

Monthly Minute Memo: *Coronavirus Update: CARES Act, IDES emergency rules and updated DOL Guidance – March 30, 2020*

In addition to the coronavirus stimulus bill signed into law on Friday, March 27, 2020, there are additional updates to the Illinois Department of Employment Security (“IDES”) emergency rules and updated guidance from the Department of Labor (“DOL”) regarding the Families First Coronavirus Relief Act (“FFRCA”). The following is a summary of the recent developments regarding these laws and regulations.

I. The CARES Act

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (“CARES”). The purpose of CARES is to provide relief for individuals and businesses impacted by the coronavirus. Within CARES, there is a section dedicated to unemployment, entitled the “Relief for Workers Affected by the Coronavirus Act.” The following is a summary of this new unemployment law:

Who is a covered individual? The definition provided under this Act expands the eligibility to individuals who typically would not be eligible for unemployment benefits such as independent contractors and the self-employed. An individual must certify he or she is able and available to work but for the coronavirus and/or coronavirus public health emergency. Furthermore, the Act provides numerous other requirements for the individual to certify such as: the individual (or a member of the household) is diagnosed with or experiencing symptoms; providing care for a member of the household diagnosed with Coronavirus; a child or other person in the household is unable to attend school or another facility that is closed due to the Coronavirus; cannot reach employment because of a quarantine or has to quit their job as a direct result of the Coronavirus. However, an individual is not eligible for unemployment for any period where he or she is receiving paid leave benefits.

When will the assistance be available? For unemployment, partial unemployment, or inability to work because of the Coronavirus, the assistance begins on or after January 27, 2020 and ends on or before December 31, 2020. This assistance shall be provided so long as the individual meets the requirements under the Act.

How many weeks does a covered individual get assistance? The assistance shall not exceed 39 weeks and includes regular compensation or extended benefits under any federal or state law.

Does an individual get benefits before the date of enactment? The Secretary will establish a process for assistance for weeks on or after January 27, 2020 and before the date of enactment. No further details were provided.

How much does an individual receive? The weekly benefit amount authorized under state law plus the Federal Pandemic Unemployment Compensation (“FPUC”), which is \$600.

For example, an individual in Illinois (no dependents or non-working spouse) who makes \$1,100 per week may be eligible for the maximum Illinois unemployment benefit of \$239.00 per week. Under CARES, the individual may also receive the \$600 FPUC for a total of \$839.00 per week. These figures may change if an individual’s salary fluctuated over the base period used by the IDES.

Is there a waiting period to receive benefits? This Act provides funding to pay the cost of the first week of unemployment benefits through December 31, 2020 which pay individuals as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits.

Is this emergency increase in unemployment compensation automatic? No, a state must enter and participate in an agreement with the Secretary of Labor. Pursuant to this agreement, the State must make state unemployment payments and the FPUC payment of \$600. The FPUC payment may be made at the same time as the state unemployment payment or the state can issue separate checks but pay on the same weekly basis as the state unemployment benefit. Pursuant to the agreement, the state will be reimbursed 100% of the FPUC paid and any additional administrative expenses as determined by the Secretary of Labor.

Are individuals who have exhausted their state unemployment benefits covered? Yes, so long as the State enters into an agreement with the Secretary, an individual who has exhausted their state unemployment benefits will receive an additional 13 weeks of unemployment (weekly benefit amount plus the FPUC). An individual must be able, available and actively seeking work, however the State must provide flexibility in meeting these requirements due to the Coronavirus and movement restrictions.

II. IDES Emergency Rules (Illinois Unemployment)

Earlier this month, IDES issued emergency rules to assist those employees whose unemployment is attributable to COVID-19. Initially, IDES stated if an employee quits because their child’s school is temporarily closed, this employee is considered to have left work voluntarily without a good reason attributable to the employer and may be disqualified from receiving unemployment benefits. IDES’s new position states since all schools in Illinois have temporarily closed due to COVID-19, it is unlikely a parent had a ready alternative for a child who cannot stay home alone. Therefore, someone who left work to care for the child could be considered as unemployed through no fault of his or her own and would qualify for unemployment benefits. The individual would still need to meet all other eligibility requirements such as able and available for work (including working from home), register with the state employment service and actively seeking work.

III. Updated U.S. DOL guidance

The DOL has finally issued guidance regarding the small business exemption (fewer than 50 employees) under the FFCRA. For leave involving a child's school or daycare being closed due to COVID-19 reasons, a small business may claim this exemption if an authorized officer of the business determines that:

- This leave would result in the business expenses and financial obligations exceeding available business revenues and cause the business to cease operating at a minimal capacity;
- The absence of the employees requesting leave would entail a substantial risk to the financial health or operational capabilities of the business due to the employees' specialized skills, knowledge of business or responsibilities;
- There are not enough workers who are able, willing, qualified and available to perform the labor or services needed for the business to operate at a minimal capacity.

You are receiving this email as you are a valued client of K|D. If you no longer want to receive K|D's Monthly Minute Memos, please reply to this email and ask to be unsubscribed from any future emails.

This material is provided for informational purposes only. It is not intended to constitute legal advice, nor does it create a client-lawyer relationship between K|D and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions.