 UI benefits for self-employed individuals, go here.



New Jersey

Filing extensions and payment deferrals

New Jersey employers granted a 90-day grace period to pay workers' compensation premiums

The New Jersey Compensating Rating and Inspection Bureau announced a 90-day grace period for payment of workers' compensation premiums to be paid by employers and agents. (*Advisory bulletin 75, April 13, 2020*.)

The grace period results from Governor Phil Murphy's Executive Order 23, which ordered a 90-day emergency grace period for premium payment obligations under various lines of insurance, including workers' compensation. (*Governor's news release*.)

Workers' compensation premiums lowered for four years in a row

The Bureau announced a 3.8% decrease in the overall employer workers' compensation insurance premium and rate level effective January 1, 2020, the fourth consecutive year of rate decreases and the fifth year without rate hikes. (*Advisory bulletin 1974, November 21, 2019*.)

All New Jersey employers must have workers' compensation coverage

All New Jersey employers, including those out of state, not covered by federal programs must have workers' compensation coverage, or be approved for self-insurance, if a contract of employment is entered in New Jersey or if work is performed within the state.

For further details, see the New Jersey Department of Labor and Workforce Development website.

New Jersey deadline to provide 2019 Forms 1094-C or 1095-C to tax division extended to May 15, 2020, for COVID-19

The New Jersey Treasury Department announced that the deadline for providing a Form 1095 health coverage form to the New Jersey Division of Taxation was extended from March 31, 2020, to May 15, 2020.

New Jersey employers must provide the New Jersey Division of Taxation with a 2019 Form 1095-B or 1095-C health coverage form for each primary enrollee who was a New Jersey resident and to whom the filer provided minimum essential coverage in 2019. This applies to both part-year and full-year New Jersey residents.

Employers must ensure that each primary enrollee who was a New Jersey resident or part-year New Jersey resident in 2019 receives at least one 1095 form that includes health coverage information. Sending a single 1095 to each primary enrollee is sufficient for both state and federal purposes. Employers do not have to send separate 1095 forms to spouses, dependents or adult children of primary enrollees.

Background

New Jersey was the first state to indicate it will leverage the federal Forms 1094-C and 1095-C to administer the state's individual mandate. Starting with tax year 2019, the New Jersey Health Insurance Market Preservation Act (Market Preservation Act), which was modeled after the federal ACA, requires third-party reporting to verify health coverage information supplied by individual payers of New Jersey's Income Tax.

The Market Preservation Act requires New Jersey residents to maintain minimum essential health insurance coverage throughout 2019 and beyond, unless the individual qualifies for an exemption. Failure to have health coverage or qualify for an exemption will result in a shared responsibility payment when individuals file their 2019 New Jersey Income Tax return.

The federal Tax Cuts and Jobs Act (TCJA) set the individual mandate penalty to $0 starting with the 2019 calendar year, effectively repealing the federal penalty.

Unemployment insurance benefits*

Update: July 31, 2020

New Jersey won't charge employer UI accounts for COVID-19 benefits; fiscal year 2021 SUI tax rates not affected by COVID-19

The New Jersey Department of Labor and Workforce Development has updated its employer unemployment insurance (UI) website to reflect that the Department plans to relieve employers of the adverse impact of COVID-19 UI benefits on their accounts before the fiscal year 2022 UI tax rates are calculated.

According to the Department's website:

Question: Will my unemployment insurance tax rate increase due to this emergency?

Answer: Employers have valid concerns about their insurance ratings. We will be taking steps to ease the charging of employers directly impacted by the COVID-19 emergency. Those numbers are calculated at the end of March every year and we will address that process in 2021.

Several bills were introduced in the state legislature (S 2504/A 4375; A 3930; A 4135) that would have required that employer accounts not be charged for COVID-19 UI benefits. None of those bills made it past committee assignment during the 2020 legislative session.

Fiscal year 2021 UI tax rates continue to be computed based on Rate Schedule B

New Jersey employer UI tax rates continue to be assigned on Rate Schedule B for fiscal year 2021 (July 1, 2020, through June 30, 2021), ranging from 0.4% to 5.4%. The new employer rate continues to be 2.8% for fiscal year 2021. These rates include the 0.1% Workforce Development Fund rate and the 0.0175% Supplemental Workforce Fund rate. (New Jersey Department of Labor & Workforce Development website.

Ernst & Young LLP insights

New Jersey is one of four states (including New Hampshire, Tennessee and Vermont) that assign SUI tax rates on a fiscal year basis, rather than a calendar year basis; however, the taxable wage base for these states is assigned on a calendar year basis.

Because the fiscal year 2021 SUI tax rates for these four states are based on state and employer experience through December 31, 2019, the fiscal year 2021 rates do not reflect the effect of COVID-19 on state UI trust funds and employer experience.

New Hampshire is an exception to this in that the balance of the state UI trust fund is reflected each quarter in the employer's SUI tax rate through a fund balance reduction factor and/or surcharges.

Teleworker nexus and income tax withholding

New Jersey will not treat temporary work from home due to COVID-19 as enough to trigger nexus

On May 6, 2020, the New Jersey Division of Taxation expanded on its March 30, 2020 guidance concerning the assertion of nexus and the income tax withholding requirements that apply for employees temporarily working in the state due to COVID-19.

In its March 30 guidance, the Division explained that during the period of the COVID-19 national emergency, it will temporarily waive the impact of the legal threshold within N.J.S.A. 54:10A-2 and N.J.A.C. 18:7-1.9(a) that treats employee work from within New Jersey as sufficient nexus for out-of-state corporations. It also stated that if employees are working from home solely as a result of closures due COVID-19 and/or the employer's social distancing policy, no threshold will be considered to have been met. (*See EY Tax Alert 2020-0797*.)

Additional guidance on nexus for sales tax

The Division states that pursuant to the COVID-19 pandemic, it will temporarily waive the sales tax nexus standard that is generally met if an out-of-state seller has an employee working within New Jersey. Accordingly, as long as the out-of-state seller did not maintain any physical presence other than employees working from home in New Jersey and is below the economic thresholds, the Division will not consider the out-of-state seller to have nexus for sales tax purposes during the period of the COVID-19 emergency.

Additional guidance on income tax withholding

Under the normal rules, New Jersey dictates that income is sourced to the state based on where the service or employment is performed using a day's method of allocation. However, during the temporary period of the COVID-19 pandemic, the Division states that wage income will continue to be sourced as determined by the employer in accordance with the employer's jurisdiction. The Division notes that because of the reciprocal agreement between New Jersey and Pennsylvania, New Jersey nonresident income tax is not required on wages for services performed within New Jersey by Pennsylvania residents.

When asked if the Division would advise New Jersey employers to not change the current work state set-up for employees in their payroll systems who are now telecommuting or temporarily relocated at an out-of-state employer location, the Division responded that it would not require employers to make that change for this temporary situation; however, employers must consider their unique circumstances and make that decision.

If examined at a later date for the period of the COVID-19 emergency, the Division said that relief from assessment for underwithheld tax, penalties and interest will be granted on a case-by-case basis if circumstances warrant.

Finally, the Division states that it does not plan to alter its audit enforcement approach pursuant to telework arrangements instituted in 2020 due to the COVID-19 emergency because its current audit program already includes the review of sourcing of income.

Paid leave

New Jersey law expands existing disability, family leave and paid sick leave to accommodate COVID-19 and other health emergency absences

Effective March 25, 2020, New Jersey S. 2304, signed into law by Governor Phil Murphy, expands the state's temporary disability insurance (TDI) and family leave insurance (FLI) programs to give more employees access to paid time off during health emergencies such as for COVID-19.

The law changes the definition of serious health condition, allowing employees to obtain TDI and FLI benefits during a public health emergency if they are unable to work because of being diagnosed with or suspected of exposure to a communicable disease or to care for family member diagnosed with or suspected of exposure to a communicable disease.

The law also modifies the state's paid sick leave law to permit employees to use their earned sick time for periods that isolation or quarantine are recommended or ordered by a provider or public health official as a result of suspected exposure to a communicable disease, or to care for a family member under recommended or ordered isolation or quarantine.

Finally, the law eliminates the current one-week waiting period for receiving disability benefits in the event of public health emergency.

In a March 25, 2020, press release the Governor said, "No one should have to decide between taking care of themselves or a sick family member and going to work during this pandemic. With this new law, we are providing hardworking men and women with the protections that they deserve and ensuring a healthier place to live and work."

For more information on New Jersey worker protections in connection with COVID-19, go here.

Other provisions

New Jersey revises WARN Act to provide employer relief during emergencies such as COVID-19

On April 14, 2020, Governor Phil Murphy signed into law AB 3938, a modification to New Jersey's Worker Adjustment and Retraining Notification (WARN Act) to provide employer relief from its requirements for natural disasters and emergencies such as COVID-19.

Background

As previously reported (*see EY Tax Alert 2020-0113*) earlier this year, Governor Murphy approved legislation (S 3170) that amended the state's WARN Act that, by, among other things mandating severance payments to employees who are part of a mass layoff and requiring a 90-day notice to employees of an upcoming mass layoff. These amendments were set to go into effect on July 19, 2020.

Amendments to the WARN Act due to COVID-19 and other emergencies/disasters

AB 3938 changes the definition of "mass layoff" to exclude from its definition layoffs that have occurred as a result of a national emergency or other circumstances such as fire, flood, natural disaster, act of war, civil disorder, industrial sabotage and decertification from participation in federal Medicare or Medicaid programs. Accordingly, and effective retroactively to March 9, 2020, mass layoffs in connection with COVID-19 do not trigger compliance with the state's WARN Act.

In light of the challenges that employers are facing due to COVID-19, AB 3938 also changes the effective date of the state's amended WARN Act under S 3170 from July 19, 2020, to 90 days after the termination of Governor Murphy's COVID-19 emergency order.

Ernst & Young LLP insights

New Jersey joins California in taking action to suspend the usual requirements under their state WARN Acts in consideration of the large number of employees who have been suddenly displaced due to COVID-19.

The California Employment Development Department (EDD) announced that under Executive Order N-31-20, the 60-day notice requirement under the California Worker Adjustment and Retraining Notification (WARN) is temporarily suspended provided other requirements are met.

For more information on California's WARN Act provisions for COVID-19, see EY Tax Alert 2020-0113.

New Mexico

Unemployment insurance benefits

Update: July 7,2020

New Mexico will not charge employers' accounts for COVID-19 UI benefits

Under Senate Bill 13, introduced in the New Mexico 2020 special session, New Mexico employers would have been relieved of the impact of COVID-19 unemployment insurance (UI) benefits on their 2021-2023 UI tax rates under a provision that directed the New Mexico Secretary of Labor to omit UI benefit data for the period January 1, 2020, through December 31, 2021 from calculations of an employer's experience history, excess claims premiums and excess claims rates.

The bill would also have required the Secretary to use the fiscal year 2019 computation date reserve factor portion of the employer UI tax rates for the calendar year 2021-2023 UI tax rate calculations. The reserve factor is computed each year based on the determination of whether the balance of the state's UI trust fund as of the end of the fiscal year is adequate enough to pay between 18 to 24 months of UI benefits at an average of the five highest years of UI benefits paid in the last 25 years.

The reserve factor used to compute the 2019 tax rates was 1.5955 and 1.6528 for 2020. For 2019 and 2020, the range of UI tax rates was 0.33% to 6.4%.

Had it been enacted, the bill would have shielded New Mexico employers from higher UI tax rates that are the result of the significant increase in UI benefit claims that are the direct and indirect result of COVID-19.

When issuing Executive Order 2020-004, Governor Michelle Lujan Grisham did not specify if employer accounts should be charged for COVID-19 benefits and the New Mexico Department of Workforce Solutions' (DWS) website does not address the issue.

Note, however, that DWS stated in its analysis of Senate Bill 13 that:

"Per guidance from the federal government, DWS is currently not charging employers for separations related to COVID-19 as of March 16, 2020," adding that "this experience history will not be included in the calculation for the 2021 tax rates. The only impacting factor for the 2021 tax calculations would be the reserve factor based upon trust fund solvency."

The DWS recommended against Senate Bill 13 because the artificial reduction in UI taxes could have resulted in even higher UI tax rates after the freeze in the reserve factor computation expired.

Filing extensions and payment deferrals*

Update: July 23, 2020

New Mexico tax department updates guidance on the waiver of interest and penalties for COVID-19 through April 2021 returns filed by July 25

The New Mexico Taxation and Revenue has updated its guidance on legislation enacted on June 29, 2020, that waives interest and penalties for failure to pay several state taxes during the COVID-19 pandemic, including income, corporate, gross receipts and employer withholding tax. (Bulletin 100.35, revised July 2020.

Under the law, failure to make withholding tax payments due March 25, 2020, through July 25, 2020, will not result in interest and penalties if paid by April 25, 2021. Note, however, that for an employer to receive this waiver of interest and penalties, withholding tax returns must be filed by the extended deadline of July 25, 2020. (*Special session 2020 HB 6; news release, governor's office, June 22, 2020.*)

Update: June 30, 2020

New Mexico law waives interest and penalties through April 2021 for withholding tax due between March-July 2021 for COVID-19

New Mexico legislation recently enacted on June 29, 2020, provides a waiver of interest and penalties for failure to pay several state taxes during the COVID-19 pandemic, including income, corporate, gross receipts and employer withholding tax.

Under the law, failure to make withholding tax payments due March 25, 2020, through July 25, 2020, will not result in interest and penalties if paid by April 25, 2021. (Special session 2020 HB 6; news release, governor's office, June 22, 2020.)

Update: June 30, 2020

New Mexico tax department announces self-service payment plan option for taxpayers with outstanding debts due to COVID-19

The New Mexico Taxation and Revenue Department recently announced that taxpayers with outstanding debts can create and enter into a payment plan through a self-service option. The new program is available for all tax programs administered by the Department, including withholding tax.

The self-service option allows taxpayers to create a custom payment plan for tax, penalty and interest. Taxpayers can choose the size of their down payment and the duration of the plan up to 72 months. Plans longer than 12 months require that a lien be put in place. Eligible participants will be accepted automatically; others will be contacted by a TRD employee to complete the process.

More information is available on the Department's website, through the New Mexico Taxpayer Access Point (TAP). Taxpayers will see the self-serve option once they've logged into their accounts.

The Department also announced it will extend some modifications to collection efforts that were enacted to ease the burden on taxpayers facing financial difficulty as a result of the COVID-19 public health emergency.

New Mexico extends four months of withholding tax deadlines for COVID-19 emergency

New Mexico Governor Michelle Grisham and the Taxation and Revenue Department announced that withholding taxes normally due on the 25th of March, April, May and June 2020 will now be due on July 25, 2020. The extension is intended to ease the cash flow problems many businesses face due to COVID-19 closures or reduced customer traffic and may prevent some businesses from laying off employees.

The state will waive any penalties for withholding taxes not remitted during the grace period. However, under state law, interest will accrue from the original due date. The governor expressed support for waiving or refunding any interest owed by taxpayers.

The deadline for 2019 individual and corporate income taxes also will be extended until July 15, 2020.

Taxpayers are encouraged to file and pay electronically through the Department's TAP system.

For more information on New Mexico withholding taxes, go to the Department's website.

New York

Unemployment insurance benefits

New York will charge employer accounts for regular UI benefits paid in connection with COVID-19

In employer FAQs issued by the New York Department of Labor about COVID-19 unemployment insurance (UI) benefits, the Department indicates that at this time, employer accounts will be charged for regular state UI benefits paid as a result of COVID-19 unless the federal government reimburses the state for those benefits.

The following other COVID-UI benefits will not be charged to employers' accounts in compliance with the CARES Act:

- Benefits paid during the one-week waiting period that was waived (for benefits paid between April and December 2020)
- Benefits paid under an approved shared work plan (April 5, 2020, to December 31, 2020)
- Up to 50% of benefits paid by reimbursing employers (March 13, 2020 ,through December 31, 2020)
- The additional $600-per-week benefit (through July 31, 2020)
- The additional 13 weeks of benefits (through December 31, 2020)

Ernst & Young LLP insights

Most states have confirmed they will not charge employers for regular UI benefits paid in connection with COVID-19 because under a Trump Administration emergency order, states will be reimbursed for these benefits provided they enter into an agreement with the U.S. Department of Labor. (*U.S. Department of Labor Program Letter, No. 10-20.*)

New York employers required to give notice of the availability of UI benefits to workers affected by COVID-19

The New York Department of Labor issued a directive to employers, requiring that they provide certain information to workers whose work schedule and/or employment status has changed due to COVID-19.

According to the Department:

"In order to ensure that you are complying with your legal obligations, and to facilitate the timely processing of unemployment insurance benefits applications, we are directing all New York State employers to provide the following information to each of your employees whose work schedule and/or employment status has been impacted as a result of COVID-19 related issues."

The notice must contain the following employer information:

- New York state employer registration number
- Federal employer identification number
- Employer name
- Employer address (though not required per the Department's directive, employers should also provide their telephone number and the date of separation or change in work schedule)

The Department instructs employers to make sure that all relevant employees, including those who have already been impacted by COVID-19, are promptly provided this information.

Employers may use the standard Department Form IA 12.3 to provide this information to employees affected by COVID-19. This form, which includes a list of personal documents and information employees will need to file for UI benefits, is used under any circumstance when an employee quits, is laid off or discharged.

Ernst & Young LLP insights

Even under normal circumstances, many of the state UI agencies require or request that employers provide notice to separating employees of the availability of state UI benefits.

During the COVID-19 pandemic, it is considered very important that employers provide this information so that affected workers, many of whom have never before filed for UI benefits, are able to access their benefits as quickly as possible.

Teleworker nexus and income tax withholding

Update: May 28, 2020

New York Senate bill would allow businesses to treat work from home outside of New York due to COVID-19 as exempt from New York income tax and withholding

New York Senate bill S.8386, introduced on May 21, 2020, would provide relief to businesses whose employees are working from home outside of New York state due to COVID-19 by confirming that such telework is due to the necessity of the employer and not the convenience of the employee and is exempt from New York income tax and income tax withholding.

The bill would apply only for the period that employers mandated employees work from home pursuant to the emergency declaration in New York Executive Order 202. Should the bill become law, it would be effective immediately but would apply only to the time covered by the executive order, which is currently March 7, 2020, through September 7, 2020.

Under New York's convenience of the employer rule, the employer is required to withhold New York state income tax from all wages paid to the employee if (1) the employee spent at least one day in the year in New York and (2) the reason the employee is working from home outside of the state is for the employee's own convenience. If the reason the employee is working from home is for the convenience of the employer, work from home is excluded from the nonresident income tax withholding requirement. (*TSB-M-06(5) I*.)

Thus far, the New York Department of Tax and Finance has not issued guidance pursuant to COVID-19 and the so-called "convenience of the employer rule," leaving businesses with uncertainty as to how the Department would rule on the matter should employers reach the conclusion that employees working from home outside of New York during the COVID-19 emergency is exempt from New York income tax and income tax withholding.

The New York Department of Tax and Finance has received numerous requests to issue guidance similar to that contained in S. 8386. For instance, on April 10, 2020, the New York Bar Association issued a letter of recommendation urging COVID-19 relief through the convenience of the employer rule.

Paid leave

Update: June 15, 2020

New York adopts sick leave law that expands on its COVID-19 paid leave requirements

Recently enacted New York State fiscal year 2021 budget legislation (SB 7506B, Part J) establishes a statewide paid sick leave law that effective September 30, 2020, requires employers to allow employees to begin accruing sick leave and to begin providing accrued sick leave to employees effective January 1, 2021.

According to Governor Andrew Cuomo's news release, employers with 100 or more employees will be required to provide at least 7 days of job-protected paid sick leave each year (businesses with 5 to 99 employees will be required to provide at least 5 days of paid leave).

Employers with four or fewer employees will be required to provide five days of job-protected unpaid sick leave each year.

The Governor stated that the law provides for "the strongest paid sick leave program in the nation" expanding on the paid sick leave legislation (SB 8091) enacted in March 2020 that requires paid sick leave for individuals affected by COVID-19 (go here for more information).

SB 7506B creates a permanent statewide paid sick leave law that will be available for all illnesses. (*EY Payroll Newsflash Vol. 21, #102, 3-26-2020*.)

Modified paid sick leave law provisions

Effective September 30, 2020, employees will begin to accrue sick leave at a rate of 1 hour for every 30 hours worked. Beginning January 1, 2021, employers must allow employees to begin to use their accrued sick leave upon oral or written request. Sick leave must be provided for the employee's personal or family member illness, injury, health condition or incident of domestic violence, regardless of whether such illness is diagnosed or requires medical care at the time of request.

The law requires that:

- Employers with 4 or less employees allow employees to use up to 40 hours of accrued unpaid sick leave (unpaid sick leave converts to paid sick leave if the employer had a net income of greater than $1 million in the previous tax year).
- Employers of 5 to 99 employees provide up to 40 hours of accrued paid sick leave to employees.
- Employers of 100 or more employees provide up to 56 hours of accrued paid sick leave to employees.

Employers may choose to "front load" sick leave, providing employees with the total amount of required sick leave at the beginning of the year rather than waiting for the employee to accrue the hours; however, an employer making this election may not reduce or revoke sick leave if the employee does not work sufficient hours during the year to reach an accrual that is equal to the sick leave provided.

An employee's unused sick leave must be carried over to the next year; however, an employer may limit the use of sick leave to 40 hours per calendar year if the employer has less than 100 employees and 56 per calendar year if the employer has 100 or more employees.

Employers are not required to pay employees for unused sick leave upon termination, resignation, retirement or other separation from employment.

Employers with a pre-existing sick leave policy are not required to provide any additional sick leave if the employer's plan meets or exceeds the requirements under the new law.

Paid sick leave must be paid at the same rate of pay the employee is paid for working hours or the state minimum wage, whichever is greater.

Upon return from sick leave, employees must be restored to their same position and pay as was provided before the leave.

Recordkeeping requirements

Upon employee oral or written request, an employer must within three business days of the request provide a summary of the sick leave accrued and used for the current and previous calendar years. As is the case for other payroll records, employers are required to maintain the amount of sick leave provided to each employee within their records for a minimum of six years.

Certain New York cities can impose their own sick leave laws

The law does not preclude a city with New York state with a population of one million or more from enacting and enforcing their own paid sick leave law that meets or exceeds the requirements of the new statewide law. Any local government's (e.g.., New York City) paid sick leave ordinance already in effect as of the effective date of the new statewide law will not be limited or diminished.

As we've previously reported, New York also has a paid family leave program that is funded by employee payroll deductions and provides eligible employees with job-protected paid time off to bond with a new child, care for a family member with a serious health condition and assist loved ones when a family member is deployed abroad on active military service.

New York imposes special paid leave requirements for COVID-19

New York has adopted legislation that requires New York employers to provide special paid leave pursuant to the COVID-19 related absences. The New York State Workers' Compensation Board published guidance for employers to its website. Following is an overview of the requirements.

New York's COVID-19 paid leave requirement provides job-protected paid leave to employees who are subject to an order of mandatory or precautionary quarantine or isolation for COVID-19, issued by the state of New York, the Department of Health, local board of health, or any government entity duly authorized to issue such order, or whose minor dependent child is under such an order.

These paid leave benefits are not available to employees who work through remote access or through other means.

The paid leave requirements depend on the employee's circumstances as follows.

Employee's own quarantine/isolation

Paid leave is available to employees subject to an order of mandatory or precautionary quarantine or isolation depending on the size of the employer's business as of January 1, 2020, and/or whether the employer is private or public.

- **Small businesses** with 10 or fewer employees as of January 1, 2020, and that had a net annual income less than $1 million last year must provide employees with:
  - Job protection for the duration of the order of quarantine or isolation.
  - Employees can access benefits through the employer's paid family leave and disability benefits policy for the duration of the order of quarantine or isolation.
  - **Medium businesses** with 11 to 99 employees as of January 1, 2020, and smaller employers (1 to 10 employees) that had a net annual income greater than $1 million last year must provide employees with:
  - Job protection for the duration of the order of quarantine or isolation.
  - At least five days of paid sick leave.
  - Employees can then access benefits through the employer's paid family leave and disability benefits policy.
- **Large businesses** with 100 or more employees as of January 1, 2020, must provide employees with:
  - Job protection for the duration of the order of quarantine or isolation.
  - At least 14 days of paid sick leave.
- **Public employers** (no matter how many employees) must provide employees with:
  - Job protection for the duration of the order of quarantine or isolation.
  - At least 14 days of paid sick leave.

Quarantine/isolation of an employee's minor dependent child

Most employees whose minor dependent child is under an order of mandatory or precautionary quarantine or isolation issued by the state of New York, the Department of Health, local board of health or any government entity duly authorized to issue such order due to COVID-19 may be eligible to take Paid Family Leave to care for them. Eligibility for covered employees is the same as it is for other Paid Family Leave.

Employer responsibilities

Employer responsibilities for COVID-19 quarantine leave provided through paid family leave and disability benefits are largely the same as they have been for New York Paid Family Leave overall; however, there are new COVID-19-specific forms and attestations.

- COVID-19 request process. If employees notify the employer of their intent to request leave, they need to have the appropriate form package as follows:

  Request for COVID-19 Quarantine DB/PFL – Self (Forms PFL-1 & SCOVID19)

  Request for COVID-19 Quarantine PFL – Child (Forms PFL-1 & CCOVID19)

Each of the above request packages has two forms with sections to be completed by the employee and the employer. Employees complete their portion of each form, keep a copy and submit the package to the employer.

The employer must provide the following information:

- An employee's average weekly wage (AWW) is computed by adding his or her wages for the eight weeks prior to the start of Paid Family Leave and dividing the total by eight. For a sole proprietor who has opted into Paid Family Leave, the average weekly wage will be the last 52 weeks of income divided by 52.
- Attest that the employee has used any quarantine paid sick time and is not able to work remotely.
- Keep a copy for the employer's records and return the completed request package to the employee within three business days. If the employer fails to return the forms within three business days, the employee can proceed without the employer's information.

Employees are responsible for submitting their completed request package directly to the employers' disability/paid family leave insurance carrier within 30 days of their first day of leave. Employees may ask the employer for the name and contact information of its insurance carrier. Employees may also access this information by calling the Paid Family Leave Helpline at +1 844 337 6303.

The insurance carrier must pay or deny the employee's request within 18 calendar days of receiving the completed request.

- **Provide other protections:** Employers are responsible for providing important employee protections.
  - **Job protection:** Employers must reinstate the employee to the same or a comparable position, upon returning from leave.
  - **No discrimination.** Employers cannot discriminate or retaliate against an employee for requesting or taking paid family leave.
  - **Continued health insurance.** Employers must continue to provide health insurance on the same terms as if the employee had continued to work while they are on paid family leave. If employees regularly contribute to the cost of their health insurance, they must continue to pay their portion of the cost while on leave.

Additional resources

New Paid Leave for COVID-19

Request for COVID-19 Quarantine DB/PFL – Self (Forms PFL-1 & SCOVID19)

Request for COVID-19 Quarantine PFL – Child (Forms PFL-1 & CCOVID19)

Frequently Asked Questions

ny.gov/coronavirus

ny.gov/COVIDpaidsickleave

New York paid family leave helpline: +1 844 337 6303

Other provisions

New York temporarily modifies WARN Act requirements for businesses participating in the Paycheck Protection Program in consideration of COVID-19 emergency

In Executive Order 202.19, New York Governor Andrew Cuomo temporarily modified the state's Worker Adjustment and Retraining Notification (WARN) Act through May 17, 2020, so that businesses receiving loans through the federal Paycheck Protection Program are given some relief from the Act's notice requirement.

Specifically, if a business receives a loan under the federal Paycheck Protection Program, they are not necessarily required to provide notice to employees within 90 days, but as soon as practical, so long as they provide the required notice when they initially laid off the employees.

Under New York Labor Code §860-B an employer may not order a mass layoff, relocation or employment loss unless at least 90 days before the order takes effect the employer gives written notice to employees and the representatives of affected employees.

Ernst & Young LLP insights

New York joins several other states (e.g., California and New Jersey) in offering relief to employers from their state WARN Act employee notice requirements in light of the unexpected interruption to the labor market due to the COVID-19 emergency.

North Carolina

Filing extensions and payment deferrals

North Carolina extends withholding tax payment deadlines due from March 15 through March 31 to July 15, 2020

On March 31, 2020, the North Carolina Department of Revenue released a notice announcing an extension of the waiver of the penalties for failure to file or pay state taxes governed by the Department, including income tax withholding, if the failure is the result of COVID-19. The extension deadline, previously April 15, 2020, is now July 15, 2020. (*Important notice: Department of Revenue expands penalty relief for taxpayers affected by Coronavirus Disease 2019 (COVOID-19; EY Payroll Newsflash Vol. 21, #083, 3-20-2020).*)

The waiver applies to the failure to timely obtain a license, file a return or pay a tax that is due between March 15, 2020, and July 15, 2020, if the license is obtained, the return or extension application is filed or the tax is paid by July 15, 2020.

The extension applies to the February–June 2020 withholding tax deadlines for monthly and semiweekly filers with withholding payments due until July 15, 2020 (see the Department's tax calendar).

State law prevents the Department from waiving any interest, including interest assessed for the underpayment of estimated tax, except in the limited case of interest on taxes imposed prior to or during a period for which a taxpayer has declared bankruptcy under Chapter 7 or Chapter 13 of Title 11 of the United State Code.

Unlike the previous notice extending tax deadlines to April 15, 2020, taxpayers do not need to request a penalty waiver to qualify for the extended relief. However, if a taxpayer receives a proposed assessment of a penalty covered by the relief granted in this notice, the taxpayer should contact the Department by phone, at +1 877 252 3052 (currently, Department representatives are not available by phone due to COVID-19), or by writing to the Department at the following address: North Carolina Department of Revenue, Customer Service, P.O. Box 1168, Raleigh, NC 27602.

Another notice similarly extends the deadlines for excise taxes.

Unemployment insurance benefits*

Update: July 17, 2020

North Carolina updates information on the second-quarter 2020 SUI tax credit

The North Carolina Division of Employment Security (DES) updated its website to show additional information on the employer state unemployment insurance (SUI) tax credit to be applied to the second-quarter 2020 (due July 31, 2020). According to the website, employers do not need to do anything to receive this credit other than to file their first-quarter 2020 SUI tax return. Any payments made for first-quarter 2020 will automatically be applied to SUI contributions due for second-quarter 2020.

The information posted to the DES website also states that any outstanding employer SUI tax payments for first-quarter 2020 are no longer due and will be canceled. It is unclear if this means that employers that have not yet paid their first-quarter 2020 SUI taxes will be credited with the amount due rather than given a second-quarter 2020 credit. Note, however, that to receive the credit, employers must file their first-quarter 2020 return, even if they did not pay the associated tax due.

As we reported, legislation provides North Carolina employers with an SUI tax credit equal to their first-quarter 2020 SUI contributions (due on or before April 30, 2020). The amount of the credit is equal to the amount of the first-quarter 2020 contributions paid by the employer and is applicable to the second-quarter 2020 SUI contributions due on or before July 31, 2020. (*SB 704, signed into law on May 4, 2020; governor's news release; EY Payroll Newsflash Vol. 21, #228, 5-15-2020*)

If the tax credit exceeds the amount of SUI contributions due on the second-quarter 2020 return, the amount of the credit that exceeds the second-quarter contributions will be refunded to the employer in accordance with state UI law. (N.C.G.S. 96-9.15(b).)

Proposed rule provides for circumstances under which workers who refuse to return to work may continue to collect UI benefits

The DES issued a proposed temporary rule that would provide the circumstances where a worker separated from employment due to COVID-19 may refuse to return to work and continue to collect UI benefits.

Under the proposed rule, a claimant who has refused suitable work for one of the following COVID-19-related reasons will be deemed to have a legally sufficient reason for the refusal, and may continue to be eligible for unemployment benefits (*04 NCAC 24G .0104*.):

(1) The claimant has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and has been advised by a medical professional to not attend work.

(2) A member of the claimant's household has been diagnosed with COVID-19 or the claimant is providing care for a family member who has been diagnosed with COVID-19.

(3) The claimant is high risk of severe illness from COVID-19. The Centers for Disease Control and Prevention (CDC) defines a high-risk individual as a person 65 years of age or older, or a person of any age who has serious underlying medical conditions including being immunocompromised, chronic lung disease, moderate-to-severe asthma, serious heart conditions, severe obesity, diabetes, chronic kidney disease and undergoing dialysis, or liver disease.

(4) The claimant is the primary caregiver of a child or person in the claimant's household who is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency, and the school or facility is required for the claimant to work.

(5) The claimant is unable to report to the claimant's place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency or the claimant has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

(6) In order to comply with any governmental order regarding travel, business operations and mass gatherings, the claimant must refuse an offer of suitable work.

(7) The claimant reasonably believes there is a valid degree of risk to the claimant's health and safety due to a significant risk of exposure or infection to COVID-19 at the employer's place of business due to a failure of the employer to comply with guidelines as set out by the CDC, other governmental authorities or industry groups as may be found in CDC guidance, the Governor's Executive Orders, or other binding authority; or due to objective reasons that the employer's facility is not safe for the claimant. (*Authority G.S. 96-2; 96-4; 96-15(a); 150B-21.1A; 166A-19.30; Families First Coronavirus Response Act. Pub. L. No. 116-27; Division D, 1402 (2020); E.O. 118, Governor Roy Cooper, 2020; E.O. 121, Governor Roy Cooper, 2020.*)

Other states have released similar guidance for circumstances under which a refusal to return to work would be considered good cause and would not cause a worker to be disqualified for UI benefits.

Proposed rule requires notice to employee

As is the case in other states, under the proposed temporary rule, employers are required to provide employees with notice of the availability of unemployment compensation at the time of separation from employment.

The notice must inform employees of the following:

(1) Unemployment insurance benefits are available to workers who are unemployed and who meet the state's eligibility requirements.

(2) Employees may file a claim in the first week that employment stops or work hours are reduced.

(3) Employees may file claims online or by telephone to +1 888 737 0259.

(4) Employees must provide DES with the following information for DES to process the claim: (a) full legal name; (b) Social Security number; and (c) authorization to work (if the employee is not a U.S. citizen or resident).

Ernst & Young LLP insights

It may be that employers will have lower-than-usual second-quarter 2020 SUI contributions as a result of business shutdowns and slowdowns due to COVID-19. Second-quarter SUI contribution payments are, in general, usually lower than those paid for the first quarter due to employee wages reaching the wage limit early in the year.

Employers that have not filed their first-quarter 2020 returns should do so as soon as possible.

North Carolina UI benefits for COVID-19 will not be charged to employer accounts

On March 17, 2020, North Carolina Governor Roy Cooper ordered bars and restaurants to shut down on-site consumption of food and beverages as a result of the continued spread of COVID-19 in the state through March 31, 2020. The governor had previously declared a state of emergency in response to COVID-19. (*Executive orders no. 116 and 118*.)

The order instructs the North Carolina Department of Commerce, Division of Employment Security to apply the flexibility allowed by the US Department of Labor to permit workers affected by the shutdown to collect unemployment insurance (UI) benefits, waiving the one-week waiting period for benefits and the work search requirements of the state UI law. The Division is also instructed to not charge employer UI accounts for the UI benefits collected due to the shutdown.

The Division's website confirms that UI benefit charges that are the result of COVID-19 will not be allocated to employers' UI accounts. Employers responding to requests for separation information should indicate that the separation was due to COVID-19.

For workers facing job loss due to COVID-19, the order specifically addresses:

- Individuals who are separated from employment
- Individuals who have had their work hours reduced
- Individuals who are prevented from working due to a medical condition or under direct quarantine orders as a result of COVID-19

According to the Department, workers filing for UI benefits who have been quarantined due to COVID-19 will be considered able and available to work provided they have not removed themselves from the labor market. If workers are unemployed due to COVID-19, they do not have to conduct a work search while filing for UI benefits.

Workers should file UI benefit claims online, or if they have no access to a computer, by calling +1 888 737 0259.

For the Division's COVID-19 information as released, go here.

For the state's COVID-19 information, go here.

North Carolina orders that severance payments made by employers temporarily furloughing workers due to COVID-19 not delay UI benefits; special employer reporting required

Governor Cooper ordered that payments made by employers to workers temporarily unemployed due to COVID-19 not reduce or delay the unemployment insurance (UI) benefits that an otherwise eligible individual would be entitled to receive. The governor's order refers to these payment as "COVID-19 Support Payments." (*Emergency Order #134, April 20, 2020*.)

In many states, severance payments (also referred to as dismissal pay) made to laid off or terminated employees delay or reduce the payment of state benefit payments. According to the North Carolina Division of Employment Security, under normal circumstances "any worker who receives severance pay is considered to be attached to that employer's payroll during that time and not eligible for UI benefits. Paid Time Off (Vacation and/or Sick Pay) will not be considered separation pay if the payment was issued as a result of the employer's written policy established prior to your separation. Workers receiving Paid Time Off (Vacation and/or Sick Pay) under these conditions will not be disqualified from receiving benefits."

The order requires that employers temporarily furloughing employees during the COVID-19 crisis do the following to allow workers to collect UI benefits at the same time as they are paid severance pay (referred to as COVID-19 Support Payments):

Employer implementation of COVID-19 Support Payment plans

- Employers must submit employer-filed UI claims according to guidance provided by the Division for each employee receiving COVID-19 Support Payments.
- The employer's COVID-19 Support Payment Plan must:
  - Detail the anticipated length of the furlough
  - State the amount of the COVID-19 Support Payments
  - Identify the names of the employees receiving COVID-19 Support Payments
  - Include a promise that the employer is not making the COVID-19 Support Payments as a form of remuneration for the employees' performance of personal services during the furlough
  - Include a promise that employees are not required to return or repay the COVID19 Support Payments.
- COVID-19 Support Payment Plans must be submitted to the Division.
- COVID-19 Support Payment Plans are not promises by the employer to make the payments listed in the Plans. If employers choose to provide COVID-19 Support Payment Plans that involve a series of payments, employers retain the flexibility to stop those payments before the scheduled end of the plan.
- COVID-19 Support Payments and COVID-19 Support Payment Plans are not promises by the employee to return to work for the employer. Employees who accept COVID-19 Support Payments retain any flexibility they may have to accept other employment.

The order requires the Division to publish a COVID-19 Support Payment Plan form and provide further guidance for employers on its website.

As we previously reported, North Carolina UI benefit charges that are the result of COVID-19 will not be charged to employers' UI accounts. Employers responding to requests for separation information should indicate that the separation was due to COVID-19. (*EY Payroll Newsflash Vol. 21, #085, 3-20-2020*.)

North Carolina workers filing for COVID-19 UI benefits are not required to conduct a work search while filing for UI benefits. Also, the one-week waiting period is waived for workers filing for UI benefits as a direct result of COVID-19.

For more information on the Division's response to COVID-19, go here.

Ernst & Young LLP insights

Other states, such as South Carolina, have waived (or may waive) the delaying effect of severance payments on COVID-19 UI benefits and require employers to perform certain tasks for workers to qualify for the waiver. Accordingly, employers will need to watch for state developments concerning special state unemployment insurance reporting obligations about severance payments during the COVID-19 emergency.

North Dakota

Filing extensions and payment deferrals

North Dakota extends SUI and workers' compensation insurance tax filing and payment deadlines to June 30, 2020

North Dakota Governor Doug Burgum ordered that the deadline for filing first quarter 2020 state unemployment insurance (SUI) tax returns and paying the associated SUI tax payment is extended to June 30, 2020.

Executive Order 2020-15 also extends the deadline for employers to file and pay workers' compensation premiums. Go here for more information from the North Dakota Workforce Safety and Insurance Department.

For more on the state's response to COVID-19, go here.

Unemployment insurance benefits*

Update: July 17, 2020

North Dakota reinstates requirement for individuals to register and search for work while collecting UI benefits

Under North Dakota Governor Doug Burgum's Executive Order 2020-08.2, the requirement that individuals collecting UI benefits register for work with Job Services North Dakota (JSND) and actively search for work, even if those benefits are directly or indirectly linked to COVID-19, is reinstated effective July 26, 2020. (News release, North Dakota Job Services, 7-9-2020.)

Note, however, that under the order, and as confirmed by a JSND agency representative, contributory employers continue to not be charged for UI benefits directly or indirectly attributable to COVID-19. (*Email response to inquiry, 7-14-2020*.)

As we previously reported, the requirement to search for work while collecting COVID-19 UI benefits has been suspended since March 13, 2020. (*EY Payroll Newsflash Vol. 21, #196, 4-27-2020*.)

On the North Dakota Response website, employers are instructed to call JSND at +1 701 328 2814 to report a worker's refusal to return to work. JSND will determine, on a case-by-case basis, whether workers who do not return to work because they feel unsafe or are at higher risk due to underlying medical conditions may continue to collect UI benefits.

According to the agency's FAQs on COVID-19:

Q: What if a business opens but an employee doesn't feel safe coming back to work? Are there any protections for them if they don't feel safe returning to work?

A: Under the Occupational Safety and Health Act (OSHA), employees may refuse work if they "reasonably believe they are in imminent danger." That fear typically includes the threat of death or serious physical harm. Generalized fear about the virus that's not based on fact would not likely be sufficient to refuse to work. However, if the workplace currently has a number of confirmed cases of COVID-19, their fears may be justified.

For workers who are at higher risk for negative outcomes if they contract COVID-19, such as those with underlying medical conditions or workers who are immunocompromised, even generalized fears may be legitimate. Businesses should work with these staff members to alter the work environment as much as possible to mitigate risk, if they can.

For more information on JSND's response to COVID-19, go here.

North Dakota Executive Order provides UI benefits for employees impacted by COVID-19; employer accounts will not be charged for benefits

Governor Doug Burgum issued an Executive Order 2020-08 to temporarily waive certain provisions of the state's unemployment insurance (UI) law to provide for flexibility as outlined by the U.S. Department of Labor to support workers and businesses impacted by the COVID-19 pandemic. Specifically, the Executive Order waives the requirement that UI benefit recipients search for work, eliminates the waiting week to be eligible for UI benefits and stipulates that COVID-19 UI benefits are not charged to employers' accounts.

Details of Executive Order 2020-08

The Governor's Executive Order includes the following temporary provisions in support of the COVID-10 pandemic:

- Effective March 13, 2020, those portions of NDCC-52-04-07 specifying the charging of base period employers are suspended under the following circumstances: Benefits paid to an individual whose unemployment is related directly or indirectly to COVID-19 shall not be charged against the accounts of the individual's employer.
- Effective March 13, 2020, the requirement in N.D.C.C. §52-06-01(2)(a) that an individual must register for work shall be suspended for those individuals whose unemployment is related to COVID-19.
- Effective March 13, 2020, the requirement in N.D.C.C. §52-06-01(3)(a) that an individual must be actively seeking work is suspended for those individuals whose unemployment is related to COVID-19.
- Effective March 13, 2020, the requirement in N.D.C.C. §52-06-02(1)(a)(1)&(2) that an individual must requalify for unemployment benefits for the week in which the individual has left the individual's most recent employment voluntarily or without good cause attributable to the employer is suspended for those individuals whose unemployment is related to COVID-19.
- Effective March 13, 2020, the requirement in N.D.C.C. §52-06-02(2) that an individual must requalify, in accordance with N.D.C.C. §52-06-02(a), for unemployment benefits for the week in which the individual has been discharged for misconduct in connection with the individual's most recent employment, is suspended for those individuals whose unemployment is related to COVID-19.
- Effective March 13, 2020, strict compliance with N.D.C.C. §52-06-04 is suspended to the extent review of an employee's separation from past employers is required. Only review of the current reason for separation from employment as it relates to COVID-19 will be considered in determining eligibility for benefits.
- Effective March 13, 2020, strict compliance with N.D.C.C. §52-06-04 subsections a through d is suspended to the extent income reduction for business owners is required when calculating monetary eligibility for unemployment benefits related to COVID-19.

Employer frequently asked questions are available here.

Teleworker nexus and income tax withholding

North Dakota will waive assertion of nexus for employees working in the state temporarily due to COVID-19

In frequently asked questions (FAQs) for business taxes, the North Dakota Office of the State Tax Commissioner announced that if employees are working temporarily in a telecommuting capacity due to COVID-19 restrictions and recommendations, it will not assert income tax nexus on that basis alone.

The announcement does not change the requirement that employers are required to withhold resident North Dakota income taxes from wages paid to residents, regardless of where earned (unless there is no business operation in the state other than telework related to COVID-19).

North Dakota nonresident income tax applies to all wages for services provided within the state. An exception to the nonresident income tax withholding requirement applies to wages earned within North Dakota by residents of Minnesota and Montana because North Dakota has a reciprocal agreement with these states.

Ernst & Young LLP insights

This announcement brings much-needed relief to North Dakota employers that otherwise could have been forced to pay business income taxes merely because employees are temporarily working from home within the state due to the COVID-19 emergency.

Ohio

Filing extensions and payment deferrals

Ohio granted waiver of penalty for UI returns filed late

Employers unable to file their first-quarter 2020 state unemployment insurance (UI) return and pay the corresponding payment due to COVID-19 reasons will not be penalized under an emergency order recently issued by Ohio Governor Mike DeWine. (*Executive Order 2020-03D*.)

Employers affected by the COVID-19 pandemic will need to request a penalty waiver (referred to the Department as a forfeiture) if they filed the first-quarter 2020 UI report and payment late. Go here for Form JFS 20132 or go to the Ohio Department of Job and Family Services' electronic filing system (ERIC) to file the waiver request online.

The governor's order and the Department's announcement do not mention a waiver of interest for the late payment of first-quarter 2020 UI taxes. According to a Department representative, interest will accrue on the tax balance for employers that were unable to timely pay the quarterly tax due. However, the form does provide the ability to also request a waiver of interest.

Go here for an explanation of the Department's procedures for typical late filing and payment.

Because the report is used to calculate benefits for affected workers, the Department urges employers to file their UI returns on time, if at all possible, throughout the state of emergency, even if unable to pay the unemployment tax timely. Quarterly returns must be filed online and payments made over the ERIC system.

See the Department website for more information regarding the Department's response to COVID-19.

Unemployment insurance benefits*

Update: July 17, 2020

Ohio won't charge employers for COVID-19 UI benefits paid under its workshare program

In Executive Order 2020-26D Ohio Governor Mike DeWine has directed that for the period the state receives full reimbursement from the U.S. Department of Labor, as provided under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, no participating employers will be charged for unemployment insurance (UI) benefits that are paid under Ohio's SharedWork program (also known as workshare or short-term compensation).

Under the CARES Act, the U.S. Department of Labor may reimburse states for 100% of their short-term compensation (STC) benefit costs up to a maximum of 26 weeks of STC per individual. These reimbursements are available starting with weeks of unemployment beginning on or after March 27, 2020, and ending with weeks of unemployment on or before December 31, 2020. (*DOL UIPL 14-20*).

The Ohio SharedWork program

SharedWork Ohio is a voluntary layoff aversion program that allows workers to remain employed and employers to retain trained staff during times of reduced business activity. Under the program, participating employers reduce affected employees' hours in a uniform manner. The participating employee works the reduced hours each week, and the Ohio Department of Job and Family Services (ODJFS) provides eligible individuals an unemployment insurance benefit proportional to their reduced hours.

Interested employers provide the Ohio Department of Job and Family Services (ODJFS) with a list of participating employees and specify their normal weekly hours of work, not to exceed 40 hours and not including overtime. Part-time employees may be eligible, but all employees in an affected unit must have their hours reduced by the same reduction percentage. Reduction percentages must be at least 10% but not more than 50% of the normal weekly hours of work.

Employers are eligible to participate in the SharedWork program if they:

- Have at least two affected employees that do not work on a seasonal, temporary or intermittent basis
- Are current on all Ohio unemployment insurance reporting, contributions, reimbursements, interest and penalties due
- Agree to the program requirements

After ODJFS notifies an employer that it approves the submitted SharedWork Ohio plan, the affected employees may apply for SharedWork Ohio benefits.

For more information, see the ODJFS frequently asked questions here.

Ohio provides UI benefits for COVID-19; employer accounts will not be charged for benefits

Under an emergency order recently issued by Ohio Governor DeWine, employer accounts of contributory employers will not be charged for unemployment insurance (UI) benefits received by workers affected by COVID-19. Instead, these benefits will be charged against the mutualized account. Nonprofit companies and government entities that have elected to reimburse the Ohio Department of Labor will be charged with COVID-19 benefits as normal. (*Executive Order 2020-03D*.)

According to the Department's website, the primary purpose of the mutualized account is to maintain the unemployment trust fund at a safe level and recover the costs of unemployment benefits that are not chargeable to individual employers. When the account balance is low, these costs are recovered and the money restored to the fund through the mutualized tax levied on all contributory employers. The mutualized tax is used solely for the payment of benefits. For calendar years 2018-2020, the mutualized rate was 0.0%.

Under the governor's executive order, workers affected by COVID-19:

- Will not be required to serve a waiting week for UI benefits
- Will be able to collect UI benefits when told to self-isolate or quarantine, even if not actually diagnosed with COVID-19, or if an employer reduces the workforce or shuts down completely
- May be able to collect partial UI benefits if the worker's hours are cut
- Will not be required to search for work while collecting UI benefits

Employers are asked to provide employees temporarily or permanently laid off due to COVID-19 with Form JSF-00671, *Mass Layoff Instruction Sheet*. The form has been updated for COVID-19 use and provides workers with the mass layoff code they will need to apply for UI benefits. However, if the worker has already filed for benefits without this code, there is no need to correct the information as it will have no effect on the individual's UI benefits.

Information for employers on UI benefits for COVID-19 is available here.

Information for individuals on how to apply for UI benefits if affected by COVID-19 is available here.

See the Department website for more information regarding the Department's response to COVID-19.

Teleworker nexus and income tax withholding

Ohio legislation gives relief from local tax withholding for telework arrangements necessary due to the COVID-19 emergency

HB 197, signed into law on March 27, 2020, by Governor DeWine, temporarily changes the Ohio Local Tax Enabling Act so that any day in which an employee performs personal services at a location, including the employee's home, to which the employee is required to report for employment duties because of Ohio's COVID-19 emergency declaration, is deemed to be a day performing personal services at the employee's principal place of work.

The provision is effective March 9, 2020, and for 30 days after the conclusion of the Ohio COVID-19 emergency declaration.

Ernst & Young LLP insights

As a result of this provision, and through the effective period, employers are not required to withhold local Ohio resident taxes if Ohio local nonresident taxes are withheld for the normal Ohio work location pursuant to telework arrangements necessitated by the COVID-19 emergency.

Oklahoma

Unemployment insurance benefits

Oklahoma COVID-19 UI benefit wages will not be charged to employer accounts

Oklahoma Employment Security Commission (OESC) Executive Director Robin Roberson recently ordered that state unemployment insurance (UI) benefit wages for UI benefits paid to workers due to COVID-19 will not be charged against employer accounts.

Per the OESC's updated frequently asked questions for employers about UI and COVID-19:

Question: Will benefit wage charges be waived during this pandemic?

Answer: Yes, pursuant to the natural disaster provision of 40 O.S. §3-106.1, all benefit wage charges to experience-rated employers for allowed claims of unemployment that are directly related to the COVID-19 pandemic shall be waived. An attempt will be made to prevent charges from going out on COVID-19 claims, but if an employer does receive a benefit wage charge on a COVID-19 claim, the employer should timely protest the charge and give information about the nature of the claim. Reimbursing charges to reimbursing employers shall not be waived and must be paid timely. Click here to view the OESC Executive Order waiving benefit wage charges directly related to COVID-19 unemployment insurance claims.

Question: How will my tax rates be affected if staff are sent home?

Answer: Oklahoma has just passed a law that will stop charges to contributing employers only, for claims that are directly related to COVID-19 until the end of 2020. However, employers will most likely see a rate increase in the annual rate calculations for 2021 as a result of COVID-19.

Question: Do we as employers pay for unemployment? If so, would it be in our favor to continue letting people work the normal hours so we don't have to continue paying when people are not working?

Answer: Yes, employer FUTA and SUTA taxes are collected from employers and used to pay for unemployment benefits. Oklahoma has waived the benefit waive charge for claims filed as a result of COVID-19 in an effort to lighten the financial burden placed on employers due to the pandemic.

Work search requirements waived for workers filing COVID-19 UI benefit claims, one-week waiting period also waived

The OESC's frequently asked questions for claimants indicate that workers do not have to search for work or serve a waiting period while collecting UI benefits due to COVID-19.

Question: Do I have to make work searches during the COVID-19 pandemic?

Answer: No. At this time the OESC has waived the work search requirement due to the COVID-19 pandemic. Since the required number of work search contacts is zero, individuals should respond "yes" when asked if the required number of work search contacts have been made when filing a weekly claim for benefits.

Question: Do I have to serve a waiting period during the COVID-19 pandemic?

Answer: No, the governor has signed an executive order waiving the waiting period. All claims filed with an effective date of 3/15/2020 or later will have the waiting period waived as long as the order remains in effect. (*Executive Order 2020-07, 2nd amendment*.)

To expedite COVID-19 UI benefits, employers are instructed to indicate on OESC correspondence that the workers' separation is due to COVID-19 and fax the document to +1 405 962 7504.

For more information on the OESC's response to COVID-19, see the Department's website.

Oregon

Filing extensions and payment deferrals

Update: May 12, 2020

Oregon provides interest and penalty relief for the late payment of first-quarter 2020 SUI contributions

The Oregon Employment Department announced that if employers were late in paying their 2020 first-quarter state unemployment insurance (SUI) contributions (due April 30, 2020) due to COVID-19, it will abate penalties and interest provided the payments are made within 30 days of the Governor Kate Brown's March 8, 2020, Executive Order no longer being in effect, or later, if a payment arrangement is reached with the Department.

Employers must apply for the interest and penalty abatement by filing the *Application for Interest and Penalty Relief*.

The Department emphasizes that the first-quarter 2020 SUI returns must be timely filed.

Teleworker nexus and income tax withholding*

Update: July 30, 2020

Oregon won't assert nexus for corporate excise and income tax for teleworkers in the state temporarily due to COVID-19

The Oregon Department of Revenue announced on its COVID-19 Tax Relief Options website that for purposes of its state corporate excise/income tax, employees teleworking within the state won't be considered a relevant factor in its nexus determination provided these employees regularly perform services outside of Oregon.

This relief provision is effective March 8, 2020, through November 1, 2020.

Income tax withholding

The Department's relief does not currently extend to the state income tax withholding requirement. Accordingly, the usual requirements apply.

- **Resident income tax withholding.** Resident income tax withholding is required from wages, regardless of the state in which those wages were earned. Employers that pay wages to Oregon residents may be relieved of the duty to withhold where it can be shown to the satisfaction of the Department that each employee will receive $300 or less from that employer in a calendar year. (*ORS 316.167 or OAR 150-316-0255*).
- **Nonresident income tax withholding.** Nonresident income tax applies to wages paid for services provided within Oregon with the exception that if the earnings for the year will be less than the standard deduction for the employee's filing status, nonresident income tax is not required. (Nonresident employees earning over the standard deduction are required to file an Oregon personal income tax return.) (*Oregon Employer's Guide, pg. 17.*)

Pennsylvania

Unemployment insurance benefits

Update: May 18, 2020

Pennsylvania employers required to provide notice of availability of UI benefits to separated employees; review of COVID-19 special provisions for UI

Pennsylvania law now requires employers to provide employees with notification of the availability of unemployment insurance (UI) benefits at the time of separation from employment or reduction in hours. The Pennsylvania Department of Labor & Industry, Office of Unemployment Compensation, provides a standard notice (Form UC-1609) for employers to use to meet this requirement. (HB 68, *Act 9 of 2020*.)

To be eligible for federal grants under the Families First Coronavirus Response Act (FFCRA), state workforce agencies must have a provision requiring that employers notify employees at the time of layoff or reduced work of the availability of UI benefits. (*U.S. Department of Labor program letter 13-20*).

Note also, as we reported previously, other legislation (HB 2362) prohibits employers from terminating, depriving, threatening or otherwise coercing a worker with respect to the employment, seniority position or employee benefits that are the result of the worker's compliance with an order to isolate or quarantine. Violating employers may be penalized by the state or sued by the employee. (*EY Payroll Newsflash Vol. 21, #135, 4-3-2020*.)

Employers reminded of requirement to submit information when workers refuse to return to suitable work

Now that the economy is starting to rebound, employers may be recalling employees that were furloughed due to COVID-19. Employers must notify the Department within seven days if an employee refuses to return to suitable work, using Form UC-1921W.

According to the Department's website, employees must return to work or risk losing their UI benefits unless they can show good cause for refusing work. During the COVID-19 pandemic, good cause may be shown if employees refuse to return to work because they are at high risk of complications from the virus and their employer cannot make reasonable accommodations for them, the employer is violating the governor's business closure orders and opens their business prematurely, or if employees are being asked to return to work at reduced hours that result in them earning less than they did before the pandemic. Department staff will review the specific reasons for work refusal and make determinations based on the facts of their individual cases.

The Department states that if employees do return to work at reduced hours, and this results in a reduced weekly income compared to their weekly income prior to filing for UI benefits, employees may still be eligible for partial benefits plus the $600 additional weekly benefit available under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Employers will not be charged for COVID-19 UI benefits

As we previously reported, contributory employers' accounts will not be charged for unemployment insurance (UI) benefits received by workers affected by COVID-19. (*EY Payroll Newsflash Vol. 21, #135, 4-3-2020*.)

Nonprofit companies and government entities that have elected to reimburse the Department will be charged with COVID-19 benefits as normal unless the employer elected for 2020 to pay the solvency fee that allows reimbursing employers an annual opportunity to request non-charge of UI benefits under certain conditions, including unemployment caused by a disaster (go here for more information).

Act 9 of 2020 (HB 68) provides 120 days for reimbursing employers that did not pay the solvency fee to repay COVID-19-related UI benefits to the Department. An additional 60 days to repay the benefits may be requested by the employer. The Department will offer interest-free payment plans to employers that demonstrate financial hardship. No interest will accrue or be charged on late reimbursement payments paid by December 31, 2020.

Work search requirements and one-week waiting period are waived for workers filing COVID-19 UI benefit claims

Effective March 16, 2020, through the remainder of the COVID-19 emergency declaration, individuals unemployed due to COVID-19 are not required to serve a one-week waiting period before collecting UI benefits or to register and actively search for work each week that they receive UI benefits. See the Department's frequently asked questions for claimants for more information.

See the Department's website for more information regarding the Department's response to COVID-19.

Pennsylvania employer accounts will not be charged for UI benefits due to COVID-19; employers are prohibited from firing employees affected by COVID-19 orders

According to the Pennsylvania Office of Unemployment Compensation, contributory employers' accounts will not be charged for unemployment insurance (UI) benefits received by workers affected by COVID-19. (*Employer UC & COVID-19 frequently asked questions*.)

Following is the FAQ that pertains to employer noncharge for COVID-19:

Question: Will my UC tax rate increase if my employees file for benefits?

Answer: No, contributory businesses who are temporarily closed due to COVID-19 will be granted Relief From Charges, and your tax rate will not be increased because of COVID-19-related claims.

Nonprofit companies and government entities which have elected to reimburse the Office will be charged with COVID-19 benefits as normal. However, Pennsylvania law provides reimbursing employers an annual opportunity to request noncharge of UI benefits under certain conditions, including unemployment caused by a disaster. For more information, go here.

The Office urges workers unemployed due to COVID-19 to first use any paid sick leave or paid time off, whether provided by their employer or under the federal Families First Coronavirus Response Act, then file for state UI benefits. Individuals unemployed due to COVID-19 are not required to serve a one-week waiting period before collecting UI benefits or to register and actively search for work each week that they receive benefits. See the Office's frequently asked questions for claimants for more information.

See the Office's website for more information regarding the Department's response to COVID-19.

Law prohibits employers from firing workers affected by COVID-19

Under recently enacted legislation (*HB 2362*), employers are prohibited from terminating, depriving, threatening or otherwise coercing a worker with respect to the employment, seniority position or employee benefits as the result of the worker's compliance with an order to isolate or quarantine. Violating employers may be penalized by the state or sued by the employee.

Teleworker nexus and income tax withholding

Pennsylvania provides nexus relief for employees working from home temporarily in the state due to COVID-19

The Pennsylvania Department of Revenue released three frequently asked questions (FAQs) to respond to inquiries concerning the imposition of nexus when employees are working from home temporarily within the state due to COVID-19.

Pennsylvania income tax withholding

When asked if a Pennsylvania employer is required to withhold Pennsylvania nonresident income tax for an employee who is not a resident of state where there is a reciprocal agreement and who is working in the state temporarily due to COVID-19, the Department responded that it will not consider a change to its sourcing rules for compensation. Accordingly, the nonresident employee's compensation is subject to Pennsylvania nonresident income tax and withholding.

Note, however, that Pennsylvania income tax withholding is not required on the wages of a New Jersey nonresident working in the state because Pennsylvania has a reciprocal agreement with New Jersey.

Nexus for corporate net income tax (CNIT)

When asked if an employee working from home temporarily due to COVID-19 creates nexus for Pennsylvania CNIT purposes, the Department responded that due to Governor Tom Wolf's Proclamation of Disaster Emergency on March 6, 2020, the department will not seek to impose CNIT nexus solely on the basis of temporary activity within the state due to individuals working temporarily from home in connection with COVID-19.

Sales and use tax (SUT)

When asked if an employee working from home temporarily due to COVID-19 creates nexus for purposes of SUT, the Department responded that due to Governor Wolf's Proclamation of Disaster Emergency on March 6, 2020, the department will not seek to impose SUT nexus solely on the basis of temporary activity within the state due to individuals working temporarily from home in connection with COVID-19.

Ernst & Young LLP insights

The Department's FAQs do not mention the applicability of Pennsylvania unemployment insurance pursuant to workers temporarily working within the state due to COVID-19. However, unemployment insurance typically applies in only one jurisdiction based the federal four-prong test. For more information see our EY Tax Alert 2020-0531.

This guidance does not change the requirement that Pennsylvania employers are required to withhold nonresident income tax from all wages earned within the state (with the exception of New Jersey nonresidents), including those that are paid to employees temporarily working from home in the state due to COVID-19.

This announcement, does, however, bring much-needed relief to Pennsylvania employers that otherwise could have been forced to pay CNIT and SUT taxes merely because employees are temporarily working from home within the state due to the COVID-19 emergency.

Philadelphia updates Wage Tax guidance for employees ordered to work from home outside of the city for the employer's convenience

On May 4, 2020, the Philadelphia Department of Revenue updated its guidance for withholding the Wage Tax from nonresident employees who are working in the city temporarily due to COVID-19 from what it previously published on March 26, 2020.

In the updated guidelines, the Department states that an employer may continue to withhold the Wage Tax from 100% of a nonresident employee's wages; however, this is a business decision, not a requirement. Nonresident employees who had Wage Tax withheld during the time they were required to perform their duties from home (outside of the city) in 2020 can request a refund through Department by completing a *Wage Tax refund petition* in 2021.

The Department also clarified that employers are required to withhold and remit Wage Tax for all of its Philadelphia residents, regardless of where they perform their duties.

Nonresident Wage Tax policy (no change from what was announced on March 26, 2020)

The city of Philadelphia uses a "requirement of employment" standard that applies to all nonresidents whose base of operation is the employer's location within Philadelphia. Under this standard, a non-resident employee is exempt from the Wage Tax when the employer requires him or her to perform a job outside of Philadelphia, including working from home.

Nonresidents who work from home for their own convenience (rather than the need of the employer) are not exempt from the Wage Tax, even with their employers' authorization. On the other hand, if Philadelphia employers require nonresidents to perform duties outside the city, they are exempt from the Wage Tax for the days spent fulfilling that work.

For more information about the city of Philadelphia Wage Tax, go here.

Paid leave

Pittsburgh paid sick leave ordinance goes into effect on March 15, 2020

The City of Pittsburgh announced that the paid sick leave ordinance that was enacted in 2015 and upheld by the Pennsylvania Supreme Court, Western District, in July 2019, takes effect on March 15, 2020.

Under the ordinance, Pittsburgh employers with 15 or more employees are required to provide up to 40 hours of paid sick leave per year (24 hours for employers with fewer than 15 employees). Employees must accrue a minimum of one hour of paid sick leave for every 35 hours worked within Pittsburgh (up to the maximum of 40/24 hours per year).

For the first year after the effective date of March 15, 2020, employers of fewer than 15 employees are required only to provide unpaid sick leave to accrue at one hour for every 35 hours worked. Effective March 15, 2021, these employees must begin to accrue paid sick leave.

History

The ordinance originally passed in 2015 and was to become effective on January 11, 2016.

Prior to the January 11, 2016, effective date, the Allegheny County Court of Common Pleas found that the city of Pittsburgh's Paid Sick Days Act (PSDA) was invalid and unenforceable. The lower court ruled that as a "home rule municipality," the city of Pittsburgh is prohibited by state law from regulating businesses by "determining their duties, responsibilities or requirements."

Because the ordinance placed affirmative duties on businesses, occupations and employers, the lower court found that the ordinance exceeded the city's authority as a home rule municipality.

In July 2019, the Pennsylvania Supreme Court overturned the lower court's decision that the ordinance was invalid and unenforceable. Instead, the high court held that when "... asked to consider whether these ordinances run afoul of the qualified statutory preclusion of local regulations that burden business. We hold that the PSDA does not exceed those limitations ..."

Ordinance details

Under the ordinance, Pittsburgh employers with 15 or more employees are required to provide up to 40 hours of paid sick leave per year (24 hours for employees with fewer than 15 employees). Employees must accrue a minimum of one hour of paid sick leave for every 35 hours worked within the geographic boundaries of Pittsburgh (up to the maximum of 40/24 hours per year), unless the employer's policy is more generous.

For employers of less than 15 employees, for the first year after the effective date of March 15, 2020, only **unpaid** sick leave is required to accrue at one hour for every 35 hours worked. Effective March 15, 2021, these employees must begin to accrue **paid** sick leave.

All covered employees must be entitled to use accrued sick leave beginning on the 90th calendar day following the commencement of their employment. Current employees must begin accruing hours on March 15, 2020. Hours worked in January or February of 2020 will not count for purposes of accrual.

Under the ordinance guidelines, a covered employee is defined as an individual who performs work within the geographic boundaries of the city of Pittsburgh for at least 35 hours in a calendar year. This does not include independent contractors, state or federal employees, any member of a construction union covered by a collective bargaining unit, or seasonal employees.

An employee who works for an employer located outside of the geographic boundaries of the city of Pittsburgh but who performs work within the geographic boundaries of the city is a covered employee once the employee performs at least 35 hours of work within the geographic boundaries of the city in a calendar year. In such an instance, only the work performed within the city of Pittsburgh is required to be included in the computation of accrued sick leave.

Employers must provide eligible employees with paid sick leave to care for the employee's or a family member's illness, injury or health condition; or in the event of a public health emergency or a family member's exposure to a communicable disease.

Employers must allow accrued, unused sick lime to be carried over from one calendar year to the next, up to the maximum accrual cap of 40 hours (24 hours for employers of less than 15 employees). Alternatively, if the employer "frontloads" at least the maximum number of hours mandated by the ordinance at the beginning of each calendar year, the employer is not required to carry over the employee's unused accrued sick leave from the previous calendar year.

For example, for a large employer, if the employee's 40 hours are carried over from the previous year, it is as though the employer has frontloaded 40 hours and the covered employee may accrue no further paid sick leave in that calendar year. If only 20 hours are carried over, the covered employee may accrue up to 20 hours in that calendar year for a total of 40 hours.

Employers may use different methods to provide paid sick leave to employees, choosing to frontload paid sick leave for certain employees and the accrual method for others, provided all covered employees are granted their entitled benefits under the ordinance.

Go here for an explanation of the ordinance, here for frequently asked questions, and here for the notice employers are required to display in a conspicuous place.

Bonuses and rebates*

Update: July 29, 2020

Pennsylvania offers time-sensitive opportunity for employee hazard pay grants for COVID-19

The Pennsylvania Department of Community and Economic Development has announced a COVID-19 hazard pay grant program to help employers provide hazard pay to employees in life-sustaining occupations during the COVID-19 emergency. Hazard pay means additional wages paid to employees for performing hazardous duty or work involving physical hardship in connection with COVID-19.

Employers must act quickly

Applications will be accepted between July 16, 2020, and July 31, 2020, leaving employers a short time to take advantage of this program.

Taxability

The Pennsylvania Department of Revenue explained in its COVID-19 news release that the additional hazard pay employees receive from their employers through the state's hazard pay grant funding is wages subject to Pennsylvania state income tax and income tax withholding.

For Pennsylvania corporate income tax purposes, businesses are not required to include as income grants they receive through the state's hazard pay program; however, they may take a deduction for the hazard pay they provide to their employees.

How it works

Employers may submit applications for up to $1,200 per eligible full-time equivalent employee. The hazard pay must be paid to the eligible employee over the 10-week period of August 16, 2020, through October 24, 2020 as a $3/hour hazard pay increase to their regular hourly pay rate.

The program limits hazard pay grants to 500 eligible full-time equivalent employees per location ($600,000 maximum grant per location). No employer may receive more than $3,000,000.

Grant funds may be used for hazard pay for direct, full-time and part-time employees earning less than $20/hour, excluding fringe benefits and overtime. Funds may only be used to pay hazard pay for eligible employees for the 10-week period from August 16, 2020, through October 24, 2020.

Eligibility

Businesses, health care non-profits, public transportation agencies and certified economic development organizations may apply for funding for employers located and operating in Pennsylvania within one of the following eligible industries:

- Health care and social assistance
- Food manufacturing
- Food retail facilities
- Transit and group passenger transportation
- Security services for eligible industries listed above and commercial industries that were not closed as a result of the Governor's Business Closure Order
- Janitorial services to buildings and dwellings

How to apply

Applications must be submitted through the Electronic Single Application (ESA). For any questions, contact DCED Customer Service by calling +1 866 466 3972 or by email at ra-dcedcs@pa.gov.

For more information, download the program guidelines here.

Puerto Rico

Filing extensions and payment deferrals

Update: May 21, 2020

Puerto Rico grants further extension for filing 2019 withholding information returns because of COVID-19

The Puerto Rico Treasury Department (PRTD) announced in Administrative Determination (AD) 20-14 that because on May 1, 2020, Governor Wanda Vázquez Garced extended the stay-at-home order until May 25, 2020, the deadline for employers and other withholding agents affected by COVID-19 to electronically submit calendar year 2019 information returns has been extended without interest or penalties to May 31, 2020. (*Executive Order OE-2020-038*.)

As we reported, the PRTD had previously extended the due date for calendar year 2019 informative returns originally due on March 31, 2020, to April 15, 2020, and then again to May 15, 2020. Now, under AD-20-14, the deadline is further extended to May 31, 2020. (*EY Payroll Newsflash Vol. 21, #090, 3-24-2020*.)

Puerto Rico's Treasury Department announces extensions for various returns and payments, and provides special cash flow tax relief measures

The Puerto Rico Treasury Department (PRTD) has announced (Administrative Determination (AD) 20-09 and AD 20-10) additional extensions for various returns, including sales and use tax returns, and payments because of COVID-19. AD 20-10 also provides various measures to try to improve cash flow for the taxpayers and merchants. AD 20-09 supersedes AD 20-03 and AD 20-05. The latter established the initial extended dates that are now mainly covered under AD 20-09 and AD 20-10.

Income tax returns

Taxpayers with income tax returns with an original or extended due date of March 15, 2020 (previously extended to April 15, 2020) have until June 15, 2020 to file those returns. Payments due with these returns are also extended to the new due date. For returns with original or extended due dates of April 15, 2020 (previously extended to May 15, 2020), the due date is extended to July 15, 2020. Payments due with these returns are also extended to the new due date. The July 15, 2020, due date also applies to returns due on May 15 or June 15, 2020.

The PRTD will not impose interest, surcharges or penalties if the tax payments are made with the returns.

AD 20-09 also provides that requests for extensions to file these returns can also be made if filed by the new extended due dates.

Employers and withholding agents — informative returns filing

The PRTD extended the due date announced in IB 20-08 for informative returns. Under AD 20-09, the due date for filing informative returns for 2019 that originally were due on March 31 is extended from April 15, 2020, to May 15, 2020.

In addition to guidance issued through AD 20-05, the PRTD stated (Informative Bulletin 20-08) that it would not impose penalties on late-filed informative statements for tax year 2019 that otherwise were due March 31, provided they were filed no later than April 15, 2020, through the IRS Unified System (SURI for its Spanish acronym).

Other tax returns, declarations, forms and payments

The PRTD is extending the due dates announced in AD 20-05 for all other returns, declarations and forms (Other Returns) due in March or April 2020. The PRTD extended the due date for those Other Returns to June 2020. For example, if the original due date was March 15, 2020, the extended due date is June 15, 2020.

For Other Returns due in May or June 2020, the extended due date is in July 2020. For example, if the original due date was May 15, 2020, the extended due date is July 15, 2020.

The PRTD will not impose interest, surcharges or penalties if the tax payments are made with the returns.

There are certain tax obligations, generally non-income tax related, that are not covered by these extended filing and payment dates and are due on their original dates.

Bonds and internal revenue licenses

Bonds and internal revenue licenses with a due date from March 15 to April 30, 2020, are automatically extended to May 31, 2020.

Sales and use tax (SUT)

AD 20-09 further extends the due dates for the monthly SUT return for March, April and May. The due date for the return due for March 2020 is extended from April 20, 2020 to May 20, 2020. The due date for the return due for April is extended from May 20, 2020, to June 22, 2020, and the due date for the return due for May is extended from June 22, 2020, to July 20, 2020.

Additionally, the PRTD extended the due dates for the Form SC 2915D, *Monthly Import Tax Return*, and the corresponding payments for the months of March, April and May. The due date for the Monthly Import Tax Return and payment for March 2020 is extended from April 10, 2020, to May 11, 2020, and the due date for the return and payment for April 2020 is extended from May 10, 2020, to June 10, 2020. The due date for the return and payment for May 2020 is extended from June 10, 2020, to July 10, 2020.

The PRTD also stated that it will not impose penalties for noncompliance with the biweekly SUT payments for the months of March, April, May and June 2020, provided the full amount of the SUT due for those months is paid with the monthly SUT returns.

Other cash flow tax relief measures

In AD 20-10, the PRTD announced the following measures to help ease the tax burden on taxpayers during this crisis:

- No penalties will be imposed for missing or insufficient estimated tax payments, which are required by individuals and corporations for tax year 2020; the penalties will not be imposed if the first and second installment payments are timely made in equal amounts by the due dates of the next two estimated installments, together with the corresponding estimated income tax payments due.
- Withholding agents are not required to do the 10% income tax withholding at source on payments for services performed, but the service provider may choose to have the withholding continue; the waiver from the withholding is temporary during the period from March 23, 2020, to June 30, 2020.
- Taxpayers may request that income tax refunds, and any accumulated and unused credits for the SUT paid on imports of taxable items for resale, be credited against other tax liabilities, such as employer payroll, income and sales taxes.
- Taxpayers may enter into installment payment agreements, without the imposition of interest, surcharges and penalties, for taxes due for tax year 2019; the taxpayer must be in good standing with the PRTD and must begin making payments by the due date of the return, as extended by AD 20-09.
- SUT does not have to be paid on the import or purchase of taxable goods for resale from April 6, 2020, to June 30, 2020 by merchants with a reseller certificate.

Employer payroll tax deposits with the PRTD seem to be covered under the extended dates provided for the other returns, forms and payments, which are now due in June and July.

Under AD 20-09, taxpayers who decide or need to request an extension for their income tax returns due on the dates provided in AD 20-09 should have the six-month extension period counted from the new extended dates.

Unemployment insurance benefits

Puerto Rico requires employers to notify certain employees of the availability of unemployment insurance due to COVID-19

The Puerto Rico Department of Labor and Human Resources has issued guidance (Circular Letter (CL) 2020-02) requiring employers to notify employees of the availability of unemployment insurance if they are laid off or have their workday permanently reduced as a result of COVID-19.

Under CL 2020-02, employers must notify employees of the availability of unemployment insurance at the time of employment separation or reduction in the workday. Employers should use the model notification provided in CL 2020-02 and should send the notification by letter, email or text message. Employers also may provide a brochure with the unemployment information.

The model notification explains how laid-off employees or those with reduced workdays may file a claim for unemployment benefits. Specifically, those employees will have to provide the following information:

- Complete name
- Social Security number
- Authorization to work if not US citizens or residents

The information may be submitted through the Department of Labor and Human Resources' website at www.trabajo.pr.gov.

Rhode Island

Filing extensions and payment deferrals

Update: May 29, 2020

Rhode Island businesses unable to file tax returns due to COVID-19 may request abatement of penalty

The Rhode Island Division of Taxation issued new Form PW, *COVID 19 Coronavirus Hardship Penalty Waiver Request* for businesses affected by COVID-19 for use in requesting abatement of penalties for the late filing of tax returns, including withholding tax returns. (*Rhode Island Division of Taxation Advisory 2020-23, May 27, 2020.*)

Taxpayers have the right, under Rhode Island Regulation 280-RICR-20-00-4 to request that penalties be abated where there was no negligence or intentional disregard of the law, and the COVID-19 emergency meets this requirement. COVID-19 penalty-waiver requests should be for the periods beginning on or after January 1, 2020, and must include a reason for the waiver request.

Businesses that received an interest and penalty assessment as a result of a COVID-19-related hardship should complete Form PW and mail it, along with a copy of the assessment(s), to the Division at:

RI Division of Taxation
Attn: COVID-19 Hardship
One Capitol Hill
Providence, RI 02908

Option to set up a payment plan is available

- **Existing monthly installment agreements.** Businesses already under an existing monthly installment payment plan that are unable to make their monthly installment payment should contact the Division by email at tax.collections@tax.ri.gov or by phone at +1 401 574 8650. Options such as partial payments or payment extensions are available to taxpayers in need.
- **New installment agreements.** Businesses unable to fully pay their Rhode Island state taxes (including withholding), may apply for an installment agreement. The installment agreement form is available here. Instructions and other information are available here.

Unemployment insurance benefits

Update: July 17, 2020

Rhode Island won't charge employer accounts for COVID-19 UI benefits through August 2, 2020

Rhode Island Governor Gina Raimondo's recently issued Executive Order 20-52 extends to August 2, 2020, the provision under Executive Order 20-19 that provides that COVID-19 unemployment insurance (UI) benefits won't be charged to employer UI accounts. (EY Payroll Newsflash Vol. 21, #177, 4-21-2020.)

Businesses are required to report employees who refuse to return work

According to the Rhode Island Division of Taxation, businesses that are reopening should report workers who refuse to return to work here.

Unless workers can prove good cause for their refusal to return to work, they will be considered ineligible to continue to receive UI benefits.

According to the Rhode Island Department of Labor & Training, during the COVID-19 pandemic, good cause for refusal to return to work may include:

- A person tests positive for COVID-19 and therefore is unable to work.
- A doctor recommends the individual not work because they are high-risk.
- The individual is the sole caregiver for someone who has no place to receive care (due to school/daycare closures) and cannot stay home alone.

Maximum weekly state UI benefit amounts increased as of July 1, 2020

The Department announced that beginning July 1, 2020, the maximum weekly UI benefit amount increased to $599, an increase of $13. For claimants reporting five or more dependents, the maximum weekly UI benefit amount is $748.

Effective July 1, 2020, the maximum weekly temporary disability insurance (TDI) amount increased to $887 per claimant and $1,197 for claimants with five or more dependents.

Rhode Island COVID-19 UI benefits will not be charged to employer accounts; reimbursing employers also to receive some relief

Under Rhode Island Governor Gina Raimondo's Executive Order 20-19, retroactive to January 27, 2020, contributory employer accounts will not be charged with workers' unemployment insurance (UI) benefits attributable to COVID-19. (*ADV 2020-15, Rhode Island Division of Taxation, April 15, 2020.*)

The Rhode Island Division of Taxation notes, however, that while contributory employers' accounts will not be charged for COVID-19 UI benefits, because these benefits will be charged to the state's balancing account it is still possible for employer tax rates to increase for 2021.

Reimbursing employers

Nonprofit and government entities that elected to reimburse the state for UI benefits will still be charged for COVID-19 UI benefits, except under the federal CARES Act exception that reduces, by 50% through December 31, 2020, the amount by which reimbursable employers are required to reimburse states for benefits paid to their workers who claim unemployment insurance benefits. In other words, for that period, reimbursable employers will have to pay only half of the cost they would normally be charged, not the full 100%.

Further, it is anticipated that the CARES Act will provide flexibility for employers to make reimbursement payments related to UI benefits in connection with COVID-19.

One-week waiting period is waived for workers filing COVID-19 UI benefit claims

The Rhode Island Department of Labor & Training has announced that the one-week waiting period for workers filing for COVID-19 UI benefits is waived. This is also true for those workers filing for temporary disability insurance (TDI) benefits if ill with COVID-19. (*Emergency regulation §260-40-05-2*.)

Nothing on the Department's website specifically indicates that the work search requirements are waived for COVID-19 UI benefit claimants, but the online claim filing system does ask if the claim is being filed for COVID-19 reasons.

Also, the Department's frequently asked questions on filing for UI benefits states:

Question: Am I required to look for work while I collect unemployment?

Answer: If you have a definite return to work date within 12 weeks of your last day of work, are a member of a labor union that uses a "hiring hall" or are in a department approved training program, you may be exempt from looking for work.

In addition, a memo recently released by the Department provides that under certain circumstances, workers filing for COVID-19 Pandemic Unemployment Assistance (PUA) benefits may not be required to be able and available for work (*Memorandum regarding unemployment insurance eligibility – pandemic response*.):

3.2 Eligibility Requirements

A. Any individual who is separated from employment as the result of a layoff shall be eligible to collect benefits if they satisfy the monetary requirements as required pursuant to R.I. Gen. Laws §28-44-11 and the non-monetary requirements as prescribed in 28-44- 1, et. seq., including, but not limited to being able and available to work.

B. Any individual who fails to meet the monetary requirements or non-monetary requirements to establish a claim shall not be eligible to collect benefits.

4.2 Eligibility

B. In accordance with UIPL 16-20, the Department requires eligible individuals to be able and available to work as required by state law, unless the individual is unemployed or partially unemployed due to the following circumstances regarding COVID-19:

1. The individual or someone they reside with has been diagnosed with COVID-19 or is seeking a diagnosis.
2. The individual is the primary caregiver for a family member, or member of their household, that has been diagnosed with COVID-19 or is seeking a diagnosis.
3. The individual has been quarantined by a medical professional or public health official as a result of COVID-19.
4. The individual is the primary caregiver for a child whose school or childcare center has been closed as a result of COVID-19.
5. The individual or a member of their household is at high risk of contracting COVID-19 because of their medical condition, their age or other rationale as offered by the Department of Health.

C. Individuals unemployed for the reasons articulated in part 3.2 (B) shall be eligible to collect Pandemic Unemployment Assistance if other applicable eligibility requirements as prescribed in R.I. Gen. Laws §28-44-1, et. seq., and 260-RICR-40-05-1 are satisfied.

Teleworker nexus and income tax withholding

Update: May 28, 2020

Rhode Island provides guidance on nexus and apportionment for employees working in the state temporarily due to COVID-19

In ADV 2020-24, the Rhode Island Department of Revenue, Division of Taxation (the Department) provides guidance concerning the assertion of nexus and apportionment for employees temporarily working from their homes within the state due to the COVID-19 emergency. For guidance issued by the Department pursuant to income tax withholding for employees working within and outside of the state due to COVID-19, see EY Tax Alert 2020-1391.

Sales and use tax nexus

During Rhode Island's COVID-19 state of emergency, the presence of one or more employees who previously worked in another state but, solely due to the state of emergency, are working remotely from Rhode Island will not in and of itself trigger nexus for Rhode Island sales and use tax purposes. Property that is temporarily located in Rhode Island during the state of emergency solely to allow one or more employees to work from home temporarily in Rhode Island (e.g., computers, computer equipment or similar property) during the state of emergency will also not, in and of itself, trigger nexus for Rhode Island sales and use tax purposes.

This policy is contingent on the fact that there are no other personnel, or any properties or activities, of a remote retailer within Rhode Island that would constitute sufficient physical presence, either before or during the state of emergency, to establish nexus for Rhode Island sales and use tax purposes. This policy is further contingent on the fact that an out-of-state retailer does not have sufficient sales into Rhode Island, either in the number of transactions or in the amount of gross receipts, during the calendar year that would warrant a finding of nexus for Rhode Island sales and use tax purposes.

Corporate income tax

For the duration of Rhode Island's COVID-19 state of emergency, the Department will not seek to establish nexus for Rhode Island corporate income tax purposes solely because an employee is temporarily working from home during the state of emergency, or because an employee is temporarily working from home during the state of emergency and is using property to allow the employee to work from home (e.g., computers, computer equipment or similar property) temporarily during the state of emergency.

In addition, the performance of any services by such employees within Rhode Island will not, of itself, cause their employers to lose the protection of Public Law 86-272 provided that there are no other activities being conducted within Rhode Island on behalf such out-of-state corporate employers, either before or during Rhode Island's coronavirus state of emergency, that would establish nexus with Rhode Island for corporate income tax purposes.

Apportionment

For the duration of Rhode Island's COVID-19 state of emergency, services performed by one or more employees who previously worked in another state but, solely due to COVID-19, are now working remotely from Rhode Island will not be considered by the Department to increase the numerator of their employer's payroll factor for purposes of apportioning income.

Update: May 27, 2020

Rhode Island issues guidance for income tax withholding on wages of employees temporarily working within and outside of the state due to COVID-19

In ADV 2020-22, the Rhode Island Department of Revenue, Division of Taxation provides temporary relief from income tax withholding for employees who are temporarily working from home outside of the state where their employer is located due to the COVID-19 emergency. The guidance is explained in detail in emergency regulations. (280-20-55-14.)

Nonresidents who normally work in Rhode Island but are temporarily working outside the state due to COVID-19

Under the emergency regulation, the income of employees who are nonresidents temporarily working outside of Rhode Island solely due to COVID-19 will continue to be treated as Rhode Island-source income for Rhode Island withholding tax purposes.

Example: A Massachusetts resident works for a Rhode Island employer, normally performs his tasks within Rhode Island and has wages that are subject to Rhode Island income tax withholding. If the employee is temporarily working within Massachusetts due to the pandemic, the employer should continue to withhold Rhode Island income tax because the employee's work is derived from or connected to a Rhode Island source.

Residents working for an employer outside of Rhode Island and normally work outside of Rhode Island but are temporarily working within Rhode Island due to COVID-19

Under the emergency regulation, Rhode Island will not require employers located outside of Rhode Island to withhold Rhode Island income taxes from the wages of employees who are Rhode Island residents temporarily working within Rhode Island solely due to COVID-19.

Example: A Rhode Island resident works for an employer in Connecticut, normally performs her tasks within Connecticut and has wages that are subject to Connecticut income tax withholding. If the employee is temporarily working within Rhode Island solely due to the pandemic, the employer will not be required by Rhode Island to withhold Rhode Island income taxes from that employee's wages for the duration of the emergency.

South Carolina

Filing extensions and payment deferrals

South Carolina extends withholding tax deadlines

The South Carolina Department of Revenue announced that in an effort to assist taxpayers with the COVID-19 emergency, various deadlines for filing and paying state taxes administered by the agency are extended.

This includes, but is not limited to, South Carolina withholding tax, individual income taxes, corporate income taxes, sales and use tax, and admissions tax.

Tax returns and payments due April 1, 2020, through May 31, 2020 are now due by June 1, 2020. Penalty and interest will not be charged if returns and payments are submitted by June 1, 2020.

The Department is automatically applying this tax relief for all applicable returns and payments; taxpayers will not be required to take any additional action. Returns filed electronically by impacted taxpayers through the electronic system MyDORWAY do not require any action to qualify for this relief. Taxpayers filing by mail and who are relying on the COVID-19 relief should write "CORONAVIRUS" or "COVID-19" at the top of any paper return or complete the "disaster area" check box if one is provided on the return.

The Department is extending its tax relief to:

- Individuals and businesses located in South Carolina who have been impacted by COVID-19
- Taxpayers who have businesses in South Carolina with offices in South Carolina
- Taxpayers whose tax records are located in South Carolina
- Taxpayers whose returns are prepared by tax professionals impacted by COVID-19. (*Information letter 20-03*.)

For more information call +1 844 898 8542.

For information on South Carolina's response to COVID-19, go to the South Carolina Department of Health and Environmental Control's dedicated website.

Unemployment insurance benefits

South Carolina Executive Order exempts COVID-19 furlough payments from covered earnings for UI purposes

Under Executive Order 2020-22, signed by Governor Henry McMaster on April 7, 2020, the South Carolina Department of Employment & Workforce is instructed to exclude from the definition of South Carolina unemployment insurance (UI) wages payments employers make to employees during a period they are laid off because of the economic impact of COVID-19 ("COVID-19 Support Payment").

As a result of the Executive Order, qualifying COVID-19 Support Payments are excluded from wages subject to South Carolina state unemployment insurance employer contributions and are not considered when determining an employee's eligibility for South Carolina UI benefits.

Defining what is a COVID-19 Support Payment

A COVID-19 Support Payment is a voluntary payment, or series of payments, made by an employer to an employee in response to furloughing the employee. The payment is provided to the employee for past services that the employee or the employee's estate is not obligated to repay, is provided without obligation for the employee to perform or not perform any act in connection with the individual's status as an employee, and that is made pursuant to a plan provided to the Department on a form the Department will prepare and publish to its website.

Requirement for COVID-19 Support Payment Plans

Employers are required to submit a COVID-19 Support Payment Plan submitted to the Department that includes the following details:

- Anticipated length of the furlough
- The amount of the COVID-19 Support Payments
- The names of the employees receiving the COVID-19 Support Payments
- An attestation that the employer is not making the COVID-19 Support Payments as a form of remuneration for the employees' performance of personal services during the furlough and that employees are not required to return or repay the COVID-19 Support Payments

Employers will file unemployment insurance claims according to guidance provided by the Department, for each employee receiving COVID-19 Support Payments.

A COVID-19 Support Payments Plan that satisfies the requirements is not required to be approved by Department prior to an employer making COVID-19 Support Payments.

Teleworker nexus and income tax withholding

Update: May 21, 2020

South Carolina provides nexus and income tax withholding guidance for employees working temporarily in the state due to COVID-19

The South Carolina Department of Revenue issued guidance in SC Information Letter #20-11 to provide temporary relief from the assertion of nexus and income tax withholding instructions for employees working from home temporarily within and outside of the state due to COVID-19.

Income tax withholding

Under normal circumstances, South Carolina employers located in the state are required to withholding income tax from the wages of residents and nonresidents working within the state. If South Carolina residents work outside of the state, those wages are not subject to South Carolina income tax withholding if the state where those wages are earned impose state income tax withholding on those wages. (SC Code §12-8-520.)

Pursuant to the COVID-19 emergency, and from the period March 13, 2020, through September 30, 2020, the Department will not use the temporary change of an employee's work location due to COVID-19 to impose the income tax withholding requirement under SC Code §12-8-520; however, this relief does not apply to workers whose status changed from temporary to permanent assignment during this period.

During the COVID-19 relief period, a South Carolina employer's income tax withholding requirement is not affected by the current shift of employees working on the employer's premises in South Carolina to teleworking from outside of South Carolina. Accordingly, the wages of nonresident employees temporarily working remotely in another state instead of their South Carolina business location continue to be subject to South Carolina withholding.

Further, during the COVID-19 relief period, an out-of-state employer is not subject to South Carolina's income tax withholding requirement solely due to the shift of employees working on the employer's premises outside of South Carolina to teleworking from South Carolina. Accordingly, the wages of a South Carolina resident employee temporarily working remotely from South Carolina instead of their normal out-of-state business location are not subject to South Carolina withholding if the employer is withholding income taxes on behalf of the other state.

Nexus

The Department will not use changes in an employee's temporary work location due to the remote work requirements arising from, or during, the COVID-19 relief period (March 13, 2020 through September 30, 2020) solely as a basis for establishing nexus (including for Public Law 86-272 purposes) or for altering apportionment of income.

South Dakota

Filing extensions and payment deferrals

South Dakota employers will not be penalized for late filing of SUI returns and payments

Recently enacted SB 187 exempts South Dakota employers from penalties if unable to file state unemployment insurance (SUI) tax returns or timely pay the associated contributions due to a temporary business shutdown or reduction in force as a result of COVID-19. The legislation waives the $25-per-month penalty assessed for both a late payment and a late return filing. The legislation, however, does not relieve the employer of interest on the late payment. (*South Dakota Department of Labor and Regulations, COVID-19 webpage, April 2020.*)

For additional information, contact the South Dakota Department of Labor and Regulations Reemployment Assistance Tax Unit at +1 605 626 2312 or see the Department's website.

Unemployment insurance benefits

South Dakota COVID-19 UI benefits will not be charged to employer accounts

Recently enacted SB 187 provides that South Dakota employer accounts will not be charged with workers' unemployment insurance (UI) benefits attributable to COVID-19. As a result, the South Dakota Department of Labor and Regulation issued updated guidance regarding COVID-19 UI benefits (referred to as reemployment assistance by the Department). (COVID-19 and reemployment assistance (*unemployment insurance) guidance for businesses, updated April 1, 2020; DLR employer connection newsletter, distributed by email on April 3, 2020*.)

The following is a FAQ provided by the Department regarding the legislation:

Question: If I lay off employees due to COVID-19, will my UI/RA rates go up?

Answer: Legislation enacted at the federal level provides that employer UI tax rates cannot be negatively impacted by the UI benefits paid in conjunction with COVID-19. Governor Kristi Noem signed Senate Bill 187 on March 31 to comply with that. SB 187 says in part:

"However, no benefits paid on the basis of a period of employment may be charged to the experience rating account of any employer, except as provided in §61-5-41, if the claimant: (10) Is unemployed as a direct result of an employer temporarily ceasing operations or instituting a reduction in force in response to Coronavirus Disease 2019 or because the claimant has been requested to isolate or quarantine as a result of Coronavirus Disease 2019 regardless of whether the claimant has tested positive for Coronavirus Disease 2019. Relief of charges under this subdivision may be granted for no more than the duration of any emergency relating to Coronavirus Disease 2019 as declared by the Governor."

Work search requirements and the one-week waiting period are waived for workers filing COVID-19 UI benefit claims

Because Governor Noem declared a state of emergency on March 4, 2020 (EO 20-24, as updated on March 20, 2020), Department Cabinet Secretary Marcia Hultman has exercised authority to waive the work-search requirement for workers filing for COVID-19 UI benefits during the period starting March 21, 2020, and continuing until the declared state of emergency ends (currently scheduled for April 12, 2020). (*COVID-19 and reemployment assistance (unemployment insurance) guidance for businesses, updated April 1, 2020*.)

Prior to the March 21, 2020, workers filing for UI benefits due to COVID-19 were not required to meet Department weekly work search requirements if they are temporarily unemployed and expected to return to work with their employers within 10 weeks. A layoff lasting longer than 10 weeks would have required the person to be able, available and actively looking for work. (*Department's COVID-19 Reemployment Assistance webpage*.)

SB 187 waives the one-week waiting period for UI benefits associated with COVID-19 because the governor declared a state of emergency,

For more information regarding the Department's response to COVID-19, go here.

Tennessee*

Unemployment insurance benefits*

Update: July 29, 2020

Tennessee won't charge employer accounts for COVID-19 UI benefits through July 31, 2020

Tennessee Department of Labor and Workforce Development Commissioner announced that employers will not be charged for COVID-19 UI benefits retroactively to March 15, 2020, and through July 31, 2020.

The change is the result of enactment of SB 2520 (Chapter 745), that also codifies the waiver of the one-week waiting period for COVID-19 UI benefits contained in Executive Order 15.

Section 2 of the bill that provides for the non-charge of COVID-19 UI benefits is repealed on January 1, 2021; however, the Department announced it will begin charging employer accounts after July 31, 2020.

Work search requirements and one-week waiting period waived under executive orders for workers filing COVID-19 UI benefit claims

Executive Order 15, issued by Tennessee Governor Bill Lee on March 19, 2020, waived work search requirements for individuals affected by COVID-19. Executive Order 36 waived the one-week waiting period and continued the waiver of the work search requirements. These provisions are extended through August 29, 2020, under Executive Order 50.

Employers must report employees who refuse to return to work

According to the Department's FAQs for employers, employers should electronically report workers who refuse to return to work here. Refusing to return to work is generally a disqualifying circumstance and will keep workers from collecting further UI benefits. Certain limited COVID-19-related exceptions may allow workers to refuse to return to work and continue to collect UI benefits.

For more information on the Department's response to COVID-19, go here.

Ernst & Young LLP insights

Because the legislation is retroactive, employers should review benefit charge statements to confirm the Department has removed UI benefit charges related to COVID-19 from their experience account.

Tennessee is one of four states (including New Hampshire, New Jersey and Vermont) that assign SUI tax rates on a fiscal year, rather than a calendar year, basis. As a result, new tax rate calculations take effect as of July 1, 2020, and are effective through June 30, 2021, though rates may change as of January 1, 2020, if the size of the SUI trust fund as of December 31, 2020, falls low enough to move to a new rate schedule.

Texas

Filing extensions and payment deferrals

Texas extends first-quarter 2020 SUI tax filing and payment deadline

The Texas Workforce Commission (TWC) announced that the deadline for filing the first-quarter 2020 state unemployment insurance (UI) contribution and wage report and paying the corresponding payment was extended to May 15, 2020.

According to a TWC representative, the extension waives any penalties or interest for late filing and payment.

Employers are asked to not start filing their first-quarter returns until after April 15, 2020, to allow uninterrupted internet access for individuals filing for UI benefits and to help ensure that employers have access to their online accounts.

See the TWC's website for more information for employers regarding the Department's response to COVID-19.

Unemployment insurance benefits

Texas employers will not be charged for UI benefits related to COVID-19

The Texas Workforce Commission (TWC) announced that state unemployment insurance (UI) benefits paid as the result of COVID-19 will not be charged against employer accounts. (*News release, $2 Trillion Federal Stimulus Package to Fund Array of Benefits for Texas Workers, Employers, April 1, 2020*.)

Employers should carefully review future benefit-chargeback statements (Notice of Maximum Potential Chargeback) to be sure that they are not being charged for COVID-19 UI benefits and, if the notice shows erroneous charges, file a protest within the 30-day time limit shown on the notice. (*Telephone conversation, TWC tax department representative, 4-3-2020; email response to inquiry, legal department representative, 4-8-2020*.)

We requested guidance from the TWC's legal department and received the following responses by email:

Question: Is the employer non-charge-back automatic or must employers request it?

Answer: Employers that receive notices of claims should timely respond to those notices. If the reason for the job separation is related to COVID-19, the employer's account is not supposed to be charged. It is important that employers respond timely in order to be able to have appeal rights in case the employer receives a determination that states the employer will be charged.

Question: Will employees filing for non-medical reasons, such as an employer shutdown or slowdown for COVID-19, be eligible for UI benefits? Does the noncharging-provision apply to employees ordered to isolate because they came in contact with a potentially infected person (presumed COVID-19, but no test results yet)?

Answer: Employees filing claims due to an employer shutdown are presumably out of work through no fault of their own, so they would qualify for unemployment benefits. For employees who were ordered to isolate by a medical provider, the answer is trickier. While employees may be out of work through no fault of their own, the fact that they are not medically able to work may render them ineligible to receive benefits until they return to a status of being medically able to work.

Note that at the time of this alert, the TWC's frequently asked questions (FAQs) for employers on COVID-19 were as follows:

Question: Is there any way an employer can avoid the cost of unemployment benefits?

Answer: An employer may be eligible for protection from chargebacks from UI benefits if the evidence shows that the work separation was for medical reasons. However, if the reason for the work separation was merely a cautionary period of time off to minimize potential exposure of others to someone who might be infected, but might not be, chargeback protection would most likely not be extended to the employer. To minimize the chance of unemployment claims being filed, the employer can encourage employees to work from home if the job is such that remote work is possible. Proper recording of work time is necessary, and the employer would need to work with the employees to set up a timekeeping system that functions well and takes all time worked into account.

TWC to waive one-week waiting period and work search requirements for workers filing COVID-19 UI benefit claims

The TWC's COVID-19 website for workers states that although the Texas legislature has not changed any UI laws or rules concerning UI benefits filings during the COVID-19 pandemic, the TWC will waive work search requirements and the waiting week for those UI benefit claimants affected by COVID-19.

See the TWC's website for more information for employers regarding the Department's response to COVID-19.

Utah

Unemployment insurance benefits

Utah COVID-19 UI benefits to be charged to social account, not directly to employer accounts

The Utah Department of Workforce Services announced that individual employer unemployment insurance (UI) accounts will not be charged for workers' UI benefits attributable to COVID-19. Instead, these UI benefits will be charged to the Department's social cost account, which is used to spread the cost of UI benefits not charged to a specific employer's account to all employers as one of the elements of the annual contribution rate calculation. (*COVID-19 and unemployment insurance, frequently asked questions for employers (FAQs), updated April 8, 2020.*)

According to the Department, effective immediately, all UI benefit costs attributable to COVID-19 will be charged to social costs instead of the employer's benefit ratio (basic tax rate).

Currently social costs are .001, or $1 for every $1,000 of wages paid. An employer's UI tax rate for 2020 is already set and will not change due to COVID-19 or any other claims; however, the Utah UI tax rates for 2021 will include all UI benefits costs from July 1, 2019 through June 30, 2020, and three prior fiscal years. The UI tax rate for 2022 will include all benefits costs from July 1, 2020, through June 30, 2021, and three prior fiscal years.

See Utah's online Employer Handbook for more information about social costs and UI tax rate calculations.

Reimbursing employers

Governmental and tax-exempt organizations that reimburse the Department for all UI benefits paid will continue to be billed for UI benefits attributable to COVID-19. However, the Department will allow these employers an additional month to make their monthly payment.

According to the FAQ, the Department will allow reimbursable employers one additional month to pay their reimbursement/bill. For example, the reimbursement for unemployment insurance benefits paid during the month of February 2020 will be due by April 30, 2020.

In addition, the Department will waive penalty and interest associated with late payments due to COVID-19 and will consider installment agreements provided the employer keeps their contact information current and remains in contact with the Department.

Reimbursable employers are still required to file Form 794-N, *Reimbursable Employment and Wage Reports*, by the last day of the month that follows the end of each calendar quarter.

Note that under the CARES Act, reimbursing employers are required to refunded up to 50% of the COVID-19 UI benefit claims that they reimburse to the state. We expect that Utah will soon update its guidance on reimbursing employers to reflect this federal provision. (*See the U.S. Department of Labor's program letter to the states about COVID-19 UI benefits and reimbursing employers*.)

Work search requirements may be waived for workers filing COVID-19 UI benefit claims; the one-week waiting period remains in effect

In its frequently asked questions (FAQs) for employees, the Department indicates that workers filing for UI benefits for reasons related to COVID-19 may be granted a waiver from the weekly requirement to search for work. However, the requirement to serve a one-week waiting period before receiving benefits currently remains in effect for COVID-19 UI benefits.

For more information regarding the Department's response to COVID-19, go here.

Vermont

Unemployment insurance benefits

Vermont employers will not be charged for COVID-19 UI benefits

Recently enacted HB 742 provides that Vermont employer accounts will under certain circumstances not be charged for unemployment insurance (UI) benefits paid to employees in connection with COVID-19.

Under the law, and for an eight-week period, employers will not be charged for benefits paid if any of the following applies:

- Because the employer temporarily ceased operation, either partially or completely, at the individual's place of employment in response to a request from a public health authority with jurisdiction that the employer cease operations because of COVID-19
- In response to an emergency order or directive issued by the governor or the president related to COVID-19, or because the employer voluntarily ceased operations due to the actual exposure of workers at that place of employment due to COVID-19
- If the individual becomes unemployed as a direct result of a state of emergency declared by the governor or the president in relation to COVID-19 or an order or directive issued by the governor or president in relation to COVID-19
- Because the individual has been recommended or requested by a medical professional or a public health authority with jurisdiction to be isolated or quarantined as a result of COVID-19, regardless of whether the individual has been diagnosed with COVID-19

Employers will only be eligible for relief of charges for UI benefits paid if they rehire or offer to rehire those employees within a reasonable period of time after the employer resumes operations at the employees' place of employment or upon the completion of the employee's period of isolation or quarantine.

The Commissioner of Labor may extend the eight-week period of non-charge upon a request from a local health official or the Commissioner of Health, or if any applicable emergency order or directive is issued by the governor or the president, and under other relevant conditions or factors.

Following are frequently asked questions (FAQs) published by the Vermont Department of Labor concerning the law:

Question: What impact does the law have on Vermont employers?

Answer: The law provides the following relief for employers:

- The employer's experience ratings will not be charged for benefits paid to employees for any of the COVID-19-related reasons (as detailed below in the employee question Am I eligible for benefits)
- If the employer rehires or offers to rehire employees within a reasonable time, it will also be relieved of charges for up to eight weeks where:
  - The employer temporarily ceased operations in response to request from a public health authority, emergency order from the Governor or President, or actual exposure to COVID-19 at the workplace
  - The employee becomes unemployed due to a state of emergency declaration or order/directive of the President or Governor; or employee isolates or quarantines at recommendation of medical professional or public health authority

Question: Am I eligible for unemployment benefits?

Answer: As the result of the law, the eligibility requirements for unemployment benefits were expanded to include the following areas:

Temporarily laid-off:

- Your employer ceases operations for a COVID-19-related reason
- As a direct result of an order issued by the Governor or President
- For the employee's own COVID-19 related isolation/ quarantine

Left employment due to:

- Being sick or isolated as the result of COVID-19
- An unreasonable risk of exposure at your place of employment
- Caring for a family member who is sick or isolated as the result of COVID-19
- Caring for a family member who had an unreasonable risk of exposure at their place of employment
- Need to care for a child whose school or child care center closed

Work search requirements are waived for workers filing COVID-19 UI benefit claims

The Department announced that work search requirements are waived for workers receiving UI benefits as a result of COVID-19. The work search waiver applies to all UI claimants, not just those that have a return to work date.

One-week waiting period likely waived

In an Executive Order (see #18) issued by Vermont Governor Phil Scott, the Vermont Department of Labor was instructed to temporarily remove all mechanisms that would delay the payment of UI benefits to claimants in connection with COVID-19. This likely means that the one-week waiting period for UI benefits should be waived, although the provision is not included in the recent legislation or in the Department's guidance.

Vermont law inactivates state's workshare program in July 2020 despite federal incentives under the CARES Act for COVID-19 relief

Recently enacted SB 108 (Act 85) provides, among other unemployment insurance (UI) provisions, that the Vermont Department of Labor will inactivate its short-time compensation program (also referred to as a work share program) as of July 1, 2020. After that time, the only way the program can resume operations is by enactment of legislation by the Vermont General Assembly or if the legislature is not in session, by Joint Fiscal Committee.

According to a U.S. Department of Labor (DOL) program letter to state workforce agencies explaining the provisions of the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, the following were provided as incentives for states to maintain or implement a short-term compensation program (DOL UIPL 14-20; EY *Payroll Newsflash* Vol. 21, #137, 4-6-2020):

- **Short-term compensation (STC) also known as shared work or work share.** States may be reimbursed for 100% of STC benefits costs up to a maximum of 26 weeks of STC per individual. These reimbursements are available starting with weeks of unemployment beginning on or after March 27, 2020, and ending with weeks of unemployment ending on or before December 31, 2020.
- If a state enacts a new law providing for the payment of STC after March 27, 2020, reimbursements are available starting with the effective date of the state law enactment and ending with weeks of unemployment ending on or before December 31, 2020.
- States without an existing STC program in the state's UC law may provide STC benefits under an agreement with the DOL and be reimbursed for 50% of STC benefit costs, with the employer paying the other half, up to a maximum of 26 weeks of STC per individual. This federal STC program is available for weeks of unemployment beginning on or after the date on which the state enters into an agreement with the Department and ending with weeks of unemployment ending on or before December 31, 2020.
- A $100 million grant to be shared across states for implementation or improved administration, and promotion and enrollment of a state's STC program.

Background on Vermont's short-term compensation program

The Department's plan to make its work share program inoperable as of July 1, 2020, stems from the fact that only one employer made use of the program since 2014.

The state's UI benefit law was amended in 2014 to allow unemployed workers not covered by a work share program the ability to collect partial UI benefits. The law changed the definition of "disregarded earnings," income earned while unemployed that does not affect UI benefit eligibility from the former 30% of the worker's weekly wage to 50%. As a result, and because of the arduous application and approval process, there was less incentive for employers and employees to apply for a work share plan. (*Vermont House proposed amendment to SB 108.*)

Ernst & Young LLP insights

In light of the incentives now available for states to adopt short-time compensation programs and the fact that SB 108 was passed before enactment of the federal CARES Act, it is possible that further action may be taken to delay the law's effective date to accommodate the need for partial UI claims during the COVID-19 crisis.

We have contacted the Vermont Department of Labor Commissioner's office for comment and the Trade Act Program coordinator told us that the impact of SB 108 will be further discussed with Department officials within the commissioner's office. (*Telephone conversation, April 8, 2020.*)

Paid leave

Vermont provides guidance on paid sick leave for employees affected by COVID-19

Employer paid sick leave for COVID-19 illnesses

Vermont employers are required to allow employees to accrue paid sick leave at a rate of one hour for every 52 hours worked. Effective January 1, 2019, employees are entitled to up to 40 hours of paid leave per year. Employers can choose to "front-load" paid sick leave at the beginning of the year. (EY *Payroll Newsflash* Vol. 17, #044, 3-10-2016.)

The following Department FAQ addresses paid sick leave for workers affected by COVID-19:

Question: What if I need to take time off from work because I contract COVID-19?

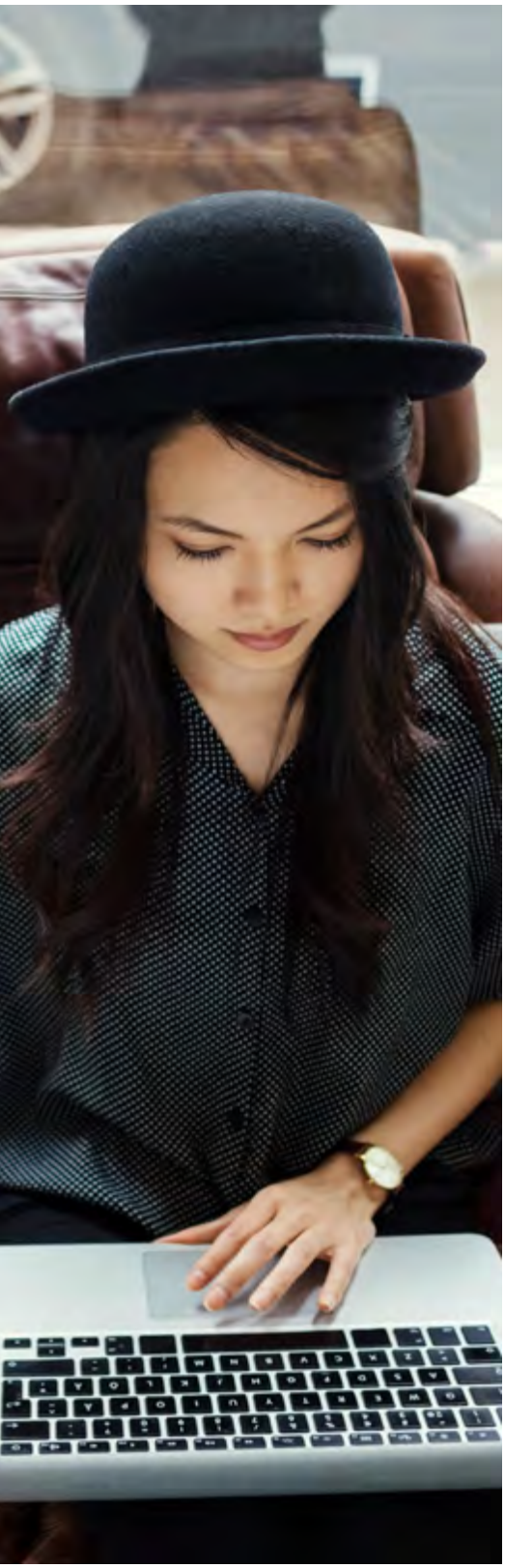
Answer: Employer-paid time off is the first and best option for employees in this case. If employer-paid time off is not available, under the Vermont Earned Sick Time law, employers are required to give employees 40-hours per year of earned sick time. Employees should check with their employer to confirm what, if any, accrued leave balances they have available.

- Information in English: https://labor.vermont.gov/document/update-2019-earned-sick-time-poster
- Information in Spanish: https://labor.vermont.gov/document/earned-sick-time-spanish-mandatory

As a result of H. 742 signed into law by Governor Phil Scott on March 30, you may also be eligible for unemployment benefits. For more information on establishing an initial unemployment claim, click here. Please note that Work Search Requirements have temporarily been waived as a result of COVID-19.

Vermont does not have a paid family and medical leave program

As we reported, Governor Scott again this year vetoed mandatory paid family and medical leave legislation, stating that he is ready instead to institute a voluntary plan. The bill (H. 107) would have established a state-run paid family and medical leave insurance program funded by a 0.20% tax on employees' wages. (EY *Payroll Newsflash* Vol. 21, #051, 1-10-2020.)



Teleworker nexus and income tax withholding

Update: June 16, 2020

Vermont issues income tax withholding guidance for employees working in the state temporarily due to COVID-19

The Vermont Department of Taxes issued guidance concerning the income tax and income tax withholding requirements that apply to wages paid for services provided temporarily in the state due to COVID-19.

Vermont nonresident income tax requirements

A nonresident temporarily living and working in Vermont has an obligation to pay Vermont income tax on the amount earned while living and performing work in Vermont. This rule applies even if the employee is working in Vermont due to the COVID-19 emergency and regardless of whether the employer is located within or outside of Vermont.

The Department provided guidance explaining that a Vermont personal income tax return must be filed (and Vermont income tax paid):

- If you are a resident, part-year resident of Vermont or a nonresident, and
- If you are required to file a federal income tax return, and
- You earned or received more than $100 in Vermont income, or
- You earned or received gross income of more than $1,000 as a nonresident. See 32 V.S.A. §5861 and §5823(b) (1-6) for information on sources of income.

Income tax withholding requirements

If businesses have employees working remotely in Vermont on a temporary basis only, the Department will not require the employer to change the employee's work state to Vermont for Vermont income tax withholding purposes.

The Department cautions that employers/employees should consider setting employees up in Vermont for income tax withholding if they intend to telework for an extended period, even if the arrangement is temporary.

Additionally, employees who have permanently moved to Vermont and make it their domicile are subject to Vermont income tax withholding if their employer operates within Vermont and/or those employees are working remotely in Vermont.

Virgin Islands

Unemployment insurance benefits

Virgin Islands COVID-19 UI benefits will not be charged to employer accounts; employers must give notice to COVID-19-affected workers

The Virgin Islands Department of Labor announced that state unemployment insurance (UI) benefits paid to workers due to COVID-19 will not be charged against employer accounts. (*Temporary changes to the Virgin Islands Unemployment Insurance Rules and Regulations in accordance with the Families First Coronavirus Response Act, Division D, April 19, 2020*.)

Per the Department's website, effective March 13, 2020, and ending December 31, 2020, the Department will not assess benefit charges against employer's unemployment insurance accounts. Therefore, the current flat tax rate of 2% (new employers) and 2.5% (experienced) shall remain during the state of health emergency.

Work search requirements and one-week waiting period waived for workers filing COVID-19 UI benefit claims

Department Commissioner Gary Molloy ordered that effective March 13, 2020 and through December 31, 2020, the requirement that workers search for work while collecting COVID-19-related UI benefits is waived for the following individuals:

- Individuals who are suffering from symptoms of the COVID-19 virus or disease
- Individuals whose business has closed based on the mandates of social distancing
- Individuals who are in quarantine or displaced from work to be able to care for a child in elementary or secondary school whose school or child care facility has been closed in response to COVID-19

Claimants must take reasonable steps to preserve their ability to come back to their job when the quarantine is lifted, or the illness subsides. If any employee is affected by COVID-19, they will be deemed to have "justifiable cause," as stated in Title 24 V.I.C 304(a)(A)(ii) for their failure to participate in such services.

Modification to the "able and available" policy

Through December 31, 2020, the requirement that a laid-off worker be "able and available" to work while receiving unemployment compensation benefits has been modified for the claimants listed above who are affected by COVID-19.

Employers must give notice of UI benefit availability to COVID-19-affected workers

Per Virgin Islands Governor Albert Bryan's Third Supplemental Executive Health Emergency Order, all employers must notify their employees who are impacted by COVID-19-related employment interruption or reduction in work hours of the following (model language may be found here):

- UI benefits are available to workers who are unemployed and who meet the requirements of the Virgin Islands UI eligibility laws. Employees may file a UI claim in the first week that employment stops or work hours are reduced to fewer than 20 hours in a week.
- For assistance or more information on a UI claim, workers may call the St. Croix office +1 340 773 1994 or for St. Thomas /St. John, call +1 340 776 3700 or apply for UI benefits online at https://www.vidol.gov/applyforui/.
- When applying for UI benefits, workers will need to provide their full legal name, Social Security number, and authorization to work if not a US citizen or resident.
- Workers with questions about the status of their UI claim can call the Department at the above numbers or email uiclaims@dol.vi.gov.

The Department requests that employers that need to furlough, lay off or reduce staff hours do the following:

- Send a letter to the Unemployment Insurance Division that includes the names of the affected employees in advance of the reduction of hours to 20 or fewer per week, discharge or layoff.
- Contact the Department directly at the following numbers to gain information on services that can be provided for affected individuals: St. Thomas +1 340 776 3700, extensions: 2094 or 2035 or for St. Croix, +1 340 773 1994, extensions: 2152 or 2154.
- Individuals affected by reduced hours, furlough, layoff or interested in finding out eligibility criteria may contact the Department by phone at: St. Croix District at +1 340 713 3425 or St. Thomas District at +1 340 715 5725.

For more information on the Department's response to COVID-19, see the Department's website.

Virginia

Unemployment insurance benefits

Virginia COVID-19 UI benefits should not be charged to employer accounts

Governor Ralph Northam issued guidance that appears to provide non-charge of COVID-19 UI benefits for employers. In his guidance, he states:

"Regional workforce teams will be activated to support employers that slow or cease operations. Employers who do slow or cease operations will not be financially penalized for an increase in workers requesting unemployment benefits."

We have been unable to reach a representative of the Virginia Employment Commission to confirm the intent of the governor's statement. The Commission's COVID-19 website is currently silent on the matter of charging employer accounts for UI benefits paid in connection with COVID-19.

Employers should carefully review benefit charge statements they receive in the future to make sure COVID-19 UI benefits have not been charged to their accounts.

One-week waiting period and work-search requirements waived for COVID-19 related UI claims

According to the Commission, beginning with UI benefit claims effective March 15, 2020, Governor Northam has directed that the one-week waiting period and the requirement that claimants conduct a weekly job search be suspended.

For more information regarding the Commission's response to COVID-19, go here.

Virginia law establishes a workshare program and makes other changes in UI law

Recently enacted Virginia legislation requires the establishment a state unemployment insurance (UI) workshare program (also known as a short compensation program) by January 1, 2021. (*SB 548, Chapter 1261, enacted April 22, 2020.*)

SB 548 also requires all employers to file SUI contribution and wage reports electronically effective January 1, 2021. Currently, employers with 100 or more employees must file electronically.

In addition, the law:

- Excludes from the definition of wages any payment made to, or on behalf of, employees or their beneficiaries under a cafeteria plan, as defined in §125 of the Internal Revenue Code (IRC), if such payment would not be treated as wages under the IRC.
- Requires that a new Virginia employing unit must establish an account with the state Employment Security Commission and file a SUI contribution and wage report by the end of the calendar quarter in which it begins employment in the state.

State workshare program

Virginia Governor Northam amended SB 548 to authorize the establishment of a state workshare program to take advantage of the funding incentives provided under the federal Coronavirus Aid, Relief, and Economic Security Act (the CARES Act).

Under the bill, the Commission must establish and implement a temporary workshare program by January 1, 2021, that meets the requirements of 22 U.S.C. §3306(v) and all other applicable federal and state laws.

A workshare program provides an alternative to layoffs for employers experiencing a reduction in available work.

Under Virginia law, an approved workshare plan allows the employer to reduce the hours of work for employees by no less than 10% and not more than 60%. The state will pay affected employees partial UI benefits to replace a portion of their lost wages due to their reduced work hours. The program benefits employers by improving the chances that these workers will be available to resume prior employment levels when business demand increases.

Employers participating in Virginia's workshare program are required to continue to provide employees included in the plan with any benefits that were available before their hours were reduced.

Once the Commission has its workshare program up and running, employers interested in participating must submit for the Commission's approval an application that contains specific information on the affected unit (i.e., a list of the employees that will be affected by the reduction in hours and the percentage by which their hours will be reduced). See the law's language for the specific information the employer will need to supply. The Commission will develop a standard application form.

The law also provides that the workshare program will not be effective if the Commission has not, on or before January 1, 2021, received adequate funding from the U.S. Department of Labor that covers the costs of information technology upgrades, training, publicity and marketing incurred by the Commission in connection with establishing the workshare program. Otherwise, the act will expire on July 1, 2022.

For general information on workshare programs, see the U.S. Department of Labor's fact sheet.

Washington

Filing extensions and payment deferrals

Washington provides employers affected by COVID-19 with a grace period for paying workers' compensation insurance premiums

The Washington State Department of Labor & Industries announced that under its Employer Assistance Program, it offered a grace period for paying the required workers' compensation insurance premiums for employers affected by COVID-19.

Under the program, employers financially impacted by COVID-19 could defer their workers' compensation premium for up to 90 days or they could request a 90-day payment plan. If the premiums are paid within the 90 days, interest and penalties do not apply.

The Department states that the 90-day payment plan can be renegotiated for businesses that go into deeper financial distress. Penalties and interest may apply for businesses that obtain a longer payment period.

To take advantage of the program employers are instructed to do one of the following:

- Call Employer Services at +1 360 902 4817
- Contact the employer's revenue agent or the Collections Education & Outreach group at +1 800 301 1826 or by email at dialercollections@Lni.wa.gov
- Call the Small Business Liaison office at + 1 800 987 0145 or contact them by email at smallbusiness@Lni.wa.gov.

Unemployment insurance benefits

Washington UI benefits for COVID-19 will not be charged to employer accounts; Department urges employers to consider the workshare program

Washington Governor Jay Inslee and the Washington Employment Security Department announced that new rules are now in place to provide state unemployment insurance (UI) benefits to workers unable to work due to an employer shutdown or quarantine/isolation period due to COVID-19. The rules also allow for the non-charging of UI benefits against employer accounts. (*Governor's news release, March 10, 2020; Washington Employment Security Department news release, March 12, 2020.*)

The Department provides the following examples of when workers may collect UI benefits:

- Workers may receive unemployment benefits and employers may get relief of benefit charges if an employer needs to shut down operations temporarily because a worker becomes sick and other workers need to be isolated or quarantined as a result of COVID-19.
- Standby will be available for part-time workers as well as full-time workers, as long as they meet the minimum 680 hours. Workers are considered on "standby" if they are temporarily out of work and are expected to return to work soon.
- Workers who are asked to isolate or quarantine by a medical professional or public health official as a result of exposure to COVID-19 may receive unemployment benefits and work search requirements could be waived, so long as they have a return date with their employer. The return-to-work date can be the date the isolation or quarantine is lifted.
- If a worker falls seriously ill and is forced to quit, they cannot collect unemployment benefits while they are seriously ill but may be eligible once they recover and are able and available for work.

Use of the SharedWork program is urged

The Department suggests that employers needing to shut down or reduce employee hours use the Washington SharedWork as an alternative to a layoff. The program allows employers to reduce the hours of full-time employees by as much as 50%, and the employees can collect partial unemployment benefits to replace a portion of their lost wages.

Paid leave

Update: June 30, 2020

Seattle ordinance extends paid sick leave and safe time to gig workers affected by COVID-19

The city of Seattle passed an ordinance on June 12, 2020, that modifies the existing municipal code for paid sick leave and safe time by extending its coverage to gig workers. (*Ord 126091*.)

Due to the COVID-19 emergency, the ordinance requires that covered hiring entities, food delivery network companies and transportation network companies provide gig workers with paid sick and safe time (PSST) to care for their personal and family members' health conditions or safety needs.

The ordinance is automatically repealed three years after the termination of the civil emergency proclaimed by the Mayor on March 3, 2020; three years after the termination of any concurrent civil emergency proclaimed by a public official in response to COVID-19; or on December 31, 2023, whichever is later.

Covered employers

The requirement applies to gig workers employed in whole or part in Seattle for a:

(1) Food delivery network company offering prearranged delivery services for compensation using an online-enabled application or platform to connect customers with workers for delivery from eating and drinking establishments, food processing establishments, grocery stores, or any facility intended to fulfill customer orders from a business whose business model relies on the delivery of groceries or prepared food and beverages.

OR

(2) A transportation network company (TNC) offering prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a TNC-endorsed vehicle.

Period of coverage

Hiring entities are required to permit accrual and use of PSST until 180 days after the termination of the civil emergency proclaimed by the Mayor on March 3, 2020 or the termination of any concurrent civil emergency proclaimed by a public official in response to the COVID-19 public health emergency and applicable to the city, whichever is latest.

Accrual requirements

Gig workers who commenced work for the hiring entity before the effective date of the ordinance accrue PSST according to the hiring entity's choice of one of the following accrual methods: ▸

- Gig workers begin accruing PSST on October 1, 2019, or upon commencement of work, whichever is later, and accrue at least 1 day of paid sick and paid safe time for every 30 days worked.

  OR

- Gig workers accrue at least 5 days of accrued PSST as of the effective date of the ordinance and subsequently accrue at least 1 day of PSST for every 30 days worked after the effective date of the ordinance.

Gig workers who commence work for the hiring entity on or after the effective date of the ordinance begin accruing PSST upon commencement of work and accrue at least one day of PSST for every 30 days worked on or after the effective date of the ordinance.

Gig workers are entitled to use accrued PSST if they have worked for the hiring entity where the work was performed in whole or part in Seattle within 90 calendar days before their request to use PSST.

Rate of pay

Hiring entities must pay gig workers their "average daily compensation," an amount based on the gig worker's daily average of compensation (i.e., hiring entity payments for providing services, bonuses and commissions, as well as tips earned from customers) for each day worked during the highest earning calendar month since October 1, 2019, or since the commencement of work for the hiring entity, whichever is later.

Hiring entities are required to recalculate a gig worker's average daily compensation every calendar month and follow other requirements, such as:

- Providing monthly notification of the gig worker's average daily compensation and available PSST
- Waiting until after a gig worker has used PSST for more than three consecutive days to ask for reasonable verification
- Carrying over up to nine days accrued, unused PSST to the following calendar year
- Providing each gig worker with a written notice of rights and PSST policy
- Retaining records for three years
- Complying with anti-retaliation prohibitions

Washington explains medical benefits for employees affected by COVID-19

Washington workers who are unable to work because they are ill with COVID-19 may apply for medical leave benefits under the new Washington state paid family and medical leave program. The Department is recommending that workers first use employer-provided leave and/or accrued paid sick leave required under the paid sick leave law. See the Department's FAQs regarding the paid sick leave law and COVID-19.

Bonuses and rebates*

Update: July 21, 2020

Washington employers have a time-sensitive opportunity to apply for relief of some of their COVID-19 UI benefit charges

Washington legislation under HB 2965 provides $25 million in emergency funds for the state's COVID-19 unemployment account to be used for relieving employer accounts of charges related to COVID-19 unemployment insurance (UI) benefits (termed "offsets").

Under guidance issued by the Washington Employment Security Department, employers that make state unemployment insurance (SUI) contributions can apply to have some of their COVID-19 UI benefits offset from the state's COVID-19 unemployment account rather than having the benefits impact their experience rating (potentially resulting in a higher SUI tax rate in 2021).

The application, once available, will be posted to the Department's website.

Eligible employers

Employers are eligible to apply for the UI benefit offset if the Department paid UI benefits in the first two quarters of 2020 to employees who:

- Were temporarily laid off as a direct or indirect consequence of COVID-19.

  And

- Returned to work for the employer after the layoff.

How the offset program works

Application for the UI benefit offset is voluntary.

Once the application is available, employers will provide within the application a list of employees meeting the two requirements above. The Department notes that employers should not include in the employee list those receiving UI benefits through the state's SharedWork program because benefits paid under that program are not changed to employers.

The offset applies only to COVID-19 UI benefits paid in the 2020 first quarter after February 29, 2020, and to all COVID-19 UI benefits paid in second-quarter 2020.

The Department will determine the amount of the employer's offset by using a formula based on the number of approved applications, the total amount of eligible benefit charges on all approved applications and the $25 million available.

Employers will be notified if the application is denied. There is no appeal process in the event of a denial.

How to apply

The Department will post an application online or employers you can request a paper copy. The Department has not yet completed the application, but it will post a link and instructions to its website. All employers that pay SUI contributions will be sent a notice once the application is available.

The application must be submitted online or postmarked no later than September 30, 2020.

Documents needed for the application process include:

- The employer's first- and second-quarter Statement of Benefit Charges
- Any documents that show the employer re-employed staff who were laid off due to COVID-19
- First- and second-quarter payroll documents

Employers aren't required to submit the documentation above with their application; however, the Department may request it later. Employers are responsible for maintaining the required documents in their records.

Ernst & Young LLP insights

Given that the offset program has limited funds, the filing of applications for relief of COVID-19 UI benefit changes is time-sensitive. Employers should act quickly to gather the required documents and to file their applications well before the September 30, 2020, deadline.

Other provisions

Seattle relaxes the overtime pay requirements for certain retail establishments and restaurants impacted by COVID-19

On April 2, 2020, the city of Seattle updated its frequently asked questions (FAQs) in connection with COVID-19 to announce a relaxation to the overtime pay in rules that apply to certain restaurants under its Secure Scheduling Ordinance.

The city's Secure Scheduling Ordinance provides scheduling protections for overtime-eligible employees who work in Seattle for retail or food service employers with 500 or more employees worldwide. To be covered, full-service restaurants must also have 40 or more full-service locations worldwide. In general, under the ordinance, if an employer changes an employee's schedule with less than 14 days before the start of the shift, the employer must pay each worker additional compensation ("overtime pay") unless an exception applies.

COVID-19 guidance for restaurants

If a restaurant substantially changes its business model such that it is essentially not operating in the way it used to (e.g., a restaurant that relies on table service but must switch to only providing takeout and delivery services in order to stay open in light of Governor Inslee's March 15, 2020, order), the "operations not begin or continue" exception may apply. Under this condition, changes to the schedules of covered employees that are reasonably necessary to comply with the order, such as shifts that are cut for the duration of the Governor's order for front-of-house employees because the restaurant is not offering table service, fall within the exception and would not incur premium pay. Changes to the schedules of covered employees that are not reasonably necessary to comply with the order, such as back-of-house employees being asked to stay late to help out with increased delivery business demands, do not fall within the exception and would incur premium pay.

COVID-19 guidance for grocery stores

Under Governor Inslee's March 15, 2020, order, the business is not required to pay premium pay to employees provided the grocery stores adhere to certain public health guidance, including social distancing and capacity restrictions. If a business cannot begin operations or must close in order to comply with these recommendations, the business is not required to pay premium pay to employees under the Secure Scheduling Ordinance.

West Virginia

Unemployment insurance benefits*

Update: July 29, 2020

West Virginia is not charging employer UI accounts with COVID-19 UI benefits

According to a management representative of Workforce West Virginia (WWV), employers are not being charged with COVID-19 unemployment insurance (UI) benefits. In an email response to our inquiry, he stated:

"We are not charging taxable employers if the claimant filed due to Covid. With that being said, we have found that some are being charged despite having filed due to Covid and we are working to fix those."

WWV representatives did not provide the date that it will begin once again charging employer accounts with COVID-19 UI benefits nor did they provide the authority under which they are currently not charging employer accounts.

Nothing posted to the WWV website indicates whether COVID-19 UI benefits will be charged to employer accounts. FAQs posted to the agency's website in March 2020 state only that employers should contact the agency, as follows:

Q: I'm an employer. Will the claims being filed now have any effects on my business's UI account and rate?

A: Employers with questions about their UI Accounts should contact the Contributions and Accounting Office at +1 304 558 2676.

Work search requirements and one-week waiting period waived for workers filing COVID-19 UI benefit claims; employers must report job refusals

West Virginia Governor Jim Justice issued Executive Order 4-20 on March 19, 2020, that ordered WWV to provide UI benefits to individuals affected by COVID-19. The order also directed WWV to apply flexibility to UI law provisions that provide for a one-week waiting period and a requirement for UI benefit claimants to conduct work searches and actively seek work.

As a result, on April 19, 2020, WWV issued a news release that provides a waiver of work search requirements and the one-week waiting period for workers filing COVID-19 UI benefits.

The news release also cautions that workers temporarily laid off due to COVID-19 must return to work if they are called back to work. Failure to return to work is considered a reason to disqualify the worker from future UI benefit eligibility.

Employers are instructed to submit the form "Employer Questionnaire of Refusal of Suitable Work" within seven days of a refusal of a job offer or referral.

Ernst & Young LLP insights

Employers should carefully review benefit charge statements to confirm that WWV removes COVID-19 UI benefit charges from their experience account.

Teleworker nexus and income tax withholding

Charleston provides guidance on local tax withholding in connection with COVID-19

The city of Charleston released guidance concerning the withholding of its city service fee from employees' wages during the COVID-19 emergency.

No waiver of the withholding requirement

The city of Charleston will not be waiving the requirement that employers withhold the city service fee from employees' wages.

Under the city's Municipal Code §2-735, employee means any individual who is employed at or physically reports to one or more locations within the city and is on the payroll of an employer, on a full-time or part-time basis, in exchange for salary, wages or other compensation. Employees are considered employed as long as they remain on the current payroll of an employer deriving compensation and they are not permanently assigned to an office or place of business outside the city.

Employees permanently working from home

Employees who are working from home or on paid leave are still employed by a location within the city and have not been permanently assigned to an outside location. Further, the location of the employer continues to receive the benefits of city services. Therefore, employers should continue the withholding and remitting of the Charleston city service fee.

Employees temporarily working from home

Charleston residents who are temporarily working from home who are employed by employers located outside the city are not subject to the withholding of the city service fee. These employees are not employed by a location within the city; rather, they are only temporarily and involuntarily conducting business from their homes within the city for an employer who is located outside the city.

Wisconsin

Filing extensions and payment deferrals

Wisconsin extends income tax withholding deadlines

The Wisconsin Department of Revenue released proposed guidance that extended the due date of state income tax withholding returns and payments due from March 12, 2020, through May 11, 2020, to May 11, 2020, for businesses impacted by COVID-19.

For example, a quarterly income tax withholding tax filer may request an extension for the first-quarter (January through March 2020) return and payment that are due in April 2020.

Penalties do not apply to returns and payments made by the extended due date. Interest will begin to accrue after the extended due date of May 11, 2020.

Wisconsin announces that revised withholding tables will not be released in April 2020 due to COVID-19

The Wisconsin Department of Revenue announced that because businesses are seeing unprecedented impacts from the COVID-19 health emergency, the Department will not revise the state withholding tables at this time. The Department had planned to issue revised income tax withholding tables in April with an effective date of July 1, 2020.

Income tax rate reduction details

Individual income tax rates were reduced for calendar year 2019-2020 under 2019 budget bill AB 56/Act 9 and AB 251/Act 10.

Act 9, effective for taxable years beginning on or after January 1, 2019, reduced the individual income tax rate for the second tax bracket from 5.84% to 5.21%.

Act 10 provided for an additional reduction to the first and second individual income tax rate brackets for calendar years 2019 and 2020. The changes in income tax rates are based on estimated amounts of additional sales and use tax revenue reported to the Department from out-of-state retailers and marketplace providers, as a result of the United States Supreme Court decision in *South Dakota v. Wayfair*, Inc., which expands Wisconsin's authority to require out-of-state retailers to collect and remit Wisconsin sales and use taxes. The individual income tax rates in effect beginning July 1, 2020, are expected to remain for each taxable year going forward.

Wisconsin allows for partial deferral of UI contributions

Although the Department hasn't extended the first-quarter 2020 state unemployment insurance (SUI) tax reporting and payment deadline, employers with a first-quarter SUI tax liability of $1,000 or more may elect to defer paying up to 60% of their total SUI tax liability to future quarters.

According to the Department's online Employer Handbook, to avoid assessment of interest on the deferred amount, employers must comply with the following requirements:

- The employer must not have any outstanding amounts for a prior quarter due on April 30. This includes interest, penalties or other fees.
- The first-quarter contribution and wage report and at least 40% of the first-quarter tax liability must be received by April 30.
- The next 30% of the first quarter and all second-quarter tax liability must be paid by July 31.
- The next 20% of the first quarter and all third-quarter tax liability must be paid by October 31.
- The remaining 10% of the first quarter and all fourth-quarter tax liability must be paid by January 31 of the next year.

Interest will not be assessed on the deferred amounts provided the installment payments and subsequent quarter tax payments are made by the specified due dates. If there are any other amounts due on each of the specified due dates including interest and/or penalties, interest on the deferral amount will be assessed retroactive to April 30. All quarterly contribution and wage reports for quarters subsequent to the first quarter must be filed by the appropriate due dates.

Any deferral amounts not paid prior to July 31 will not be included in the employer's account balance for purposes of computing the SUI tax rate for the next calendar year. This could result in a higher employer SUI contribution rate.

To take advantage of the deferral option, employers must file the election electronically between February 15 and April 30 of the year they want to take the deferral. A new election must be filed each year the employer wishes to defer first-quarter tax liability. Tax and wage reports must be filed electronically for all calendar quarters of the year elected for deferral.

For more information on Wisconsin SUI tax rates, see the Department's website.

Unemployment insurance benefits*

Update: July 10, 2020

Wisconsin employers must file form for relief from charges for COVID-19 UI benefits

The Wisconsin Department of Workforce Development (DWD) has announced that both contributory and reimbursing employers must use Form UCB-18823-E to request relief from charges of unemployment insurance (UI) benefits paid in connection with Executive Order 72 pertaining to the COVID-19 emergency.

According to the instructions, Form UCB-18823-E must be submitted within 30 days after the initial claim is filed. However, for initial claims filed between May 17, 2020, and June 30, 2020, the deadline for submission is August 15, 2020.

Employers are instructed to email the completed form(s) as encrypted documents and to send to DWD the password for the protected document in a separate email. Employers should include the Wisconsin UI account number in the subject line of both emails.

Wisconsin's provisions for the charging of COVID-19 UI to contributory employer accounts

According to DWD's frequently asked questions (FAQs) for employers, if employees of a contributory employer are laid off due to the public health emergency declared by Executive Order 72 and initial unemployment claims were filed for weeks after May 16, 2020, the employer may qualify for relief of UI benefit charging. To request relief of charging, the contributory employer must file Form UCB-18823-E.

DWD anticipates that the charging relief will take many months to complete for all reimbursing employers because it is a manual process. Accordingly, pursuant to contributory employers, DWD issued an emergency rule that benefit charges and adjustments for March 15, 2020, through June 30, 2020, will not affect employer contribution rates for 2021 even if the charging relief is not processed for each employer's account.

Wisconsin's provisions for the charging of COVID-19 UI to reimbursing employers

For reimbursable employers, half of the benefits for the period of March 15, 2020, through December 26, 2020, for initial claims related to the public health emergency declared in Executive Order 72 will be charged to the DWD's interest and penalty account. Reimbursing employers will receive federal reimbursement of the remaining half after employers pay those amounts to the DWD.

Example: Employees of a reimbursable employer receive $3,000 of benefits for initial claims related to Executive Order 72 in April 2020. $1,500 will be charged to the interest and penalty account, so the employer is not required to pay for those benefits. The employer must pay $1,500 to the department. After payment is made, the reimbursable employer can request relief of the remaining amount ($1,500 in this example).

To request relief of the other half of benefit charging, reimbursing employers must file Form UCB-18823-E.

Wisconsin COVID-19 UI benefit wages will not be charged to employer accounts

The Wisconsin Department of Workforce Development has updated its COVID-19 frequently asked questions (FAQs) to reflect that state unemployment insurance (UI) benefits paid to workers due to a COVID-19 business shutdown will not be charged against contributory employer accounts. Instead, they will be charged against the state's fund balancing account, which could reduce the state's UI trust fund and ultimately increase future SUI tax rates.

Per the Department's FAQs for employers about UI and COVID-19:

Question: If an employee receives unemployment benefits as a result of a coronavirus-related business shutdown, will the employer's unemployment taxes increase?

Answer: If the initial claim for unemployment benefits is related to the public health emergency that the Governor declared in Executive Order #72, the benefits for that claim will not be charged to the employer's unemployment insurance account if they are paid for the period of March 15, 2020, through December 26, 2020. However, many of these benefits will be charged to the fund's balancing account, which could reduce the balance of the trust fund below a threshold that would result in a change to a higher tax schedule, which would likely result in higher taxes for employers.

Question: If an employee receives unemployment benefits as a result of a coronavirus-related business shutdown, can the benefits be charged to the fund's balancing account?

Answer: If the initial claim for unemployment benefits is related to the public health emergency that the Governor declared in Executive Order #72, the benefits for that claim will be charged to the fund's balancing account for contribution employers if the benefits are paid for the period of March 15, 2020, through December 26, 2020. For reimbursable employers, the benefits for that period for an initial claim related to the public health emergency declared in Executive Order #72 will be charged to the employer interest and penalties appropriation or to the federal government.

Work search requirements and one-week waiting period waived for workers filing COVID-19 UI benefit claims

According to the Department's frequently asked questions (FAQs) for COVID-19 claimants, workers are not required to search for work or serve a waiting period while collecting UI benefits due to COVID-19.

Following are the pertinent FAQs from the Department's website:

Question: I heard there was a law change and the waiting week is no longer in effect. What does that mean?

Answer: With the new law (Act 185), any claimant who filed a new application in the week of March 15, 2020 or later will not have to serve a waiting week. If you started a new claim in the week of March 15, 2020 or later and already served the waiting week, you will receive back payment for that week. We are currently programming the changes. We plan to make those back payments by April 25.

Question: Am I required to search for work during the COVID-19 pandemic?

Answer: As a result of Governor Evers Emergency Order, you do not need to do a work search during the Governor's declared emergency. The Department is in the process of making the necessary updates. No action is needed on your part regarding the work search.

Employers participating in a work share program will not be charged for the resulting UI benefits

The Department is urging employers to participate in its work share (also known as short-term compensation) program. The current version of the program applies to Department-approved plans through December 31, 2020. Under the CARES Act, the federal government will pay for 100% of the UI benefits paid through the work share plan, meaning that employers will not be charged and future SUI tax rates will not be affected. For more information, go here.

For more information on the Department's response to COVID-19, see the Department's website.

Wisconsin seeks federal advance to keep SUI rates low in 2021

On April 15, 2020, Wisconsin Governor Tony Evers signed into law AB 1038, instructing the Department of Workforce Development to seek advances from the U.S. Department of Labor (DOL) to boost the SUI trust fund balance to a level that allows the lowest state UI experience rate schedule (Schedule D) to continue to be used for 2021.

Rate Schedule D has been in effect for calendar years 2018–2020

Rate Schedule D, the lowest possible under Wisconsin UI law, has been in effect since 2018, with SUI tax rates ranging from 0.0% to 12.0% for small employers with less than $500,000 in taxable payroll annually, and 0.05% to 12.0% for larger employers.

Rate Schedule D is in effect for any calendar year when, as of the preceding June 30, the state's UI trust fund has a balance of at least $1.2 billion.

Wyoming*

Unemployment insurance benefits*

Update: August 4, 2020

Wyoming legislation provides for non-charge of COVID-19 UI benefits by executive order

Recently enacted legislation (SF 1002) provides that Governor Mark Gordon may by executive order declare that employers will not be charged for COVID-19 UI benefits. Specifically, the bill language provides that:

> "In addition to the list of benefits that shall not be charged to an employer's unemployment compensation account under W.S. 27-3-504(e), no benefits shall be charged to an employer's unemployment compensation account if the governor, by executive order outlining the basis for the order and with the adoption of adequate standards and safeguards to assure the continued actuarial soundness of the unemployment compensation fund, determines that the charges should not be charged due to circumstances related to the unique coronavirus COVID-19."

Governor Gordon has not yet issued an executive order regarding this issue. We have sent an email to the governor's office asking if such an executive order will be issued.

The Wyoming Department of Workforce Services website states the following:

Q: Will the pandemic Unemployment Insurance benefits go against my employer Unemployment Insurance rate in the future?

A: At this time we do not have a statute to accommodate benefit non-charging for COVID-19. Director Cooley is working closely with the Attorney General's office, the legislature and U.S. Department of Labor to enact legislation to non-charge for COVID-19-related claims.

Employers must provide notice to separating employees

Employers are required to provide a notice to employees at the time of separation of their rights to unemployment.

Wyoming regulations require that employers keep a record that this notice was individually provided at the time of separation to any employee who separates from employment for any reason. The record of notification must be maintained and made available to the Department upon request.

Employers should report worker refusal to return to work

In a news release, the Department emphasizes that workers must return to work when employers offer them employment unless special circumstances apply.

Employers are encouraged to report workers who refuse to return to work.

Q: If you have an employee who was temporarily laid off, and after you try to hire them back they refuse due to receiving more on Unemployment Insurance, how should this be handled?

A: If you have an employee who is refusing to return to work you should notify our agency. You can either call our Benefits Helpline at +1 307 473 3789 or report the issue on our website (see the Report Fraud link on the right-hand menu bar on the page).

The website further states:

"If your employer offers you hours to return to work, be aware you cannot refuse work to continue receiving unemployment insurance benefits without "good cause." This includes all programs, regular unemployment insurance, PEUC, PUA and FPUC. Work Refusal issues must be adjudicated to determine the cause. Quitting work or refusing work without "good cause" to obtain Unemployment Insurance benefits can be considered fraud. You must honestly report any work refusals on your Continued Claim when filing for weeks in the week you refused work. Your adjudicator will determine whether your reason was good cause."

Work search requirements remain for workers filing COVID-19 UI benefit claims unless job attached; state law does not require a one-week waiting period

According to the Department's website, individuals filing for and receiving COVID-19 UI benefits continue to be required to register on the WyomingAtWork.com website. However, workers considered job attached are not required to search for work for a 12-week period. Once the 12-week period has ended, if the worker has still not returned to work, the worker must begin conducting two work searches per week unless the employer contacts the agency to extend the worker's status.

For more information on the Department's response to COVID-19, go here.

Bonuses and rebates*

Wyoming legislation provides for employer workers' compensation credits; non-charge of COVID-19 workers' compensation benefits

Wyoming 2020 legislation (SF 1002; SF 49) provides that employers will receive two credits against their employer workers' compensation (WC) premiums. The credits are available starting July 1, 2020, and may be applied to WC premiums through June 30, 2021.

The bills passed during the regular and special legislative sessions and the credits are intended to help employers weather the financial and economic strain of the COVID-19 pandemic.

"These Workers' Compensation premium credits come at a good time for Wyoming businesses," said Department of Workforce Services (DWS) Workforce Standards Administrator Jason Wolfe. "The credits will effectively give two months' worth of Workers' Compensation premium payments back to the employers, and these savings will be tremendously helpful during these difficult times." (*News release, July 2020.*)

Each WC premium credit equals 8.33%, for a total of 16.66%. The credits will expire if not used by June 30, 2021. To be eligible for the credits, employers must have made WC premium payments in calendar year 2019 and are required to be in good standing with the Division on all required WC premium payments as of June 15, 2020.

The DWS Workers' Compensation Division mailed letters to qualified employers and instructions on how to apply the credits to their WC premiums. According to the Division, erroneous letters may have been sent to ineligible employers (i.e., those that did not pay WC in 2019).

Employers with questions regarding their qualification for the premium credits should contact the Division at +1 307 777 6763.

COVID-19 WC benefits will not be charged to employer experience accounts

Under SF 1002, injuries and illness related to COVID-19 for which a WC claim has been filed by an affected employee will not be charged against the employer's WC experience rating account. To be eligible for non-charge, the claim must be filed on or before December 30, 2020.

For more information on the DWS' response to COVID-19, go here.

Summary

Federal, state and local governments are responding quickly to craft legislation, regulations and policies to address the unique workforce challenges created by the global COVID-19 crisis. The resulting framework is complex and confusing, and in many cases, guidance is still forthcoming.

Employers will be challenged in the months ahead to comply with the requirements governing employee protections while at the same time properly taking advantage of COVID-19 relief measures that can bring them administrative and financial relief.

For updates to this COVID-19 state guide or to obtain our COVID-19 state trackers, contact debera.salam@ey.com or kenneth.hausser@ey.com.

Ernst & Young LLP can assist you throughout the COVID-19 workforce life cycle

Federal and state paid leave requirements	Federal law imposes paid leave for employees impacted by COVID-19 under the Families First Coronavirus Response Act. Some states (e.g., Colorado and New York) have also adopted COVID-19 leave provisions.
Employee work-from-home considerations	Telework arrangements raise numerous tax-related questions, including the income tax withholding and unemployment insurance rules that apply, the nexus implications for businesses taxes, and the tax treatment of tools and equipment provided to work-from-home employees. See our brochure for more information on how we can help you with teleworker arrangements.
Employee disaster relief benefits	Employers are providing their affected employees with disaster assistance payments, additional day care, loans, advances and other disaster-related benefits. The federal, state and local tax treatment can vary depending on the facts.
State unemployment insurance management	State rules governing the charging of COVID-19-related unemployment insurance (UI) vary, and there are various options available to avoid layoffs during a temporary shutdown, such as a workshare program. UI cost-containment measures are vital to decreasing employer costs. See our brochure for more information on how we can help you with workshare programs for unemployment insurance.
Social Security payment deferrals	The employer portion of Social Security tax (6.2% up to $137,700) can be deferred with 50% of the amount paid by December 31, 2021, and the remainder by December 31, 2022. Form 941 reconciliation issues could occur, resulting in subsequent IRS notices/audits.
Federal tax credits	For employers with fewer than 500 employees, two tax credits are available — the paid sick leave credit and the child care leave credit. For all employers regardless of size, a federal retention tax credit applies for wages paid from March 13, 2020, to December 31, 2020, by employers that are subject to closure or significant economic downturn due to COVID-19.
Tax filing and payment extensions	Whether the issue is staffing shortages to meet deadlines or deferring tax payments to assist with temporary cash flow issues, state provisions for delaying income tax withholding and UI tax returns and payments can be very helpful.
Paycheck Protection Program	Small businesses with fewer than 500 employees are eligible for loans that can be fully forgiven if the borrower keeps its employees on the payroll for 8 weeks and the loan is used for payroll, rent, mortgage interest or utilities.

Contact us for more information

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