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Illinois Unemployment Benefits and COVID-19-Related Changes: What Employers Need to Know

The Illinois Department of Employment Security (IDES) and the federal government have made significant changes to the laws governing the availability of unemployment insurance benefits. These changes, which respond to the economic downturn caused by the COVID-19 pandemic, expand eligibility and provide additional benefits to workers. Below are answers to several frequently asked questions regarding the recent developments and their effect on Illinois employers and workforces.

IDES and the “Emergency Rule”

Question 1. Are employees who were temporarily laid off due to COVID-19 eligible for unemployment benefits?

Answer 1. Yes. Individuals temporarily laid off because their places of employment closed due to the COVID-19 crisis are eligible for unemployment benefits so long as they meet all the usual eligibility requirements. Those requirements include being separated from employment through no fault of their own, being able and available for work, and actively seeking work. Under IDES’s “emergency rule,” individuals in this situation do not have to register with the employment service; they are considered to be actively seeking work as long as they are prepared to return to their jobs as soon as their employers reopen.

Q2. Is an employee who was diagnosed with COVID-19 and forced to stay home eligible for unemployment benefits?

A2. Yes. Employees who have been diagnosed with COVID-19 or who must stay home to care for spouses, parents, or children diagnosed with COVID-19, are eligible for unemployment benefits as long as they meet all other eligibility requirements, including being able and available for work and actively seeking work from the confines of their homes.

Q3. An employee has quit due to COVID-19 concerns. Is this individual eligible for



unemployment benefits?

A3. Generally, no. An employee is disqualified from receiving unemployment benefits if he or she leaves work without good reason that is attributable to the employer. The eligibility of an individual in this situation will depend on whether the facts of his or her case demonstrate the individual had a good reason for quitting (or volunteering for a layoff) and that the reason was attributable to the employer. An individual generally has a duty to make a reasonable effort to work with his or her employer to resolve whatever issues have caused the individual to consider quitting.

Q4. For how long may an individual receive unemployment benefits?

A4. Illinois law provides eligible individuals with up to 26 weeks of unemployment benefits. The federal stimulus package provides individuals with an additional 13 weeks of unemployment benefits. (See Q&A16.)

Q5. Must an employer provide information on how to obtain unemployment benefits to an employee who is separated or laid off due to COVID-19?

A5. Yes. Generally, employers are required to provide employees who are laid off or separated for more than seven days with a pamphlet supplied by IDES, titled, [What Every Worker Should Know About Unemployment Insurance](#).

Q6. My company does not have “employees” because we work primarily with independent contractors. Are they eligible for unemployment benefits?

A6. In Illinois, independent contractors are not eligible for unemployment benefits, but the Federal Pandemic Unemployment Assistance program under the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#) provides unemployment benefits to assist independent contractors. (See Q&A16.)

Q7. Would a reduction in weekly hours or “rotational” furloughs trigger unemployment compensation?

A7. Potentially. To qualify as an “unemployed individual,” the employee must receive “less than full-time” work in a given week and the employee’s wages must be less than the weekly benefit amount, which is generally 47 percent of the individual’s average weekly wage with a minimum of \$51 per week and a maximum of \$667 per week. The weekly benefit amount depends on each individual’s compensation and dependent allowances. Thus, in order to qualify, an individual’s compensation must be reduced such that it falls below 47 percent of his or her weekly wages. If an employee receives more than the maximum weekly benefit amount for a given week, he or she is not considered to be unemployed and is not eligible for benefits.

Employers are also implementing [alternative reductions in force](#) by, for example, alternating furloughs where an employee may work only two full weeks or so in a month. Employees who are subject to these rotational furloughs *may* be entitled to their weekly benefit amounts without reduction for the weeks that they are not working. However, it is important to note that this is a determination that only IDES can make.

Under IDES’s “Emergency Rule,” individuals in either of the foregoing situations do not need to



register with the employment service or actively seek employment.

Q8. Does Illinois participate in a work-sharing program?

A8. No. While there is a work-sharing program in Illinois called the “Short-Time Compensation Program,” it is not currently active. However, because recent federal legislation creates incentives for states and employers to implement such programs, Illinois may decide to activate its program.

Q9. If an employer pays out paid time off (PTO) at the time of separation or layoff, will that affect an employee’s eligibility or cause a delay in unemployment compensation?

A9. Generally, yes. PTO payments connected to a separation or layoff are generally considered wages under the Illinois Unemployment Insurance Act and may reduce or delay the payment of benefits. This is also true of paid sick leave and Family and Medical Leave Act payments.

Q10. Are unemployment benefits resulting from a COVID-19–related layoff chargeable to an employer?

A10. Currently, yes. Employers generally contribute to the cost of benefits for their former employees. The contribution rate is based, in part, on the amount of unemployment benefits paid to the employer’s former employees, so this rate may rise if an employer furloughs or lays off employees due to the COVID-19 pandemic. Future legislation may change or impact chargeability.

The CARES Act also provides an additional emergency \$600-per-week unemployment insurance bonus benefit—called Federal Pandemic Unemployment Compensation (FPUC). The FPUC benefit is wholly funded by the federal government and therefore not chargeable to an employer. Benefits under FPUC expire four months from the March 27, 2020, enactment of the CARES Act.

Q11. Can an employer protest a claim?

A11. Yes. An employer has 10 calendar days to protest a claim.

Q12. Can an employer continue to provide fringe benefits, severance pay, 401(k) loans, and COBRA health insurance coverage following benefits without affecting or delaying an employee’s unemployment eligibility?

A12.

- *Fringe Benefits*

No, fringe benefits provided to a discharged employee may be considered wages that will reduce the individual’s unemployment benefit amount.

- *Severance*



Yes. Severance may be paid periodically or in a lump sum without affecting eligibility.

- *401(k) Loans*

Yes.

- *COBRA Coverage*

Yes, regardless of whether the individual fully pays for continuing health insurance benefits under Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) coverage or the employer partially or totally subsidizes COBRA premiums.

- **Q13. Can an employer supplement an employee's wages while he or she is on unemployment?**

A13. Yes, but it may eliminate or reduce an employee's benefit amount. An individual is ineligible for unemployment insurance in any week the individual receives wages that exceed his or her weekly unemployment benefit amount. If wages do not exceed the weekly amount, unemployment benefits will be reduced by the amount of wages that exceeds 50 percent of the weekly unemployment benefit amount. Wages include bonuses paid after a job separation.

Q14. Can an employer supplement state unemployment benefits?

A14. Yes. [Supplemental Unemployment Benefit \(SUB\) payments](#) made by an employer to a laid-off employee will not affect the individual's ability to collect unemployment insurance benefits from the state, as long as the following conditions are met: (1) the recipient is otherwise eligible to receive state unemployment insurance benefits; (2) SUB payments are made under a [tax-exempt trust agreement](#) or other contractual plan, which grants the individual a vested right to receive SUB payments once the conditions set forth in the trust agreement or contractual plan have been satisfied; and (3) the trust agreement or plan treats each individual in a class of employees similarly.

Illinois Adopts CARES Act Provisions

Q15. What is the CARES Act?

A15. The CARES Act is a federal law that was recently enacted to address the economic situation resulting from the current COVID-19 pandemic crisis. The CARES Act provides a variety of economic stimulus items, which include federally funded expansions of states' traditional unemployment benefits provisions. (Ogletree Deakins has provided insight into the CARES Act's [unemployment insurance provisions](#) and [related provisions](#).) Illinois has signed on to participate in the CARES Act.

Q16. What unemployment benefits are now available for Illinois workers under the CARES Act?



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A16. As noted in Q&A10, the CARES Act provides an additional \$600 per week under the FPUC program, added on to an eligible individual's weekly unemployment benefit amount. This FPUC benefit applies to individuals who are eligible for benefits beginning March 29, 2020 and concluding the week ending July 25, 2020. Individuals who are eligible for even \$1 of unemployment benefits in a given week are eligible for the \$600 bonus.

The law also provides the \$600 unemployment benefit to Illinois workers who would not traditionally be eligible for unemployment benefits, but who are now eligible under the CARES Act's Pandemic Unemployment Assistance (PUA) program (for example, gig workers and independent contractors), and affected by COVID-19.

Additionally, the CARES Act's Pandemic Emergency Unemployment Compensation (PEUC) entitles eligible Illinois workers to an additional 13 weeks of unemployment benefits (on top of whatever duration is already provided for under Illinois state law).

Q17. When will Illinois pay the additional CARES Act FPUC benefits?

A17. The additional \$600 per week will be paid to eligible individuals at the same time as their traditional unemployment benefits. IDES began to pay out these benefits on April 6, 2020. The wait for payment for PUA will be longer for those who would not traditionally be eligible for unemployment benefits, but who are now eligible under the CARES Act's unemployment provisions (again, for example, gig workers and independent contractors). According to IDES, this benefit may not be available for weeks or months, because IDES is still developing the systems to be able to handle those applications and payments.

IDES is in the process of implementing the 13-week extension under the CARES Act, so there is no timetable for this benefit.

Q18. Could an individual receive more from IDES under state unemployment and the CARES Act than would be received if he or she kept his or her job?

A18. In theory, yes, but this is a fact-specific question that depends on an individual's base weekly compensation and how that compares to the objective amount of \$600 per week.

That does not mean that an employee can quit work to collect unemployment benefits. IDES has cautioned that an employee who quits work without good cause just to obtain additional benefits under the regular state unemployment program or the federal emergency unemployment insurance programs, engages in fraud and could be subjected to criminal penalties. Similarly, individuals cannot refuse to go back to work to keep collecting FPUC because they must certify every two weeks that they are able and available to work. Thus, if they refuse to go back to work, they are no longer eligible for unemployment benefits, including FPUC.

IDES expects employers to report individuals for fraud if they quit their jobs or do not want to return to work because they receive more money from unemployment benefits.



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Key Takeaways

The State of Illinois and the federal government have provided monetary assistance to workers experiencing losses or reductions of employment because of COVID-19. In addition, they have provided incentives to employers to retain their workforces. As much as an employer may want to highlight these benefits when making difficult decisions affecting its workforce, it is important to remember that IDES makes the ultimate determinations regarding unemployment benefits, not the employer. Additionally, the circumstances for each individual worker will be different, as determined by IDES. For these reasons, employers may want to refrain from assuring workers of their benefit amount or eligibility, and instead recommend that workers apply online and determine their own specific eligibility.

Ogletree Deakins will continue to monitor and report on developments with respect to the COVID-19 pandemic and will post updates in the firm's [Coronavirus \(COVID-19\) Resource Center](#) as additional information becomes available. Critical information for employers is also available via the firm's [webinar programs](#).

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