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The Law Pertaining to Healthcare in the Covid-19 Pandemic

Labor and Employment Issues

May 21, 2020

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SPEAKER BIOGRAPHY

MARGARET SUROWKA, ESQ., is counsel with Barclay Damon, LLP, where she primarily concentrates her practice on representing individual health care providers and facilities in licensure, disciplinary, and ethics proceedings. She routinely counsels clients facing Medicaid, Medicare, and other governmental investigations and audits as well as assisting with employment and contract matters. She assists clients with compliance programs and has successfully represented health care entities with significant disclosures to the federal and state government. Ms. Surowka also defends clients facing license revocation and represents them in disciplinary matters before the Office of Professional Medical Conduct and the Office of Professional Discipline. Previously, she served as general counsel to the New York State Dental Association with more than 20 years of legal experience. Ms. Surowka additionally represents employers from other industries in matters before the New York State Division of Human Rights. Her familiarity with New York State and New York City lobbying laws helps her navigate clients' lobbying-compliance issues and audits. Ms. Surowka is a former president of the Capital District Women's Bar Association; a member of the New York State Bar Association's Commercial and Federal Litigation, Health Law, and Corporate Counsel sections; and a former Legislative Committee co-chair of the Women's Bar Association. Her memberships and affiliations include Barclay Damon's Women's Forum; the National Institute of Trial Advocacy; and the National Society of Dental Practitioners, where she serves on the Board of Directors. Ms. Surowka received a J.D., cum laude, from Albany Law School, where she was the executive editor for production for the *Albany Law Review*, and a B.A. from Hamilton College. Ms. Surowka is admitted to practice in New York, the U.S. District Court for the Northern District of New York, the U.S. District Court for the Southern District of New York, the U.S. District Court for the Eastern District of New York, the U.S. District Court for the Western District of New York; and the U.S. Supreme Court.

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BARCLAY DAMON ^{LLP}

***The Law Pertaining to Health
Care Providers in the COVID-
19 Pandemic:
Labor and Employment
Issues***

Margaret Surowka '90

Albany Law School Webinar

May 21, 2020

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Operating in Crisis



Agenda

- » Regulatory changes
- » FFCRA
- » NYS Paid Sick Leave
- » CARES Act
- » Return to work

Executive Orders: NY on PAUSE



Workforce Reduction

- » Governor Andrew Cuomo issued Executive Order 202.8 (**effective March 20 at 8:00 p.m. and continuing through June 13 except for regions who meet the reopening criteria**) and states as follows:
 - > All NYS businesses and not-for-profits will safely utilize, to the maximum extent possible, telecommuting or work-from-home procedures.
 - > Each employer will reduce the in-person workforce at any non-essential work locations by 100 percent.

Essential Businesses

- » “Essential” businesses are exempt from the in-person workforce restrictions, including the following essential entities:
 - › Health care operations, including research and laboratory services

Health Care as an Essential Business

- » Essential businesses must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the Department of Health, and every business, even if essential, is strongly urged to maintain social distance to the extent possible.

Non-Essential Services by Health Care Providers

- » Even essential service providers are under an obligation to utilize, to the maximum extent possible, any telecommuting or work-from-home procedures.



CMS Guidelines

- » Postpone non-essential surgeries and other procedures
- » Implement telehealth, virtual check-ins, or remote monitoring
- » PPE
- » <https://www.cms.gov/files/document/31820-cms-adult-elective-surgery-and-procedures-recommendations.pdf>
- » <https://www.cms.gov/files/document/covid-19-physicians-and-practitioners.pdf>

Telehealth

- » Medicare expanded
 - › Services to new or established patients
 - › Can waive Medicare co-pays for telehealth services for beneficiaries in Original Medicare
 - › Additional services
 - › <https://www.cms.gov/files/document/covid-19-physicians-and-practitioners.pdf>

Relaxation of HIPAA

- » The Department of Health and Human Services Office for Civil Rights will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good-faith provision of telehealth during the COVID-19 nationwide public health emergency.
- » A covered health care provider that wants to use audio or video communication technology to provide telehealth to patients during the COVID-19 nationwide public health emergency can use any non-public-facing remote communication product to communicate with patients.

Methods of Communication

» Acceptable (non-public facing):

- › Apple FaceTime
- › Facebook Messenger video chat
- › Google Hangouts video
- › Skype

» Unacceptable (public facing):

- › Facebook Live
- › Twitch
- › TikTok

<https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

AMA Recommendations

- » Advance calls to and from patients
- » Review rescheduling and cancellation policies
- » Advise patients to self-screen
- » Consider telemedicine whenever possible
- » Develop common script, language for staff
- » Increase prescription refills

WHO Guidance: Health Care Workers' Rights

- » Employers will ensure that all necessary preventive and protective measures are taken to minimize occupational safety and health risks
- » Provide adequate PPE supplies (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies)
- » Workers should not incur expenses for occupational safety and health requirements

Governmental Guidance

- » Occupational Health & Safety Administration:
 - > <https://www.osha.gov/SLTC/covid-19/>
- » Equal Employment Opportunity Commission:
 - > https://www.eeoc.gov/facts/pandemic_flu.html

Governmental Guidance (cont'd.)

- » US Department of Labor: Wage and hour:
 - > <https://www.dol.gov/coronavirus>
- » NYS Department of Health:
 - > <https://www.health.ny.gov/diseases/communicable/coronavirus/>

NYS Office of Professions

- » <http://www.op.nysed.gov/COVID-19.html>
- » Telehealth guidance for specific professions:
 - › Applied behavior analysis
 - › Audiology
 - › Mental health practitioners
 - › Physical therapy
 - › Psychology
 - › Social work
 - › Speech-language pathology

Department of Health

- » Telehealth laws Article 29-G
 - › <https://www.nysenate.gov/legislation/laws/PBH/A29-G>
- » Medicaid update:
 - › https://www.health.ny.gov/health_care/medicaid/program/update/2019/2019-02_speced.htm
 - › https://health.ny.gov/health_care/medicaid/covid19/docs/faqs.pdf

Best Practices for Providers

- » COVID-19 testing: Hospital workers prioritized
- » Flexibility is essential
- » Furloughed employees due to isolation qualify for paid sick leave



NYS Paid Sick Leave

General Background

- » On March 18, the NYS Legislature passed an updated version of a bill mandating paid sick leave to employees that would also include employee protections and additional paid sick leave and other benefits resulting from the spread of COVID-19.

General Background (cont'd.)

- » The updated bill, which was signed by Governor Cuomo, only provides employee benefits and protections in the event of orders of quarantine.

Covered Employee

- » The term “employee” is not defined.
- » Thus, it appears to apply to all employees:
 - › Full-time
 - › Part-time
 - › Per diem
 - › Etc.

Covered Employee (cont'd.)

- » The statutory leave and benefits provided under the new law will only be available to employees who've been officially and formally quarantined or isolated by a state or local government agency.

Covered Employee (cont'd.)

- » In this regard, these benefits **aren't** available to:
1. Employees in voluntary quarantine or isolation
 2. Employees who merely fear they've been infected by the virus
 3. Employees who object to reporting to work for fear of exposure to the virus
 4. Employees who are placed on leave, layoff, or furlough by an employer

Covered Employee (cont'd.)

- » Another important caveat is that the new law **doesn't** apply to employees:
 1. Who have been self-quarantined or isolated
 2. Who are asymptomatic
 3. Who aren't yet diagnosed with any medical condition
 4. Who are physically able to work remotely

Covered Employee (cont'd.)

- » The law also doesn't contemplate any benefits for employees who are home caring for children due to mandatory school closures as a result of the pandemic (federal law does).

Benefits

- » Employers with more than 100 employees as of January 1, 2020: Employees are entitled to at least 14 days of paid sick leave at regular rate of pay
- » Employers with 11 or more employees or employers with fewer than 10 employees as of January 1, 2020, whose income was greater than \$1 million dollars in 2019 employees: Employees entitled to at least five sick days at regular rate of pay
 - › After those days are used, employee may be eligible to receive weekly wages through a combination of Paid Family Leave and disability benefits up to a maximum of \$2,884.62 per week.

Benefits (Can't)

- » Employers with fewer than 10 employees as of January 1, 2020, whose income was \$1 million dollars or less in 2019: Employees are eligible to receive weekly wages through a combination of Paid Family Leave and disability benefits up to a maximum of \$2,884.62 per week.

Documentation Requirements: Mandatory Isolation

- » If the employee is subject to **mandatory isolation**, the documentation from the employee's licensed medical provider must include an attestation that the employee meets one or more of the following criteria:
 1. The employee has tested positive for COVID-19
 2. Testing is currently unavailable to the employee, but the employee is symptomatic and has had contact with a known COVID-19 case

Documentation Requirements: Mandatory Quarantine

- » If the employee is subject to **mandatory quarantine**, the documentation from the employee's licensed medical provider must include an attestation that the employee meets one or more of the following criteria:
 1. The employee has been in close contact with someone who has tested positive for COVID-19 or is currently in mandatory isolation
 2. The employee is symptomatic and has returned within the past 14-days from a country designated with a level 2, 3, or 4 advisory for COVID-19

Documentation Requirements: Precautionary Quarantine

- » If the employee is subject to **precautionary quarantine**, the documentation from the employee's licensed medical provider must include an attestation that the employee meets one or more of the following criteria:
 1. The employee is asymptomatic and has returned within the past 14 days from a country designated with a level 2, 3, or 4 advisory for COVID-19
 2. The employee has been determined to have had proximate exposure with someone who has tested positive for COVID-19

Other Qualifying Events

- » There may be other qualifying events out there that we haven't yet seen.
- » Please keep this in mind as it relates to your workforce. If anyone tests positive, you should run a search of the local quarantine orders to see if paid sick leave under the new laws is triggered.



Job Restoration/Protection Rule



Job Restoration/Protection Rule

» **Question: Is the employee's job protected during COVID-19 quarantine leave?**

- » **Answer:** Yes, the employee's job is protected during the leave, and the employee is entitled to be restored to the position held prior to taking leave.

Job Restoration/Protection Rule (cont'd.)

- » An employee cannot be fired because they took leave.
- » An employer cannot fire an employee or take action against an employee because the employee took leave.

Job Restoration/Protection Rule (cont'd.)

- » Any COVID-19 quarantine leave shouldn't be counted as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.



Family First Coronavirus Relief Act (FFCRA)



Overview

- » On March 18, President Trump signed the Families First Coronavirus Response Act (HR 6201).
- » The FFCRA became effective on **April 1**.

Overview (cont'd.)

- » The FFCRA contains two main components:
 1. The Emergency Paid Sick Leave Act
 2. The Emergency Family and Medical Leave Expansion Act



The Emergency Paid Sick Leave Act



Covered Employers

- » Applies to “covered employers”
- » Private sector:
 - › Employers with **fewer** than 500 employees
- » Public sector:
 - › Employers with one or more employees
 - › Includes public agencies

Meeting the 500-Employee Threshold

- » Look to the Fair Labor Standard Act “joint employer” test
- » Four factors are generally considered to determine whether the potential joint employer is directly or indirectly controlling the employee:
 1. Hires or fires the employee
 2. Supervises and controls the employee’s work schedule or conditions of employment to a substantial degree
 3. Determines the employee’s rate and method of payment
 4. Maintains the employee’s employment records

Entitlement to Leave

- » Employers must provide paid sick time to an employee who is unable to work or telework due to a qualifying need for leave.

Reasons for Leave: Employee's Own Condition

- » The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19
- » The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19
- » The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis

Reasons for Leave: Caring for Others

- » The employee is caring for an individual who:
 - › Is subject to a federal, state, or local quarantine or isolation order
 - › Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19

Reasons for Leave: Caring for Others (cont'd.)

- » The employee is caring for a child whose school or place of care is closed or whose childcare provider is unavailable due to COVID-19 precautions

Reasons for Leave: Exception

- » Employers may exclude employees who are health care providers or emergency responders from coverage.
- » If you voluntarily agree to provide leave even though the employee may have been exempted, you must abide by the leave requirements.

Duration of Paid Sick Leave

- » Full-time employees: 80 hours of paid sick time
- » Part-time employees: The average number of hours worked over a two-week period
- » Paid sick time will cease beginning with the employee's next scheduled shift immediately following the termination of the need for paid sick time.

Payments for Paid Sick Leave

- » For paid sick time because of an employee's own condition:
 - › The employee will receive the higher of their regular rate or the applicable minimum wage, not to exceed \$511 per day (\$5,110 total).

Payments for Paid Sick Leave (cont'd.)

- » For paid sick time because the employee is caring for another individual or for a child whose school or care is unavailable:
 - › The employee will receive $\frac{2}{3}$ the rate the employee would otherwise receive, up to \$200 per day (\$2,000 total).

Other Paid Sick Time Provisions

- » Employees are **immediately** eligible for paid sick time regardless of how long the employee has been employed by the employer.
- » Employers may **not** require employees to use other paid leave before using the paid sick time available to the employee under the Emergency Paid Sick Leave Act.

Other Paid Sick Time Provisions (cont'd.)

- » The provisions of the Emergency Paid Sick Leave Act end on December 31.
- » The US Department of Labor secretary has the authority to issue regulations:
 - › Excluding certain health care providers and emergency responders from the definition of employee, including by allowing their employer to opt out
 - › Exempting small businesses with fewer than 50 employees from these requirements if they jeopardize the viability of a business as a going concern

Notice to Employees

- » Employers are required to post notice of the requirements of the Emergency Paid Sick Leave Act on the premises of the employer where notices to employees are customarily posted.
 - > https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Anti-Discrimination and Retaliation Provision

- » The Emergency Paid Sick Leave Act includes an anti-discrimination provision that makes it unlawful to discriminate against any employee who:
 - › Takes leave in accordance with the Emergency Paid Sick Leave Act
 - › Has filed any complaint or instituted any proceeding under or related to the Emergency Paid Sick Leave Act or has testified or is about to testify in any proceeding

Penalties

- » An employer who violates the provisions of the Emergency Paid Sick Leave Act is subject to the penalties contained in the Fair Labor Standards Act (FLSA).
- » Violations of the paid leave provisions:
 - › The employee's unpaid wages or overtime compensation and an additional equal amount as liquidated damages
 - › \$2,050 for each willful violation

Penalties (cont'd.)

- » Violations of the Emergency Paid Sick Leave Act's anti-discrimination and anti-retaliation provisions:
 - › Employment, reinstatement, or promotion of the employee
 - › Payment of lost wages and an additional equal amount as liquidated damages
 - › Attorney's fees

Health Care Providers May Exempt Employees From Paid Sick Leave

- » Both the Paid Sick Leave and the expanded Family and Medical Leave sections of the FFCRA state that an employer may elect to exclude “health care providers” and “emergency responders” from receiving benefits under the FFCRA.

Exempted Health Care Providers

- » Anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity



CARES Act Financial Aid Options for Employers



Paycheck Protection Loans

Small Companies

- » The CARES Act allocated \$350 billion to help small businesses keep workers employed amid the pandemic and economic downturn. Known as the Paycheck Protection Program, the initiative provides 100-percent federally guaranteed loans to small businesses who maintain their payroll and employee headcount during this emergency.

COVID-19 Emergency Loans

- » These loans may be forgiven if borrowers maintain their payrolls and headcount during the crisis or restore their payrolls and headcount by June 30.

PPP Eligibility

- » You're eligible if you're:
 - > A small business with fewer than 500 employees
 - > A small business that otherwise meets the SBA's size standard
 - > A 501(c)(3) with fewer than 500 employees
 - > An individual who operates as a whole proprietor

PPP Eligibility (cont'd.)

- » You're eligible if you're:
 - > An individual who operates as an independent contractor
 - > An individual who is self-employed who regularly carries on any trade or business
 - > A tribal business concern that meets the SBA size standard
 - > A 501(c)(19) veterans organization that meets the SBA size standard

What Will Lenders Be Looking For?

- » In evaluating eligibility, lenders are directed to consider whether the borrower was in operation before February 15 and had employees for whom they paid salaries and payroll taxes or paid independent contractors.

Lenders Will Require a Good-Faith Certification That ...

1. The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations.
2. The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments.
3. The borrower doesn't have an application pending for a loan duplicative of the purpose and amounts applied for here.
4. From February 15 to December 31, 2020, the borrower hasn't received a loan duplicative of the purpose and amounts applied for here (Note: There's an opportunity to fold emergency loans made between January 31, 2020, and the date this loan program becomes available into a new loan).

What Lenders Will NOT Require:

- » That the borrower sought and was unable to obtain credit elsewhere
- » A personal guarantee is not required for the loan.
- » No collateral is required for the loan.

- » Loans can be up to 2.5x the borrower's average monthly payroll costs, not to exceed \$10 million.
- » Monthly payroll cost calculation



Included Payroll Costs for Employers

- » The sum of payments of any compensation with respect to employees that is a:
 - › Salary, wage, commission, or similar compensation
 - › Payment of cash tip or equivalent
 - › Payment for vacation, parental, family, medical, or sick leave
 - › Allowance for dismissal or separation
 - › Payment required for the provisions of group health care benefits, including insurance premiums
 - › Payment of any retirement benefit
 - › Payment of state or local tax assessed on the compensation of the employee

Excluded Payroll Costs for Employers

- » Excluded from an employer's payroll costs are:
 - > That portion of compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the period February 15 to June 30, 2020
 - > Payroll taxes, railroad retirement taxes, and income taxes
 - > Any compensation of an employee whose principal place of residence is outside of the United States
 - > Qualified sick leave wages for which a credit is allowed under section 7001 of the FFCRA or qualified family leave wages for which a credit is allowed under section 7003 of the FFCRA

Possible Loan Forgiveness

- » A borrower is eligible for loan forgiveness equal to the amount the borrower spent on the following items during the eight-week period beginning on the date of the origination of the loan:
 - › Payroll costs (using the same definition of payroll costs used to determine loan eligibility)
 - › Interest on existing mortgage obligation incurred in the ordinary course of business
 - › Rent on existing leasing agreement
 - › Payments on utilities (electricity, gas, water, transportation, telephone, or internet)
 - › For borrowers with tipped employees, additional wages paid to those employees
- » The loan forgiveness cannot exceed the principal.

Possible Reduction in Loan Forgiveness

- » The amount of loan forgiveness calculated previously is reduced if there's a reduction greater than 25 percent in employee headcount or a reduction greater than 25 percent in wages paid to employees.

What if the Employer Brings Back Employees or Restores Wages?

- » Reductions in employment or wages that occur during the period beginning on February 15, 2020, and ending 30 days after enactment of the CARES Act won't reduce the amount of loan forgiveness **if** by June 30, 2020, the borrower eliminates the reduction in employee headcount or reduction in wages.

Expanded EIDL Program

- » The expanded Economic Injury Disaster Loans (EIDL) program offers up to a \$10,000 emergency cash advance. Businesses that apply for these EIDL loans should be able to get a cash advance within three days of applying. Eligible entities include small businesses, sole proprietors, private not-for-profits, independent contractors, cooperatives, ESOPs, and tribal units—all with under 500 employees—that apply for loans in response to COVID-19.
- » Upon verification, the government, through lending institutions that work with the SBA, will provide grants up to \$10,000. The applying entity has to have been in business for at least a year, which may be waived, but certainly before January 31, 2020. EIDL will get you a \$10,000 grant, even if you're denied or decline an EIDL loan itself.

Expanded EIDL Program (cont'd.)

- » You must request the grant when you apply for an EIDL with the SBA.
- » You don't have to repay the grant even if your application for the loan is denied.
- » You can still apply for a Paycheck Protection loan, but the amount forgiven will then be decreased by \$10,000.
- » You can't apply for both “for the same purposes.”

Allowed Uses

» **CARES**

- › Payroll costs
- › Continuation of health care benefits
- › Salaries
- › Mortgage interest
- › Rent
- › Utilities
- › Interest on other debt obligation

» **EIDL**

- › Fixed debt
- › Payroll
- › Accounts payable
- › Other bills that could have been paid had the disaster not occurred



Employee Retention

Credit

Employee Retention Credit

Pandemic Unemployment Compensation

Employee Retention Credit

- » The CARES Act includes a significant tax incentive for employers to keep employees on the payroll.

Payroll Tax Credit

- » 50 percent of “qualified wages” paid by “eligible employers” to certain employees during the COVID-19 crisis
- » Credit applies against the employer’s share of FICA
- » Cap of \$10,000 per employee

IRS

- » Authority to advance tax credit payments to eligible employers
- » Authority to waive failure to deposit penalties for employers who don't make payroll tax deposits in anticipation of receiving the credit
- » Credit applies to wages paid March 12-December 31, 2020

Eligible Employer

- » An employer (including tax exempt) whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel, or group meetings or that experienced a reduction over 50 percent in quarterly receipt (against same quarter last year)

Qualified Wages

- » > 100 full-time employees in 2019
 - › Wages paid to employee who is not performing services (furloughed remaining on payroll)
- » < 100 full time employees in 2019
 - › All wages paid

Coordination With the FFCRA

- » For purposes of the CARES Act employee retention credit, qualified wages do **not** include wages taken into account for purposes of the mandatory paid leave credit.

Coordination With Other Employer Tax Credits

- » Retention credit not available to an employee whose employer is allowed a work opportunity credit
- » Wages taken into account for FMLA credit under IRS Code 45S aren't eligible for employee retention credit

Other Limitations

- » Employee retention credit is **not** available to employers receiving small business interruption loans under CARES.
- » **Not** available for those who use the Paycheck Protection Program



Accelerated and Advance Medicare Payments Program



Eligibility

- » To qualify for advance or accelerated payments, the provider or supplier must:
 - › Have billed Medicare for claims within 180 days immediately prior to the date of the request
 - › Not be in bankruptcy
 - › Not be under active medical review or program integrity investigation
 - › Not have any outstanding delinquent Medicare overpayments

Payment Amounts

- » Most providers and suppliers: 100 percent of the Medicare payment amount for a three-month period
- » 100 percent for a six-month period:
 - › Inpatient acute care hospitals, children's hospitals, and certain cancer hospitals
- » 125 percent of their payment for a six-month period:
 - › Critical access hospitals (CAH)
- » If approved, the MAC will issue payment within seven days from the request.

Process

- » The provider or supplier can continue to submit claims as usual after issuing the accelerated or advance payment.
- » Providers and suppliers will receive full payments for their claims during the 120-day delay period.
- » At the end of the 120-day period, the recoupment process will begin, and every claim submitted will be offset to repay the accelerated or advanced payment.
 - › This process is automatic.

MAC Assistance

- » **National Government Services (NGS):
Jurisdiction 6 & Jurisdiction K**
 - › Toll-free COVID-19 Hotline: 1.888.802.3898
 - › Hours: 8:00 a.m. – 4:00 p.m. CT



Pandemic

Unemployment

Federal Pandemic Unemployment Compensation: The “Extra \$600”

- » The act provides for “federal pandemic unemployment compensation.”
- » Those already eligible for benefits under state law are paid an additional \$600 per week by the federal government.
- » This benefit is in addition to whatever amount the individual receives from the state.
- » The benefit is available through July 31.

Federal Funding of First Week of Unemployment

- » Many states require a one-week waiting period before eligibility for unemployment benefits begins.
- » Under the CARES Act, the federal government will fund the first week of benefits, eliminating the waiting period.
- » Federal funding continues to December 31.
- » NYS Governor Cuomo has suspended the one-week waiting period.

Pandemic Emergency Unemployment Compensation: The “Extra 13 Weeks”

- » The act creates “pandemic emergency unemployment compensation.”
- » Additional benefits are available to those who’ve exhausted state and federal benefits.
- » Individuals may receive the amount of state benefits for an additional 13 weeks beyond normal state limits (typically, 26 weeks).

Pandemic Emergency Unemployment Compensation (cont'd.)

- » Individual must be “able to work, available to work, and actively seeking work” in order to qualify
- » “Actively seeking work” means:
 1. Registered for employment services with a state agency
 2. Engaging in an active search for employment that’s appropriate considering the labor market and the individual’s skills
 3. Has maintained a record of the work search

Pandemic Unemployment Assistance: Workers Not Otherwise Eligible

- » The act creates a “Pandemic Unemployment Assistance Program”
- » Provides unemployment compensation benefits to workers impacted by COVID-19 who aren’t otherwise eligible for benefits
- » Includes “gig economy” workers, independent contractors, self-employed, and those with limited work history

Pandemic Unemployment Assistance

- » Workers eligible for a maximum of 39 weeks of benefits
- » Workers will receive the weekly benefit amount authorized under state law, plus the additional \$600/week federal benefit
- » Available retroactively beginning on January 27 and ending on December 31

Pandemic Unemployment Assistance (cont'd.)

- » Individual must be able to work and available for work
- » Exception: Individual can still receive benefits if unable or unavailable to work because:
 - a) The individual or a family member has COVID-19
 - b) Providing care for a family member with COVID-19
 - c) Child is out of school
 - d) Unable to reach the place of work due to quarantine or advice of a health care provider
 - e) Had to quit job due to COVID-19
 - f) Place of employment is closed due to COVID-19

Liability Issues



NYS Budget: Immunity

- » Health care facilities and professionals now have immunity from civil or criminal liability for any harm or damages alleged to have been sustained as a result of an act or omission for services that relates to the diagnosis, prevention, or treatment of COVID-19; assessment or care of an individual with a confirmed or suspected case of COVID-19; or the care of any other individual who presents for health services during the period of the COVID-19 emergency declaration.

Requirement for Immunity

- » Provider is arranging for or providing health care services pursuant to a COVID-19 emergency rule or otherwise in accordance with applicable law
- » The act or omission occurs in the course of arranging for or providing health care services, and the treatment of the individual is impacted by the health care facility's or health care professional's decisions or activities in response to or as a result of the COVID-19 outbreak and in support of the state's directives
- » The health care services are provided in good faith

Limits to Immunity

- » Immunity does **not** apply if the harm or damages were caused by an act or omission constituting **willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.** However, decisions resulting from a resource or staffing shortage will not fall within this exception.

NYS Protocol for Return to Work

- » March 28: DOH issued “Updated Protocols for Personnel in Health Care and Other Direct Care Settings to Return to Work Following COVID-19 Exposure or Infection” health advisory

Providers and Staff Exposed to Confirmed or Suspected Cases of COVID-19

- » Return to work:
 - › Self-monitor temperature & symptoms twice a day
 - › Wear facemask until 14 days after exposure
 - › Assigned to patients at lower risk
 - › Self-quarantine while not at work
 - › If symptomatic, immediately stop working and isolate at home

Staff With Symptoms

- » Any provider or staff member with symptoms consistent with COVID-19 should be managed as if they have the infection.

Staff With Confirmed or Suspected COVID-19

- » Return to work:
 - › Maintain isolation for at least seven days
 - › Fever-free for at least 72 hours
 - › Improvement in other symptoms

Asymptomatic

- » If HCP are asymptomatic but tested and found positive, to return to work:
 - › Maintain isolation for at least seven days
 - › Fever-free for at least 72 hours
 - › Improvement in other symptoms
 - › Wear face mask
 - › Assigned lower risk patients if possible

New CDC Guidelines for Essential Workers' Return to Work

- » Do take your temperature before work.
- » Do wear a face mask at all times.
- » Do practice social distancing as work duties permit.
- » Don't stay at work if you become sick.
- » Don't share headsets or objects used near the face.
- » Don't congregate in the break room or other crowded places.

Thank you!



Questions?



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