

Changes to Wisconsin Unemployment Benefits for School Districts

Developments in recent days have clarified the scope and implementation of federal and state law changes to the Wisconsin unemployment system. These changes will have a significant impact on school districts.

This article will cover the following changes affecting Wisconsin unemployment benefits:

- Increased duration and amount of benefits due to the federal CARES Act;
- Elimination of the one-week waiting period for benefit eligibility; and
- Changes to how unemployment benefits related to COVID-19 will be attributed to and charged back to school districts.

INCREASE IN BENEFIT AMOUNT

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) increased the amount of weekly unemployment benefits by \$600 for each benefit claimant. These additional benefits are funded entirely by the federal government and will not be charged back to school districts. This \$600 increase in benefits is not prorated. Therefore, so long as a claimant is eligible for the state minimum benefit of \$54 dollars per week, the claimant will receive an additional \$600 per week for a total weekly benefit of \$654. Similarly, if a claimant is eligible for the maximum state benefit of \$370 per week, the claimant will receive an additional \$600 per week for a total weekly benefit of \$970.

Because individuals are able to receive \$600 on top of their normal weekly state unemployment benefits, this dramatic increase in weekly benefits might have some unintended consequences. For example, an employee making the minimum wage of \$7.25 an hour and working 40 hours a week would receive only \$290 a week in wages. If that employee were terminated or laid off by his/her employer, the employee would receive his/her regular state weekly unemployment benefits plus \$600, which would be more than double what the employee would earn through employment.

Employers should remember, however, that employees who voluntarily quit their employment are generally not eligible for unemployment benefits, and thus would not be eligible for the extra \$600. Similarly, employees who are terminated due to misconduct or substantial fault are not eligible for unemployment benefits. Employers can continue to enforce their job performance and conduct rules and can still challenge employees' eligibility for unemployment benefits on the basis of voluntary quit, substantial fault, or misconduct.

Under these unique circumstances where terminations of employees may be "cushioned" by the enhanced unemployment benefits, employers may give more than usual consideration to implementing terminations. There are several reasons employers should be cautious about terminations, however. First, many school districts still have work that needs to be performed and terminating too many workers might cause a disruption to the school district's short-term and long-term operations. Second, school districts that will be receiving money from the

Educational Stabilization Fund of the CARES Act have to contemplate the condition arising from receipt of that funding which requires school districts to continue to pay employees “to the greatest extent practicable.” Guidance clarifying that condition of the funding is not currently available. Finally, any time an employer terminates an employee, even if the employer believes that it financially benefits the employee, the employer risks discrimination allegations and other claims related to the employee’s termination.

The Wisconsin Department of Workforce Development (DWD) stated that the additional \$600 in weekly unemployment benefits will start being issued during the week of April 26, 2020. These benefits will be retroactive to April 4, 2020 and will continue through the week ending July 25, 2020. Claimants who have already been deemed eligible for unemployment benefits by DWD do not need to take additional action to receive the extra \$600 per week. New potential claimants must complete DWD’s regular unemployment benefit application form.

EXPANSION OF ELIGIBILITY PERIOD

The CARES Act expanded the eligibility period for unemployment benefits from 26 weeks to 39 weeks. The additional 13 weeks of benefits are paid out at the level of the employee’s regular state unemployment benefit and do not include the additional \$600 per week for any weeks after July 25, 2020. This expanded eligibility period will last until the week ending on December 26, 2020 or until the employee has used up all 39 weeks of eligibility, whichever is sooner. These benefits are funded by the federal government and will not be charged back to school districts.

RELAXED JOB SEARCH REQUIREMENTS

On March 18, 2020, Governor Evers issued Emergency Order #7. This order states that an unemployment benefits claimant shall be deemed “available for suitable work” during the state public health emergency if the claimant is perceived by an employer as exhibiting COVID-19 symptoms which prevent him/her from returning to work, or if the claimant is quarantined by a medical professional or under governmental order if one of the following applies:

1. The employer has instructed the claimant to return to work after the employee no longer exhibits symptoms, after a set amount of time to see if the disease is present, or after the quarantine is over.
2. The employer has not provided clear instruction for the claimant to return to work.
3. The claimant would be available for other work with another employer but for the perceived COVID-19 symptoms preventing a return to work or a qualifying quarantine directive.

Additionally, individuals receiving unemployment benefits are not required to perform work search actions during the period of the state public health emergency.

Even in light of that order, employers should be aware of the following:

- An employee who is sick and unable to work is not eligible for unemployment benefits.
- An employee who imposes a “self-quarantine,” without the advice or order of a medical professional or the government, is not eligible for unemployment benefits.
- An employee who has refused an offer of work from a former employer (such as a “recall” from layoff or furlough) will likely no longer be eligible for unemployment benefits, provided that this information is brought to the attention of the DWD.

SELF-EMPLOYED CLAIMANTS

The CARES Act provides unemployment benefits to self-employed individuals, certain independent contractors, individuals with limited recent work history, and other workers who are not normally eligible for unemployment benefits. DWD will begin taking applications from these individuals during the week of April 21st. These benefits are retroactive to the week ending February 8, 2020 or to the first week an individual is out of work due to COVID-19, whichever is later. The last payable week for these benefits is the week ending December 26, 2020. DWD is working to provide additional information on these benefits on its [website](#).

ELIMINATION OF THE ONE-WEEK WAITING PERIOD

On April 15, 2020, Governor Evers signed 2019 Wisconsin Act 185 into law. Among other provisions, this law eliminates the one-week waiting period that claimants must usually wait in each benefit year before they can receive unemployment benefits. This provision is retroactive to benefit years that began after March 12, 2020. This provision will no longer apply for benefit years that began on or after February 7, 2021.

Under the CARES Act, the federal government will reimburse states for the full cost of unemployment benefits during this initial week, so this first week of unemployment benefits will not be charged back to school districts—regardless of the reason an employee qualifies for unemployment benefits.

ATTRIBUTING BENEFITS TO EMPLOYERS

2019 Wisconsin Act 185 also changed DWD's procedure for attributing benefits to employers. For benefit weeks occurring after March 12, 2020 and before December 31, 2020, unemployment claims will generally not be attributed to an employer, and thus will not be charged back to a school district employer, if DWD determines that these claims are related to the state public health emergency.

DWD has not yet provided guidance regarding how it will determine if a claim is related to the state public health emergency. At a minimum, a school district must timely state to DWD that a claim is related to the state public health emergency in order for these claims not to be charged back to the school district. DWD will instead charge these benefits to other state funds.

CONCLUSION

The state unemployment system is a crucial resource for both employers and employees during this unprecedented pandemic. School districts should be aware of the potential effects these recent changes to the state unemployment system will have on their operations, particularly school districts considering reductions in hours, layoffs, or terminations and school districts who have already taken such actions.

The Boardman Clark School Law Practice Group is here to assist employers as they navigate challenging employment decisions implicating the unemployment system.

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