



## ***Unemployment Benefits and COVID-19***

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- Adam is the Director of Training at Thomas and Company, an organization that helps nationwide employers save money and increase efficiency within the unemployment cost control, wage verification, and Tax Credit and Incentives programs.
- Adam has been with T&C for 12 years working with clients as well as internal employees focusing on best practices and process improvements. In his current role, Adam maximizes the value of developing and delivering training and resource materials on each of the services and their respective online platforms.
- “Working with nationwide clientele has taught me that each business has strengths and weaknesses that are unique to them. My goal is to reinforce those strengths and limit the weaknesses by providing educational opportunities.”



# The CARES Act

- The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was signed into law on March 27, 2020.
- The \$2.2 trillion package included various provisions increasing and expanding unemployment insurance benefits available to workers, including individuals who are unemployed, partially unemployed, or unable to work due to COVID-19.

## Emergency Increase in Unemployment Compensation Benefits

- Provides an additional \$600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance through July 31<sup>st</sup>, 2020.
- A concern of many employers is that the additional funding will incentivize employees to stay on unemployment instead of returning to work.
- This is a valid concern. Until we know how the states will implement and adjudicate these situations, our recommendation is for employers to track the details of job offers and refusals so that we can provide them to the state agencies.

# Job Refusals



## JOB REFUSAL CHECKLIST FORM

1. Claimant information:  
NAME: \_\_\_\_\_  
SSN: \_\_\_\_\_
2. Date of Refusal: \_\_\_\_\_
3. Name of Client: \_\_\_\_\_
4. Type of Work: \_\_\_\_\_
5. Rate of Pay: \_\_\_\_\_
6. Scheduled Start Date: \_\_\_\_\_
7. Length of Job: \_\_\_\_\_
8. Work Hours: \_\_\_\_\_
9. Total Work Hours Per Week: \_\_\_\_\_
10. Job Location: \_\_\_\_\_
11. How was the Job Offered: \_\_\_\_\_
12. Name and Title of Person Offering Job: \_\_\_\_\_
13. What Reason did this person give for Refusing Job? Please be specific.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Why is this important? Aren't the benefits for COVID-19 claims being charged to the state trust fund and not my account?

- In most cases, COVID-19 claims are being charged to the trust fund, but these trust fund balances determine the overall unemployment tax rates in the states.
- It is important to ensure that improper payments aren't charged to the trust funds to keep state unemployment rates in check.

## What if the claimant has a good reason to turn down our offer?

- It is best to let the state determine if the employee has a compelling reason to refuse an offer of work. Some potentially valid reasons could be those specifically addressed in the CARES Act:
  - If you have tested positive for COVID-19 and are experiencing symptoms;
  - If you have recovered but it caused medical complications rendering, you unable to perform essential job duties;
  - If a member of your household has been diagnosed with COVID-19;
  - If you are providing care for a member of your household who was diagnosed with COVID-19;
  - If you do not have childcare due to COVID-19 reasons; or
  - If you do not have transportation to your place of work because of COVID-19.
  - If you have been advised by a health care provider to self-quarantine due to COVID-19
    - This is an occurrence where we believe employers could require documentation from the health care provider.

## So, what wouldn't be a compelling reason?

- Many states have already determined that individuals who are asymptomatic and have chosen to self quarantine are generally not eligible.
- Employees who qualified for both state and federal benefits could be earning more while they are on furlough than they would if they returned to work full or part-time. This is not a compelling reason to refuse an offer of work.



## Other concerns about increased benefit amounts

- If an employee earns more than their weekly benefit amount, they will not be eligible for the additional \$600.
  - Example: Their weekly benefit amount is \$275 and the additional money gives them \$875. If they work and earn \$400, they do not receive the additional payment, effectively losing \$475 for that week.
  - Some industries will be hit harder by this occurrence due to work being available while others may still be closed due to government enforced shutdowns.
  - This is where tracking all job refusals to provide details to the state could help to potentially reduce benefits and incentivize employees to return to work.
  - Keep in mind there are many categories with some not yet clearly defined that allow employees to stay out of the workforce.

## What do I need to do to help my employees get the benefits they need and deserve?

- Separation Notices
- Employer Filed Claims
- Workshare/Short Term Compensation

## Separation Notices

- There are a growing number of states that require the employer to provide a separation notice to their employees when they are furloughed. These documents are required by the states to provide direct notice to your employees of the availability of unemployment compensation benefits. The list of states is changing often, so for the latest updates, please see the [Separation Notice](#) page on our web site.
- In states that do not require a separation notice, you can provide a letter for your staff to help them determine how to file for unemployment benefits in the states. Include information such as:
  - The link to the state site for filing a claim
  - A list of what they need to file – they need to provide their full legal name, their social security number or work authorization if they are not a US Citizen/resident.
  - Provide the employees with the full company name, (as registered with the state), the state account number and Federal Employer Identification Number (FEIN) so that state can expedite the verification of employment and wages.

## Employer Filed Claims

- There are four states that require the employer to file claims on behalf of their employees (Alabama, Georgia, Hawaii, and Virginia).
  - Virginia has temporarily suspended this process because of the volume of COVID-19 requests.
- These claims are filed within the employer portal on the state's website.
- An important thing to remember is that these employer portals are also where the unemployment tax account information is held and administered typically through the payroll or tax departments with your company.
- It is imperative that nothing regarding the tax accounts, address of records, or other items are changed while the employer is filing these claims on behalf of their employees.
  - This could cause disruption in the process and result in time and money being lost.

## Temporary Financing of Short-Time Compensation Payments in States with Programs in Law

- Short-Time Compensation (STC), also known as work sharing or shared-work program, is an alternative to layoffs for employers experiencing a reduction in available work.
- STC preserves employees' jobs and employers' trained workforces during times of lowered economic activity. STC allows employers to reduce hours of work for employees rather than laying-off some employees while others continue to work full time.
- Those employees experiencing a reduction in hours are allowed to collect a percentage of their unemployment compensation (UC) benefits to replace a portion of their lost wages. STC cushions the adverse effect of the reduction in business activity on workers by averting layoffs and ensures that these workers will be available to resume prior employment levels when business demand increases.

## Temporary Financing of Short-Time Compensation Payments in States with Programs in Law

- Currently, 27 states have STC programs already established in law that meet the new federal definition (AZ, AR, CA, CO, CT, DC, FL, IA, KS, MA, MD, ME, MI, MN, MO, NE, NH, NJ, NY, OH, OR, PA, RI, TX, VT, WA, and WI).
- The CARES Act is providing funding to support the STC/Work Share programs. The new provision would pay 100% of the costs they incur in providing this short-time compensation through December 31, 2020.
- The hope is that this will incentivize more employers to apply for these programs.
- To implement an STC arrangement, employers must submit an STC plan to the appropriate state workforce agency for approval.

**Let's go through some questions/scenarios that you already have or could be involved in.**

## My employees have paid time off available. Do they have to take it?

- It depends on your corporate policies. When filing for benefits, this paid time off could be factored into their eligibility.
- States do not require employees to use all available PTO time (vacation, sick time, severance, etc.) before being eligible for benefits.
- The employees who do take advantage of PTO will need to report those wages to the state when they file.



## How do our impacted employees qualify for the \$600 per week federal benefit?

- Under the CARES Act, if an individual qualifies for state benefits, then they are automatically qualified for the federal payment of \$600 per week.
- Unlike the state's weekly benefit amount which will vary based on the employee's earnings, everyone gets a flat \$600 federal benefit per week.
- This additional benefit runs from March 29, 2020 through July 31, 2020.

## What happens to those who are already unemployed and whose state unemployment insurance payments have ended or are ending soon?

- The CARES Act provides up to 13 additional weeks of federally financed UI payments for individuals who exhaust state and federal unemployment insurance payments and are able, available, and actively seeking work, subject to COVID-19-related flexibilities. This provision expires December 31, 2020.

## Does an employer have to lay a person off for that person to get unemployment insurance payments?

- No.
  - An employer can furlough workers, who will then be eligible for unemployment insurance payments.
  - It is also possible for an employer to continue to pay an employee's health benefits during a furlough, which would still allow the employee to receive unemployment insurance payments until they are called back to work.

## What about people whose hours have been reduced? Can they get unemployment insurance payments?

- Yes.
  - Individuals can receive benefits for what's called "partial unemployment." In a few states, an individual is considered totally unemployed in a week even though certain small amounts of wages are earned.
  - In most states, an individual is partially unemployed if they are working less than full-time and their earnings are less than the weekly benefit amount they'd be eligible for if they were unemployed.
  - Some states may also disregard a portion of a person's earnings in this calculation as well, meaning some of their earnings would not count when calculating their weekly benefit amount they are eligible for.

## Can an employee who does not qualify for state benefits because they haven't earned enough in the base period collect the \$600 benefit?

- Yes.
  - The CARES ACT has a provision for individuals who would not traditionally qualify for state benefits to collect the \$600 benefit.

## I'm a non-profit employer, am I eligible for any relief?

- Yes.
  - The program offers non-profits, government agencies and Native American tribes' relief in the form of covering 50% of the benefits paid from the state unemployment accounts. The federal \$600 payments are covered 100% by the federal government.

## Do unemployment insurance payments count as income?

- Yes.
  - Unemployment benefits are counted as unearned income for federal tax purposes, and the additional \$600 in weekly unemployment insurance payments provided by the CARES Act count toward eligibility for means-tested benefits (other than Medicaid and the Children's Health Insurance Program).

## What benefits are available?

- Your employees are probably asking how much they will be able to collect if they file for unemployment.
  - The amount that an individual can collect will vary state-by-state and case-by-case. The state determines the monetary eligibility for each claimant using a calculation factoring in the wages earned during the state's base period.
- While the qualification rules vary from state to state, generally, the state will look at the wages earned in the first four of the last five completed calendar quarters. The amount of work and wages earned in this base period determine:
  - a) If a worker had sufficient work history to meet the minimum requirements for benefits.
  - b) The weekly benefit amount that they will qualify for, and
  - c) The number of weeks that they may receive benefits.



## **My employees are reporting that the state denied them because they have no wages. They've worked for us for a while, what happened?**

- In most cases, this happens because the state is unable to find the wages under the employer they reported on their claim.
- Most times, we find that the employee is using the wrong Employer Account Number (SUI/EAN) when they filed their claim.
- If you can provide the correct information prior to filing, this helps eliminate this potential issue.

## **My employee just certified for a week of part-time work and the state says they are disqualified. I thought they could work and collect unemployment.**

- If the employee earned more than the weekly benefit amount, then they are not eligible for benefits for that week. This does not mean that they can't collect in the future.
- They should also continue to certify for benefits per the state's requirements.
- Except for the states where the employer files the claims, the employee must certify each week to continue benefits. If an employee fails to certify, the state assumes that they have returned to work and no longer need benefits.

**I received funds from the Payroll Protection Program, and I am going to pay my employees for 7 weeks and then will furlough them again. Should they continue to file each week while they are being paid?**

- No.
  - Once an employee returns to work or they are being paid through a PPP, they need to stop certifying weekly. If it is necessary to collect benefits again, the employee can reopen their claim.

## Where to file?

- An unemployment insurance claim is filed in the state where the individual worked, not where they live.
- What if they worked in more than one state in the past 18 months?
  - They may have an option to file against any one of the states in which they worked and have monetary eligibility.
  - They may choose to combine the wages of the states in which they worked to establish a combined wage claim, which may result in a higher weekly benefit amount.

## What if they only worked for me for a short time before they were furloughed?

- Encourage your employees to report all their employers that they worked for in the past 18 months when they file their claim.
- The state may not need to use the wages/earnings from their previous employer(s), but it will speed up the process if they don't qualify based on their current earnings with you.
- The state is asking them about other types of pay. What should they report?
  - If your employees used any Vacation/PTO time, sick time or received any severance pay, bonus pay or commissions, they need to report this to the state. It is possible that this pay may temporarily disqualify them for benefits for the week in which it was earned, but not properly reporting additional pay is considered fraud and could lead to bigger issues for the individual.
  - If you have enrolled in the Payroll Protection Program and are paying your employees, they need to report this pay to the state as well.

## What is unemployment fraud?

- You may have seen recent reports that unemployment fraud is on the rise. Recently, the U.S. Secret Service issued a news alert that a crime ring has been filing unemployment claims in different states using Social Security numbers and other personally identifiable information (PII) belonging to identity theft victims. This is just one type of unemployment fraud to be on the lookout for.
- If you receive a claim for someone who is still working for you and they did not file for unemployment, or a claim for someone who has never been employed by your company, this could be a sign of unemployment fraud. In addition to identity theft that is not the fault of the employer or the identity theft victim, there may be more intentional acts of fraud committed. Claimant fraud can include:
  - knowingly submitting false information;
  - continuing to collect benefits when knowing oneself to be ineligible;
  - not being able and available to work while certifying for benefits under state law;
  - or intentionally not reporting wages or income while collecting full benefits.

## What are the penalties for unemployment fraud?

- All states are required to assess a penalty of not less than 15% of the amount of the fraudulent payment. Other penalties under state unemployment insurance laws generally include:
  - criminal prosecution with fines and/or incarceration;
  - required repayment of fraudulently collected benefits;
  - forfeiting future income tax refunds;
  - and/or permanent loss of eligibility for unemployment compensation.
- Commission of unemployment benefit fraud may also be prosecuted by the U.S. Department of Justice in federal courts under 18 U.S.C § 1341 or other appropriate federal statutes.

## How can I report unemployment fraud?

- In addition to notifying Thomas & Company of suspected fraudulent activity, you should report the fraud to the State Workforce Agency and alert them of the following:
  - Who is committing fraud?
  - What is their Social Security number or employer number?
  - What are they doing?
  - When did they start doing this?



## What should my employee do if they think they have been a victim of fraud?

- It is recommended that they contact the state agency in question to report that their identity has been used to claim unemployment insurance benefits. Filing a claim using the identity of another person is a felony and is subject to prosecution so the agency would like to obtain additional information for their case file. In the event you receive an unemployment claim from the agency, file a response indicating they are an active associate who has not filed a claim for benefits and monitor your unemployment account to insure there are no erroneous charges associated with the claim.
- They should also research the Federal Trade Commission website ([www.ftc.gov/identitytheft](http://www.ftc.gov/identitytheft)) for additional information and guidance related to identity theft.
- Recommended actions include, but are not limited to:
  - Contacting your bank and credit card companies.
  - Communicating with the IRS and completing the form associated with identity theft.
  - Contact all three of the credit reporting agencies to place a freeze on your credit report.
  - Contact the Social Security Administration.

## COVID-19 Impact on Unemployment Tax Rates

- A number of states have made the decision that COVID-19 claims will not be charged against the individual employer's account balance, while others state that you need to request relief from charges. Either way, there will be a long-term impact to the state trust funds due to the sheer volume of claims. As the state trust fund balances are depleted, the tax rates in the states will increase.
- This is why it is important to report any instances of unemployment fraud (collecting benefits while still getting paid, not reporting vacation pay, etc.) or job refusals to the state so that they can control the amount of benefits that are paid.

## One Final thing to keep in mind.

**The current implication and scope of the CARES ACT provisions are uncertain. These issues will be resolved over time by adjudication and interpretation by the various state unemployment agencies.**

Please visit our website at  
<https://covid19.thomas-and-company.com/>  
to view the most current information and  
download a copy of our

**COVID-19 Employer Unemployment Guide**