

COVID-19 and Unemployment:

What Employers Need To Know

Kelley F. Farrell, Shareholder

Traci Dale Pupillo, Shareholder

Unemployment Rate Skyrockets

- In April 2020, the unemployment rate in the United States hit 14.7%, rising from 3.5% in February 2020
- US Labor Department reported that almost 20.5 million people lost their jobs in a single month
- Unemployment rate declined to 13.3% in May, indicating a limited resumption of economic activity

Federal Legislation Passed to Assist Employees Affected by Coronavirus Crisis

- CARES Act/Paycheck Protection Program Flexibility Act (PPPFA)
 - Expanded unemployment insurance benefits
 - Paycheck Protection Program
- Families First Coronavirus Response Act
- When are employees entitled to unemployment benefits v. wages/salary under PPP loan v. paid time off under the FFCRA?

Missouri Unemployment Insurance (UI)

- Missouri's regular unemployment insurance program continues to be in effect
- **Eligibility for UI:**
 - Any employee who earns at least \$2,250 (at least \$1,500 during one of the calendar quarters, and at least \$750 during the remainder of the year) from an insured employer during his/her base period is eligible to file an unemployment insurance claim

Missouri Unemployment Insurance (UI)

- Eligibility for UI:
 - Employee lost his or her job through no fault of his or her own
 - Employee unable to work because due to a natural disaster
 - Employee quit for good cause related to the work or the employer

Missouri Unemployment Insurance

- Employees receive weekly benefit amount (WBA) is 4% of employee's two highest quarters in the base period
 - **However**, Missouri caps the WBA at **\$320**
- Missouri only allows a **maximum of 20 weeks** of benefits for a benefit year

Missouri Unemployment Insurance

- Employees **may work part time** and still receive some UI benefits
 - Must continue to look for and be able to work
 - Must report gross wages earned each week
- Benefits paid when working part time will be reduced
 - **Weekly deduction** = (Weekly wages) – (\$20 or 20% of WBA, whichever is greater)

Missouri Unemployment Insurance

- To be eligible for unemployment benefits employee is required to make **at least 3 work search activities** each week
 - Ex) attending workshop at Office of Workforce Development, attending job interview, attending job fair, or submitting job application online

Missouri Unemployment Insurance

- **Waiting Week:**

- Traditionally, employees are **not paid** the benefits he/she is eligible to receive for the **first week** after he/she files an unemployment claim

Missouri Unemployment Insurance

- The Division of Employment Security (DES) waived the one-week waiting period for all claims filed as a result of the coronavirus
- Although the requirement of weekly work searches has been suspended, beginning July 5, 2020, individuals wishing to continue receiving UI, including PUC, will be required to resume work searches

Employer's Unemployment Tax Rates

- Under Missouri ED20-4, the Missouri Department of Labor is temporarily waiving any charges to contributory employers for benefits paid out to claimants as a result of loss of work due to the coronavirus through July 4, 2020

Missouri Extended Benefits Program

- As of May 31, 2020, Missouri's insured unemployment rate triggered a 13-week Extended Benefits (EB) period
 - 44 other states have also had an EB period triggered in response to the pandemic
- Federal law creates this program, which offers 13 additional weeks of benefits to individuals who have exhausted both state UI benefits and the PEUC (discussed later)
- The Division of Unemployment Security will send a written notice to those who qualify for the EB Program
- The weekly benefit amount is the same as the individual received for regular UI
- The last time this EB program was triggered in Missouri was 2009

CARES Act Expands Entitlement to UI

- The CARES Act creates **3 new types of UI relief**:
 - Pandemic Unemployment Assistance
 - Pandemic Unemployment Compensation
 - Pandemic Emergency Unemployment Compensation
- All programs are 100% funded by the federal government

Pandemic Unemployment Assistance Program (PUA)

- Provides emergency assistance to workers that are left out of regular state UI or who have exhausted their state UI benefits (including any extended benefits that may be available in the future)
- Up to 39 weeks are available to workers who are immediately eligible to receive PUA
- Workers who are eligible for state UI are not eligible for the PUA program
- Those eligible include self-employed workers, including independent contractors, freelancers, workers seeking part-time work, and workers who do not have enough work history to qualify for state UI benefits

Pandemic Unemployment Assistance Program (PUA)

- Applicants will need to certify that they are fully or partially unemployed or unable and unavailable to work because:
 - they have been diagnosed with COVID-19 or have symptoms and are seeking a medical diagnosis;
 - a member of their household is diagnosed with COVID-19;
 - they are providing care to a family or household member who has been diagnosed with COVID-19;
 - they are providing child care for a child or other household member who can't attend school or another facility because it is closed due to COVID-19;
 - they are unable to reach the place of employment because of a quarantine; or
 - they are unable to reach the place of employment because they are advised to self-quarantine

Pandemic Unemployment Assistance Program (PUA)

- US Department of Labor's guidance provides that **general fear of COVID-19 will NOT support continuation of unemployment benefits under Missouri Unemployment Insurance or any of the federally funded programs available under the CARES Act**
- If employer provides employee with suitable work, and employee chooses not to return to work, employee is no longer eligible for UI

Pandemic Unemployment Assistance Program (PUA)

- Workers are not eligible if they can telework or are receiving paid sick days or paid leave
- Runs from January 27, 2020 through December 31, 2020
- The amount for which they are eligible is the weekly benefit amount authorized under the unemployment compensation law of the state where they were employed and the amount of PUC

Pandemic Unemployment Compensation (PUC)

- Provides that all regular UI and PUA claims will receive their usual weekly benefit amount **plus** an additional \$600 per week in compensation until July 31, 2020
- Workers must be eligible for Missouri UI or PUA
- As a result of the PUC payment, many employees receive more in UI than they would if they were working

Pandemic Emergency Unemployment Compensation (PEUC)

- PEUC provides an additional 13 weeks of state UI benefits, which becomes available after someone exhausts all of their regular state UI benefits
- In effect until December 31, 2020
- Employee receives the state weekly benefit amount plus the PUC amount
- To receive PEUC, an individual must be actively engaged in searching for work, but the Act provides that “a State shall provide flexibility in meeting such [work search] requirements in case of individuals unable to search for work because of COVID-19, including because of illness, quarantine, or movement restrictions.”

What Happens Now that Businesses are Opening Back Up?

Unemployment Benefits vs. Families First Coronavirus Response Act (FFRCA)

- The FFRCA requires employers with fewer than 500 employees to provide employees with two types of paid leave for specified reasons related to COVID-19
 - Emergency Paid Sick Leave
 - Extended Family and Medical Leave
- The FFRCA went into effect April 1, 2020 and expires December 31, 2020
- Eligibility for Emergency Paid Sick Leave and Extended Family and Medical Leave are essentially the same as those set forth in the CARES Act for expanded Unemployment Benefits, BUT an employee cannot receive both

Emergency Paid Sick Leave

- Provides 2 weeks (up to 80 hours) of paid sick leave at employee's regular rate of pay (up to a cap of \$511 per day) to any employee who:
 - Has symptoms of COVID-19 and is seeking a medical diagnosis
 - Is subject to a governmental quarantine order or isolation order related to COVID-19
 - Has been advised by a health care provide to self-quarantine because of COVID-19-related concerns
- Provides 2 weeks (up to 80 hours) of paid sick leave at two-thirds of employee's regular rate of pay (up to a cap of \$200 per day) to any employee who:
 - Is caring for someone in quarantine due to a governmental quarantine order or has been advised to self-quarantine by a health care provide due to COVID-19 concerns
 - Is caring for a son or daughter if the son or daughter's school or place of childcare has been closed because of COVID-19

Expanded Family And Medical Leave

- Provides 12 weeks of leave if an employee is unable to work (or telework) due to a need for leave to care for a son or daughter whose:
 - School or place of child care has been closed due to COVID-19
 - Child care provider is unavailable due to COVID-19
- The first 10 days are unpaid, but unlike other types of FMLA leave, additional leave up to 12 weeks must be paid

FFCRA Paid Leave VS. Unemployment Benefits

- Employees cannot receive paid leave under FFCRA and unemployment benefits
- When is an employee entitled to UI?
 - If an employer is closed or closes its place of business
 - If an employee is furloughed because of lack of work
 - If an employee is unable to work for specified COVID-19 related reasons and employer employs more than 500 employees and is not otherwise receiving pay

FFCRA Paid Leave VS. Unemployment Benefits

- When is an employee entitled to paid leave under the FFCRA?
 - If employer with less than 500 employees is open and has work for the employee AND
 - Employee is unable to work for a specified COVID-19-related reason

Recalling Employees Back to Work

- Be Careful!
 - The FFRCA prohibits any adverse action against an employee who requests paid leave or has already used paid leave
 - Fraud
- If you are not bringing back all of your employees, make sure you have a documented business reason to explain why some employees are being treated differently

PPP Loans vs. Unemployment Benefits

- In addition to providing expanded UI, the CARES Act provides additional pandemic assistance in the form of the Paycheck Protection Program (PPP)
- The purpose of the PPP is to keep businesses operating and ensure that employees are receiving a paycheck

PPP Loans vs. Unemployment Benefits

- PPP loan funds may be used to pay payroll (salary, wage, family, medical, or sick leave, health benefits)
 - Can also be used to pay mortgage interest, rent, or utilities
- All expenses that fall under these categories are eligible for forgiveness
- Loan forgiveness is reduced if you:
 - Decrease your full-time employee headcount
 - Decrease salaries and wages by more than 25% for any employee that made less than \$100k in 2019

PPP Loans vs. Unemployment Benefits

- Employees who were laid off or put on furlough may not wish to return to work especially for employees who are receiving more in expanded benefits under the CARES Act than he/she earned in wages
- If an employer has received a PPP loan, employees cannot choose to accept unemployment instead of a paycheck from their employer

PPP Loans vs. Unemployment Benefits

- The CARES Act/Paycheck Program Flexibility Act (PPPFA) preserve loan forgiveness for borrowers who can document either:
 - An inability to rehire individuals who were employees on February 15, 2020, and an inability to hire similarly qualified employees for unfilled positions on or before June 30 or December 31, 2020; or
 - An inability to return to the same level of business activity the business was operating at before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19

PPP Loans vs. Unemployment Benefits

- To qualify for the safe harbor provision, employer **MUST**:
 - Make written, good faith offer to rehire during the covered period
 - Offer to rehire for same salary/wage and number of hours as before lay-off/furlough
 - The offer is rejected by the employee
 - The borrower maintained records of the offer and its rejection
 - The borrower informed the applicable state unemployment insurance office of the employee's rejected offer of reemployment within 30 days of the employee's rejection of the offer

Maintaining Payroll for PPP loan

- If an employer chooses to back pay an employee through a PPP loan, an employee is required to report this immediately to the DES
- Any UI that was paid to the employee, including PUC, is required to be paid back by the employee for the weeks the employee was paid through the PPP
 - Can still receive UI if the amount the employee is paid is less than the Weekly Benefit Amount
- Failure to report can lead to a monetary penalty, benefits rights canceled, arrest, fines and imprisonment

Maintaining Payroll for PPP loan

- Also may be exempt from PPP loan forgiveness reductions if:
 - Employee was fired for cause
 - Employee voluntarily resigned
 - Employee voluntarily requested and received a reduction of their hours
- In the foregoing circumstances, employees are typically ineligible for UI

After Exhausting PPP Loan Funds

- After the 8/24 week period defined in the CARES Act/PPPFA, or after spending all PPP loan funds, employers are able to lay-off or furlough employees if business has still not improved
- Employees are then eligible for UI benefits

Fraud and Unemployment Claims

- The US Department of Labor (DOL)/Department of Justice and the state of Missouri are very focused on fraud prevention
- The Department of Justice has announced it intends to “[remain] vigilant in detecting, investigating, and prosecuting wrongdoing related to the crisis”

Fraud and Unemployment Claims

- As recently as June 15, 2020, the DOL issued guidance to help ensure the accuracy of unemployment claims due to the implementation of the CARES Act
 - “It is vital, now more than ever, that states exercise due diligence in the administration of their unemployment insurance programs to ensure taxpayer funds are spent properly,” said Assistant Secretary for Employment and Training John Pallasch. “Today’s guidance will help states detect fraud and assess the accuracy of payments to ensure benefits are provided only to eligible claimants.”

Fraud and Unemployment Claims

- The Missouri Department of Labor has said that “quitting without good cause to obtain additional funds under the regular unemployment program or the CARES Act qualifies as fraud.”
- If a worker fraudulently receives unemployment benefits, that person will be ineligible for any additional UI payments, must pay back the benefits he/she received, and is subject to criminal prosecution

How to Report Work Refusals

- Division of Employment Security has developed portal for employers to submit information about employees who refuse to return to work or who quit their jobs
 - Portal available at <https://uinteract.labor.mo.gov/benefits/home.do>
 - Instructions for reporting work refusals:
<https://labor.mo.gov/sites/labor/files/2020-5-1%20Slides%20on%20UInteract%20Employer%20Work%20Offer%20Refusal%20Function.pdf>
- Employers should report work refusals or quits ASAP

Sample Notice For Employers



<https://labor.mo.gov/sites/labor/files/Employee%20Notice%20Unemployment%20flyer%20%281%29.pdf>



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Attorneys at Law

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to help you find the answers.**

Kelley F. Farrell, *Shareholder*

P: 314.505.5422

F: 314.505.5423

E: farrell@capessokol.com

Traci Dale Pupillo, *Shareholder*

P: 314.505.5466

F: 314.505.5467

E: pupillo@capessokol.com



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