NCSL COVID-19 WEBINAR SERIES

Workforce and Labor Issues

MARCH 31, 2020
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Information on state policies and responses related to continuity of government, education, fiscal, elections, criminal justice and more.

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COVID-19 Labor Relief Stimulus Provisions
Stimulus: Unemployment Insurance Issues
Workforce Issues
Paid Sick Leave
NAVIGATING COVID-19 LABOR RELIEF PROVISIONS

Jon Jukuri
Federal Affairs Counsel, Labor and Economic Development
NCSL State-Federal Affairs
H.R. 6201, THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- H.R. 6201
- Second piece of the COVID-19 relief legislation
- Established the Emergency Paid Sick Leave Act (EPLSA) and Emergency Family Medical Leave Act (FMLA).
- Intent was to directly respond to the outbreak by providing paid leave for workers of businesses with 500 employees or less.
- Department of Labor (DOL) Secretary has authority to exempt businesses with fewer than 50 employees.
- Temporary mandate for workers to be paid their full wages for up to 2 weeks.
- Requires mandatory paid sick leave for employees for state and local governments.
Will private sector employers (with under 500 workers) be repaid for providing Paid Leave benefits?

Answer: Yes, employers will be repaid in the form of a dollar-for-dollar tax credit. The legislations stipulates a refundable tax credit in “an amount equal to 100% of the qualified” sick leave paid by the employer for each calendar quarter. However, the refund for sick leave is capped at $511/day for qualifying events 1-3 above and at $200/day for qualifying events.
As an employer, am I able to require my employees to use accrued PTO or vacation pay in lieu of benefits under the EPSLA?

Answer: No, the law is specifically designed to ensure employees will not be required to use PTO or vacation time to deal with coronavirus-related leave.

Does the new FMLA and Paid Sick Leave apply to state legislatures/governments? Are they no longer exempt through the Fair Labor Standards Act (FLSA)?

Answer: Yes, emergency FMLA and Paid Sick Leave now applies to State Governments, and it is unfunded by the Federal Government. The new law did temporarily change the FLSA exemption for Legislatures (legislative staff and legislators), they are now covered by the mandate and they are not exempt again until January 1, 2021.
Private sector **employers with 500 or less workers**, state legislatures and government entities now have to provide **12 weeks of job-protected leave**.

Stipulations requiring such leave are to:

1. Comply with a requirement or recommendation to quarantine because of exposure to or symptoms of the virus.
2. Provide care to a family member who’s complying with such a requirement/recommendation.
3. Provide care for a child younger than 18 whose school or day care has closed because of the virus.
What are the pay requirements for employees taking FMLA?

The first 10 days (rather than FMLA 14 days) may be unpaid. During this period, an employee may elect to substitute any accrued paid leave (such as vacation or sick leave) to cover a part or all of the 10-day period. The employer cannot require the employee to substitute paid leave.

Will I, as an employer, have to hold the employee’s job open for them upon their return?

Yes, however, there are several limited exceptions. The rules established under the FMLA will apply to job reinstatement. Employers with 25 or more employees will have the same obligation as under traditional FMLA to return any employee who has taken EFMLEA leave to the same or equivalent position upon the return to work. However, employers with fewer than 25 employees are generally excluded from this requirement if the employee’s position no longer exists following the EFMLEA leave due to an economic downtown or other circumstances caused by a public health emergency during the period of EFMLEA leave.
Phase Three: Coronavirus Aid, Relief, and Economic security act
HR 748, (the CARES Act)
Appropriates $360 million for the Department of Labor to invest in programs that provide training and supportive services for dislocated workers, seniors, migrant farmworkers, and homeless veterans.

Expands the unemployment insurance from 3 to 4 months, and provides temporary unemployment compensation of $600 per week, which is in addition to and the same time as regular state and federal UI benefits.

- Part-time, self-employed, and gig economy workers now have access to UI benefits.
- Allows employers to receive an advance tax credit from Treasury instead of having to be reimbursed on the back end.
- $260 billion investment into the unemployment insurance program
- Creates regulatory authority to implement the tax credit advances
The Department of Labor posted an FAQ page answering the most pressing questions around the Families First Coronavirus Response Act.

NCSL blog on the Labor and Economy Provisions of Second COVID-19 Relief Bill.

NCSL Coronavirus Resources for States
QUESTIONS: PLEASE TYPE THEM IN THE CHAT BOX

CONTACT ME AT: JON.JUKURI@NCSL.ORG
PANDEMIC UNEMPLOYMENT ASSISTANCE

- Fully federally funded
- 39 weeks
- Based on disaster unemployment assistance
- Broader definition of who qualifies
- Based on state benefit levels, states must administer
- Challenges to administering this benefit
<table>
<thead>
<tr>
<th><strong>PANDEMIC UNEMPLOYMENT COMPENSATION</strong></th>
</tr>
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<tbody>
<tr>
<td><strong>$600 per week</strong></td>
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<tr>
<td><strong>Federally funded</strong></td>
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<tr>
<td><strong>Applies to regular UI, extended UI, or PUA – anyone getting an unemployment benefit qualifies</strong></td>
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<td><strong>Expires July 31, 2020</strong></td>
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</tbody>
</table>
PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION (PEUC)

- 13 week extension of regular unemployment insurance
- This is not 50% of current duration as regular extended benefits work
- States with fewer than 26 weeks of duration still get 13 weeks of PEUC but not EB
- Fully federally funded
- Reminder: when regular EB is triggered, that will be fully federally funded from the previous stimulus package
Short Time Compensation (Work Sharing)

- Work Sharing is a tool for employers to manage layoffs to spread lost hours across the workforce and retain employees.
- States with a program in place get 100% federal funding.
- States without a program get 50% funding to run a program that conforms with federal standards temporarily.
- $100,000,000 grants to states to implement and publicize Work Sharing programs.
- Administrative funding associated with this shall be reimbursed.
MISCELLANEOUS PROVISIONS

- NON-REDUCTION CLAUSE
- FULLY FUNDED WAITING WEEK
- REIMBURSABLE ENTITIES PARTLY REIMBURSED (GOVERNMENTS AND NON-PROFITS)
WHAT IS NOT INCLUDED

- Nothing permanent
- No changes to basic UI programs
- No funding to shore up trust funds
- States will need additional administrative funding
QUESTIONS: PLEASE TYPE THEM IN THE CHAT BOX

CONTACT ME AT: MEVERMORE@NELP.ORG
COVID-19 AND WORKFORCE ISSUES

Zach Herman
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NCSL Employment, Labor and Retirement Program
TOPICS TO COVER

- Unemployment Insurance
- Occupational licensing in a state of emergency
- Workshare
UNEMPLOYMENT INSURANCE

- An employee can be eligible if:
  - An employer temporarily ceases operations due to COVID-19, preventing employees from coming to work.
  - They are quarantined with the expectation of returning to work after the quarantine is over.
  - They leave employment due to a risk of exposure or infection or to care for a family member.

- States are encouraged to waive the weeklong waiting period, which is not required by federal law.
STATE LEGISLATIVE ACTION ON UNEMPLOYMENT INSURANCE

- Waiving the waiting period: **MA SB 2599**
- Extending length of benefits period: **KS SB 27**
- Expanding eligibility requirements: **MN HB 4414**
- Requiring employers to pay wages for workers under quarantine orders: **NJ AB 3846**
- Appropriating money to supplement current unemployment fund: **OH HB 574**
State approaches to licensing in response to COVID-19 are changing rapidly, right now we can point to some general trends.

- Waiving licensure requirements for out-of-state professionals:

- Temporary licensure and/or expedited licensure:
  - Georgia, Massachusetts, South Carolina, Texas, Washington.
COVID-19: OCCUPATIONAL LICENSING DURING PUBLIC EMERGENCIES

- Ability to practice with a license that may have recently lapsed or is inactive:
  - Colorado, Iowa, New York, Texas
- Pushing back renewal deadlines:
  - Georgia, Indiana, Maryland, New Mexico, Pennsylvania
- Temporary modification to scope of practice:
  - New York and Pennsylvania
Workshare programs let businesses temporarily reduce the hours of their employees, instead of laying them off during economic downturns.

Technically referred to as short-term compensation, the goal of worksharing programs is to reduce unemployment.
HOW DOES WORKSHARE OR STC WORK?

A business applies and is approved.

Employee workweeks are reduced by at least 10%.

STC is paid as a pro rata portion of the unemployment compensation.
States That Have Adopted Workshare Programs

Workshare Programs

Source: NCSL, 2020

The sudden emergence of the COVID-19 pandemic is dealing a severe blow to state economies, businesses and workers. First and foremost, states are strengthening their health care capacity in the event that demand for medical services surge. Ensuring there are enough licensed health care professionals is a key component in this preparation.

States are also restricting access to in-dining restaurants, theaters, concert halls, some retail stores and other non-essential businesses where large groups of people risk coming into close contact with one another. Additionally, public health officials and experts have warned Americans to stay home as much as possible and avoid doing anything that requires close contact with others. Many other businesses have voluntarily closed to protect their employees and the public as a whole. Perhaps the most visible closure has been the nearly universal shutdown of the professional sports industry. Those exposed to the virus are being advised to
QUESTIONS: PLEASE TYPE THEM IN THE CHAT BOX

CONTACT ME AT: ZACH.HERMAN@NCSL.ORG
PAID LEAVE AND THE RESPONSE TO COVID-19

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Senior Policy Specialist
NCSL Fiscal Program
Paid sick leave is not yet a major focus of state responses to COVID-19.

The federal government has enacted important emergency paid sick leave legislation that will be available to many U.S. workers.

States that currently requiring paid leave benefits are allowing them to be used as intended for those affected by COVID-19 or are expanding/combining paid leave benefits to provide additional financial assistance.
76 percent of U.S. civilian workers have access to some sort of paid sick leave

17 percent of U.S. workers have access to paid family leave

Federal (unpaid) Leave Protection: Family and Medical Leave Act
FEDERAL SICK LEAVE LEGISLATION: H 6209

- Applies to employers with 500 or fewer employees. Exemptions available for employers with fewer than 50 employees.
- Provides 80 hours of sick leave to full-time employees (capped at $511)
- Part-time workers receive time off equivalent to normal hours
- Tax credits will be made available to offset costs for employers
PAID LEAVE IN THE STATES

- **Paid Sick Leave**: (13) California, Connecticut, DC, Maryland, Massachusetts, Michigan, Nevada, New Jersey, Oregon, Rhode Island, Vermont, and Washington.

- **Temporary Disability Insurance**: (6) California, Hawaii, New Jersey, New York, Rhode Island, Puerto Rico


*Paid FML law enacted, insurance program not yet operational*
In every state, paid sick leave benefits are paid for by employers at the employee’s full rate of pay.

Can be taken to treat an employee’s own illness, care for a sick family member. In some states, it can be used in light of a business closure due to a public health emergency or care for a dependent whose school has closed.

Typically, employees can accrue a maximum of 30-40 hours of paid sick leave per year.

Paid sick leave benefits are generally not payable to recently terminated employees.
<table>
<thead>
<tr>
<th>State</th>
<th>Covered Employers</th>
<th>Paid Sick Leave Accrual</th>
</tr>
</thead>
<tbody>
<tr>
<td>AZ</td>
<td>Private-sector employers and local governments</td>
<td>1 hr/30 hrs worked. Max. of 40 hrs/year.</td>
</tr>
<tr>
<td>CA</td>
<td>Public and private employers</td>
<td>1 hr/30 hrs worked. Can be capped at 6 days/year.</td>
</tr>
<tr>
<td>CT</td>
<td>Employers with &gt; 50 employees</td>
<td>1 hr/40 hrs worked. Max. of 40 hrs/year.</td>
</tr>
<tr>
<td>D.C.</td>
<td>Public and private employers</td>
<td>Max. of 3-7 days/year, depending on employer size.</td>
</tr>
<tr>
<td>MD</td>
<td>Public and private employers with &gt;15 employees</td>
<td>1 hr/30 hrs worked. Max. of 40 hrs/year.</td>
</tr>
<tr>
<td>MA</td>
<td>Public (not federal) and private employers with ≥ 11 employees</td>
<td>1 hr/30 hrs worked. Max. of 40 hrs/year.</td>
</tr>
<tr>
<td>MI</td>
<td>Public (not federal) and private employers with ≥ 50 employees</td>
<td>1 hr/35 hrs worked. Max. of 40 hrs/year.</td>
</tr>
<tr>
<td>NV</td>
<td>Private employers with 50 or more employees</td>
<td>≈1 hr/52 hrs worked. Max. of 40 hrs/year.</td>
</tr>
<tr>
<td>NJ</td>
<td>Public and private employers</td>
<td>1 hr/30 hrs worked. Max. of 40 hrs/year</td>
</tr>
<tr>
<td>OR</td>
<td>Public and private employers with ≥ 10 employees</td>
<td>1 hr/30 hrs worked.</td>
</tr>
<tr>
<td>RI</td>
<td>Public and private employers with ≥ 18 employees</td>
<td>1 hr/30 hrs worked. Max. of 40 hrs/year</td>
</tr>
<tr>
<td>VT</td>
<td>Public and private employers</td>
<td>1 hr/52 hrs worked. Max of 40 hrs/year</td>
</tr>
<tr>
<td>WA</td>
<td>Public and private employers</td>
<td>1 hr/40 hrs works. Max of 40 hrs/year</td>
</tr>
</tbody>
</table>


Hawaii: Temporary disability insurance (TDI) may be available to workers who are quarantined or sick because of COVID-19.

Washington: Paid family leave insurance will cover workers who need to care for complications from COVID-19, or caring for a family member who does.

California: In addition to paid sick leave, TDI is available to workers who cannot work because they are sick. Paid family leave is available for family care.
Rhode Island: Once available paid sick leave has been exhausted, workers may be eligible to receive temporary disability insurance benefits to treat their own illness. Family care may be covered by family leave insurance.

New Jersey: Paid family leave benefits are only able to be used to care for a family member who become ill with COVID-19, and workers are first able to use any available paid sick leave for these purposes. Workers who must take a leave of absence due to illness can apply for temporary disability insurance benefits once they’ve exhausted their earned paid sick leave benefits.
NEW YORK SB 8091 (ENACTED)

- Employers with less than ten employees must provide job-protected, unpaid sick leave. Employees are eligible for paid family leave and disability benefits up to a maximum of $2,884.62 per week. Small employers with net income over $1 million must provide 5 days of paid sick leave.

- Employers with 11-99 employees must provide 5 days of paid sick leave and unpaid, job-protected sick leave until quarantine or isolation orders are finished. After paid sick leave, employees are eligible for paid family leave and temporary disability insurance benefits.

- Employers with 100 or more employees (including state/local governments) provide 14 days of paid sick leave.
California: AB 3216 (pending) would make it unlawful to prevent an employee from using family and medical leave to care for a worker’s illness related to COVID-19 or a family member.

Colorado: Executive Order 13-2020 required four days of paid sick leave for certain workers.

DC: Emergency legislation expanded protections and waives certain eligibility requirements for the paid family and medical leave insurance program in order to provide two weeks of unpaid, job-protected “declaration-of-emergency” leave to any employee unable to work due to a public health emergency.

Kentucky: SB 282 (pending) would create a mechanism for employees to accrue sick leave.

Ohio: HB 593/SB 299 (pending) would permanently establish paid sick leave and require 14 days of “quarantine and isolation pay”
QUESTIONS: PLEASE TYPE THEM IN THE CHAT BOX

CONTACT ME AT: JACKSON.BRAINERD@NCSL.ORG
Questions and Answers

Please type your questions into the chat box in the lower left-hand corner of your screen.
COVID-19 WEB PAGE

Go to:

www.ncsl.org or