




**Covid-19**

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**Coronavirus / COVID-19  
Response Team**


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1

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**Employment Law Guidance  
in Response to the  
CARES Act**

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3

## Agenda

- CARES Act Enhanced Unemployment Benefits
  - General Information
  - 2102 - Individuals not normally eligible for UI benefits
  - 2104 - Extra money for people eligible for UI benefits
  - 2107 - 13 more weeks when UI benefits are exhausted
- What can we do when our essential workers will not come to work?

4

## CARES Act – Enhanced Unemployment Benefits

- CARES Act - signed into law on March 27<sup>th</sup>
- Enhanced unemployment benefits:
  - Provides state UI benefits to individuals that normally cannot receive unemployment benefits
  - Provides an additional \$600/week in addition to state UI benefits to everyone
  - Provides an additional 13 weeks of benefits once individuals have exhausted their state UI benefits

## CARES Act – Section 2102

- Pandemic Unemployment Assistance Program
- Section 2102 - “*Unemployment for people not normally eligible for unemployment*”
- Sole proprietors, independent contractors, Gig workers, certain agricultural workers, LLC members, partnerships, church employees
  - No reported base period wage to the UIA - so these individuals normally cannot establish a state UI claim

## CARES Act – Section 2102

- Who can collect section 2102 benefits?
  - NOT ELIGIBLE for normal state UI benefits
  - ABLE to work
  - AVAILABLE for work
  - SELF-CERTIFY that their unemployment or partial unemployment is related to COVID-19

## CARES Act – Section 2102

- Section 2102 COVID-19 factors:
  - Diagnosed with COVID-19 or is experiencing symptoms of COVID-19
  - A member of the household has been diagnosed with COVID-19
  - Individual is caring for a family member or household member diagnosed with COVID-19
  - Individual is caring for a child that is unable to attend school due to a COVID-19 public health emergency, and sending the child to school is required for the individual to work

## CARES Act – Section 2102

- Section 2102 COVID-19 factors (contd):
  - Individual cannot reach work because of a quarantine due to COVID-19
  - Individual advised by HCP to self-quarantine due to COVID-19 concerns
  - Individual was scheduled to commence employment and does not have job or cannot reach it due to COVID-19
  - Individual has become breadwinner in the home because previous breadwinner died due to COVID-19

## CARES Act – Section 2102

- Section 2102 COVID-19 factors (contd):
  - Individual had to quit job as direct result of COVID-19
  - Individual's place of employment close due to CoVID-19
  - Individual meets additional criteria described by the Secretary of Labor; or
  - Individual is self-employed and is seeking part-time employment but does not have sufficient work history to qualify for regular unemployment benefits

## CARES Act – Section 2102

- If an individual's unemployment or partial unemployment is - in any way - related to COVID-19 - he/she will receive an enhanced unemployment benefit under section 2102
- EXCEPT - does not include an individual:
  - Ability to "telework" with pay; or
  - Receiving paid sick leave or other paid leave

## CARES Act – Section 2102

- How much is the 2102 benefit?
  - State UI benefit amount + \$600 (In MI, up to \$962/week)
- How long does the benefit last?
  - Up to 39 weeks - until December 31, 2020
- Is it retroactive?
  - Yes - Individuals covered by section 2102 can receive the benefits retroactively back to January 27, 2020
  - Additional \$600 kicker may expire on July 31, 2020

## CARES Act – Section 2104

- Section 2104 - Emergency Increase in Unemployment Benefits
- Extra money for people who are eligible for unemployment (*\$600/week*)
  - Examples: most employees that work and earn W-2 wages
    - This section covers most of your workers

## CARES Act – Section 2104

- Who can collect section 2104 benefits?
  - Individuals that are ELIGIBLE for state UI benefits; and
  - NOT DISQUALIFIED in accordance with state law
    - 2104 benefits are not linked to COVID-19.
- An individual that is not ELIGIBLE under state law or DISQUALIFIED under state law – cannot receive 2104 enhanced benefits



## CARES Act – Section 2104

- How much are 2104 benefits?
  - State UI benefit + \$600/week (In MI, up to \$962/week)
  - NOT DISQUALIFIED in accordance with state law
    - 2104 benefits are not linked to COVID-19.
- How long to 2104 benefits last?
  - Until July 31, 2020

## CARES Act – Section 2107

- Section 2107 – Pandemic Emergency Unemployment Compensation
- More benefits after you run out of your normal state UI benefits - 13 extra weeks
- Examples: When people exhaust their 26 weeks of Michigan unemployment benefits, they will use this for 13 more weeks.



## CARES Act – Section 2107

- Who can collect 2107 benefits?
  - Individuals that have EXHAUSTED REGULAR UNEMPLOYMENT COMPENSATION;
  - Have NO RIGHT TO OTHER COMPENSATION during a particular week under any state or federal law;
  - Are not receiving Canadian compensation; and
  - Are - ABLE TO WORK, AVAILABLE TO WORK, AND ACTIVELY SEEKING WORK (and are NOT DISQUALIFIED).
  - 2107 benefits are not linked to COVID-19?

## CARES Act – Section 2107

- How much are 2107 benefits?
  - State UI benefit + \$600/week (In MI, up to \$962/week)
- How long do they last?
  - 13 weeks

## CARES Act Enhanced Unemployment Benefits

- Are we getting charged for these benefits – including the additional \$600/week?
  - Unclear
    - My position:
      - Contributing employers – account will not be charged – this is a federally funded benefit
      - Reimbursing employers (governmental, non-profits that elected reimbursing status) – may be billed for ½ charges based on sections 2103
        - Guidance coming from the UIA
      - EO 2020-24 – benefits paid to “laid off” workers of workers placed on “LOA” – Non-chargeable account

## CARES Act Enhanced Unemployment Benefits

- When will individuals be able to collect the enhanced benefits?
  - 2-3 weeks
  - States must enter into an agreement with the USDOL before these benefits can be paid
  - Normal state UI benefits in the meantime
- Will paid leave impact the enhanced unemployment?
  - Unclear
    - My position – Yes, paid leave will be treated as earnings

## General UI Benefit Information

**UNEMPLOYMENT INSURANCE**  
File Your Claim By **Last Name**

ONLINE FILING SCHEDULE:		CALL CENTER FILING SCHEDULE:	
<a href="http://michigan.gov/uia">michigan.gov/uia</a>		<b>1-866-500-0017</b>	
<b>A-L</b> FILE CLAIMS	<b>M-Z</b> FILE CLAIMS	<b>A-L</b> CALL ON	<b>M-Z</b> CALL ON
Monday Wednesday Friday	Sunday Tuesday Thursday	Monday & Wednesday	Tuesday & Thursday
Saturday if you missed your days <b>WEBSITE IS 24/7</b>		Friday if you missed your days <b>8AM-5PM MON-FRI</b>	

The day or time of day in which a claim is filed will not impact whether you receive benefits or your benefit amount. Additionally, your claim can be backdated to reflect the date you were laid off or let go due to COVID-19.

## General UI Benefit Information

- Record numbers of claims
- UIA computer problems
- File claims online between 8pm-8am – for best results

## My Essential Workers Are Refusing To Come To Work – What Can I Do?

1. Communications
2. Unpaid Leave Status or Discipline
3. Messaging on Benefit Issues
4. Unemployment Eligibility

## My Essential Workers Are Refusing To Come To Work – What Can I Do?

1. Communicate
  - An opportunity for leadership
  - Explain / clarify misunderstandings
  - Details on why the company's work is essential
  - Assurance on mitigation and safeguarding efforts

## My Essential Workers Are Refusing To Come To Work – What Can I Do?

### 2. Leave vs. Discipline/Discharge

- Is it a truly a voluntary quit?
- Practical and legal considerations
  - Practically – employee engagement and wanting to keep your talent – also PR concerns
  - Legally – is there any protected activity involved (e.g. NLRA, WPA, MIOHSA)?
- Option: Put employee on the shelf without pay

## My Essential Workers Are Refusing To Come To Work – What Can I Do?

### 3. Benefit Issues (assuming no confirmed quitting)

- Worker refusing available work is withholding labor
- No pay and no need to continue healthcare or other benefits for an employee who withholds their labor in a dispute over working conditions (consistent with your policies)
- Will potential loss of benefits deter folks from refusing to work?
- Return to work not guaranteed – employers can certainly favor those employees who've worked and there may be fewer jobs

## My Essential Workers Are Refusing To Come To Work – What Can I Do?

### 4. Unemployment Issues

- In ordinary times, refusal of available work is a voluntary quit
- It still should be and employers should take that position; but remember who's deciding this and there is a potential wrinkle with EO 2020-24.
- Can tell employees they may not be eligible and may want to challenge
- Additional potential employer challenge based on disqualification for striking employees
- Can stress practical delays in receiving benefits, even if eligible. Could be a 2-3 week delay.

**Today's Briefing Panelists:**  
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