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Q & A FOR COUNTY EMPLOYEE UNEMPLOYMENT INSURANCE BENEFITS UNDER THE CARES ACT

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On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) to provide nearly \$2 trillion of support to families and businesses during the COVID-19 pandemic. In addition to economic aid, the CARES Act expands unemployment insurance benefits (“UI benefits”) through the Relief for Workers Affected by Coronavirus Act. For purposes of this Q & A, the most relevant of the benefits provided by the Act is the availability of an additional \$600 per week in UI benefits to a qualified individual in addition to the amount paid under existing State law. Importantly, the UI benefits are available to public sector employees in addition to private sector employees.

The Association and its general counsel von Briesen & Roper, s.c., have received many questions regarding county employee eligibility for the UI benefits under the CARES Act. Many of the questions relate to the interaction of the enhanced benefits with a partial reduction in hours (furlough or layoff). Decisions counties make concerning its workforce are critically important and counties are rightfully reviewing all options.

The Wisconsin Counties Association asked our General Counsel von Briesen & Roper, s.c. to prepare a Q & A to provide information related to county employee eligibility for the UI benefits and related issues facing counties as employers. This information should be reviewed carefully with corporation counsel to ensure county compliance with other applicable employment laws and regulations.

Q: Our county may need to reduce its workforce due to loss of revenue, but we are concerned about retaining personnel that the county will need to return to work in the future. What is the difference between a furlough and a layoff?

A: A layoff is a full separation of employment subject to possible recall if economic circumstances change. On the other hand, a furlough is similar to an unpaid leave of absence, with an intended return date. Even though an employee has been furloughed, that furlough can be converted to a layoff or termination if circumstances change..

Q: Are employees who are furloughed instead of laid off eligible for UI benefits?

A: Yes. UI benefit eligibility is based on a reduction or elimination of hours worked.

Q: Our county is concerned about employee personal finances due to a furlough or layoff. If our county furloughs or lays-off employees, would the employees be eligible for the \$600 per week CARES Act benefit?

A: While the precise details of how the program will be administered are still being worked out by DWD, the answer is yes. Counties are not exempt from the CARES Act UI benefit expansion. Employees who are eligible under State law for UI benefits will be eligible for an additional \$600 per week under the CARES Act, in addition to that which they would normally qualify for under State law.

Q: Are part-time employees also eligible to receive the \$600 per week CARES Act benefit? Is it prorated based on hours worked?

A: Part-time employees are also eligible to receive the \$600 per week CARES Act benefit provided that they are eligible under State law for UI benefits, the same as full-time employees. All eligible individuals receive the entire \$600--there is no proration.

Q: Are employees who are working remotely or already receiving paid leave benefits, including under the Families First Coronavirus Response Act eligible to receive the \$600 benefit?

A: No. The benefit is not available to those who can work remotely or already are receiving paid leave benefits.

Q: When will employees start to receive the \$600 benefit?

A: The Wisconsin Department of Workforce Development (“DWD”) anticipates guidance from the U.S. Department of Labor (“DOL”) to issue shortly, and is currently working on its technology to make sure that all eligible individuals receive the full amounts owed. The target launch date is currently mid-to-late April. DWD has indicated that the \$600 payments may be retroactive, but additional confirmation is needed.

Q: How do the employees receive the benefit?

A: The employees would apply for UI benefits through DWD in the same manner as if they were applying for regular unemployment compensation. Under the program, the \$600 will be paid on a weekly basis on the same date as regular UI benefit payments, either on the same check or on a separate check.

Q: How long will employees be eligible for the \$600 benefit?

A: The \$600 weekly federal benefit will last for approximately 4 months, until July 31, 2020.

Q: Will counties still be able to continue employees’ health insurance benefits during a layoff? Will this affect employees’ ability to obtain the \$600 benefit?

A: Because health insurance contributions are excluded from the definition of wages for the purposes of calculating UI benefits, we believe employers would be able to continue to maintain health insurance benefits, and employees would still be eligible for UI benefits, including the \$600 benefit, without any deductions from the weekly benefit rate of the

employee. There would be no deduction from UI benefits received because health insurance contributions are not considered wages. However, employee coverage eligibility rules are subject to county policy and the insurer's policies, so those plans, policies and documents would need to be reviewed in order to determine whether continued coverage is possible.

Q: Can I reduce employee hours to part-time without affecting an employee's eligibility for the \$600 benefit?

A: Yes. Wisconsin law recognizes partial UI benefits. Under the CARES Act, so long as employees qualify for any UI benefits, including partial UI benefits, they would qualify for the additional \$600 benefit.

Q: Is there still a one-week waiting period for benefits? Does that apply to the \$600 benefit as well?

A: Currently, yes. Because the CARES Act ties receipt of the \$600 benefit to eligibility for benefits under State law, employees would receive the \$600 benefit as soon as they qualify for receiving regular UI benefits. Governor Evers has proposed legislation waiving the one-week waiting period, but the Wisconsin Legislature has not addressed this legislation yet. If the State waives the one-week waiting period, the Federal Government will fund payment for the first week of UI benefits, and the employer's UI account will not be charged.

Q: Will counties be responsible for funding the additional \$600 benefit in addition to regular unemployment benefits?

A: The \$600 benefit is fully funded by the Federal Government under the CARES Act; employers are not be responsible for the expansion of benefits.

Q: Are counties eligible for reimbursement for any unemployment costs?

A: Because they are self-insured, counties are eligible to receive a 50% reimbursement from the Federal Government (administered by the State) for UI benefits paid for employees furloughed or laid off during the covered period (March 13, 2020 – December 31, 2020). For example, if a county furloughs 25 employees for 8 weeks and the county pays \$74,000 in UI benefits due to such employees under State law, the county is eligible for a reimbursement of \$37,000.

Q: What is a Short-Time Compensation ("STC") program?

A: An STC program, also known as a work-share program, is a program designed to help employers reduce work hours in order avoid or minimize furloughs and layoffs. Employees whose hours are reduced under an approved work-share plan receive UI benefits that are pro-rated for the partial reduction of work.

Q: Are benefits paid pursuant to an approved STC program funded by the CARES Act?

A: Yes. CARES provides for 100% federal funding for benefits paid pursuant to an approved STC program in states that have such programs. Wisconsin has an STC program administered by the Department of Workforce Development (DWD). These benefits will be funded until December 31, 2020 for a maximum of 26 weeks.

Q: What UI benefits are employees entitled to under an approved STC plan?

A: Employees who participate receive an amount equal to the employee's regular UI benefit amount multiplied by the employee's proportionate reduction in hours worked for that week as a result of the STC program.

Q: Are UI benefits under an STC plan the same as regular UI benefits (without an STC plan?)

A: While the same formula is used to calculate the weekly benefit rate under both STC plans and regular UI benefits, STC plans allow employees to obtain UI benefits even if they work 32 hours a week or more. Absent an STC plan, employees who work 32 hours or more during a week are ordinarily ineligible for UI benefits for such week. However, under an STC program, an employee whose hours are reduced from 40 to 32 hours per week would still qualify for UI benefits. For example, a full-time employee who works 40 hours per week and earns \$16.00 per hour (and is otherwise eligible for benefits) would have a weekly benefit rate of \$370.00. A 20% reduction in hours (40 hours – 32 hours = 8 hours) would result in a weekly benefit of \$74.00 under an STC ($\$370 \times .20 = \74.00). Without an STC program, this employee would not receive any UI benefits due to working 32 hours per week.

Q: Will employees who receive STC benefits also receive the \$600 benefit?

A: Per guidance issued by the DOL on April 4, 2020, employees will be entitled to receive STC benefits in addition to the \$600 benefit discussed above.

Q: Do employees continue to receive health insurance and retirement benefits under an STC program?

A: Yes. The employer must maintain health insurance coverage under the same terms and conditions as if the employees were not included in the STC program.

Q: How do I apply for an STC program?

A: Employers can fill out and submit an application through DWD. The application is available at <https://dwd.wisconsin.gov/uitax/workshare.htm>.

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