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*Unemployment Benefits &  
— MNA Questions —*

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# The CARES Act

- ❖ **Signed Into Law on March 27th, 2020**
- ❖ **Contains Provisions for:**
  - **Temporary Additional Unemployment Benefit**
  - **An extension to the number of weeks a claimant can draw UI**
  - **Emergency Business Loans for Payroll Costs**
  - **Changes to certain Retirement plans**
  - **Changes to certain expenses allowed under the Affordable Care Act**
- ❖ **Other MNA Workshops have addressed the Loans and other provisions. This workshop will focus on Unemployment insurance**

# Rehired Employees and FMLA

- ❖ **The CARES Act addresses the rights of rehired employees to paid family leave under the FFCRA.**
  - **The FFCRA generally requires that employees have been employed for at least 30 calendar days to be eligible for such leave.**
  - **The Act now mandates that a rehired employee qualifies for paid family benefits if the worker:**
    - was laid off by that employer on or after March 1, 2020, and
    - had worked for the employer for at least 30 of the last 60 calendar days prior to his or her layoff.

# Retention Tax Credit

- ❖ **The CARES Act allows an employer retention tax credit that depends on the size of the employer's workforce,**
  - **Companies with more than 100 employees may claim the credit for employees who are on the payroll but not currently working due to the crisis.**
  - **Companies with 100 or fewer employees may claim the credit for all employee wages, regardless of whether the employer is fully operating, or partially or fully shut down.**

# Retention Tax Credit

- ❖ **This credit is generally available to employers, including tax-exempt employers, who either:**
  - **Had operations fully or partially suspended during 2020 because of government orders limiting business activity, travel, or meetings (for commercial, social, religious, or other purposes) due to COVID-19 or**
  - **Whose gross receipts for a calendar quarter in 2020 were less than 50% of its gross receipts for the same calendar quarter in the prior year (until the business's gross receipts are equal to at least 80% of its gross receipts relative to the same quarter in the prior year).**

# Retention Tax Credit

- ❖ **The tax credit is capped at \$10,000 per employee for all calendar quarters (which caps the total amount of the employment tax credit at \$5,000 per employee).**
- ❖ **Any business receiving “small business interruption loans” is not eligible to receive this employment tax credit.**

# Tax Deferment

- ❖ **The Act also allows employers and self-employed individuals to defer payment of their share of the Social Security tax on employee wages owed for 2020 until**
  - **December 31, 2021 (when half of the amount deferred must be paid), and**
  - **December 31, 2022 (when the remainder is due).**

# **Unemployment Insurance**

**The Pandemic Unemployment Act**



# New UI Related Programs

- ❖ **The CARES Act creates three new UI programs:**
  - **Pandemic Unemployment Assistance, for individuals ineligible for UI**
  - **Pandemic Unemployment Compensation , a \$600 week UI Bonus, and**
  - **Pandemic Emergency Unemployment Compensation for Individuals who have exhausted UI benefits**
- ❖ **All three programs are fully federally funded.**
  - **a “non-reduction rule” in the CARES Act, prohibits states participating in these programs from doing anything to decrease the maximum number of weeks of UI or the weekly benefits available under state law as of January 1, 2020.**

# Pandemic UI Assistance (PUA)

- ❖ **PUA provides emergency unemployment assistance to workers who cannot get access to regular state UI or who have exhausted their state UI benefits.**
  - **Up to 39 weeks of PUA are available to workers who are immediately eligible to receive PUA. The program will expire on December 31, 2020, unless otherwise extended.**
  - **Eligible individuals include self-employed workers, including independent contractors, freelancers, workers seeking part-time work, and workers who do not have a long-enough work history to qualify for state UI benefits.**

# PUA

## Eligibility:

- Workers are not eligible for PUA if they can either telework with pay or are receiving paid sick days or paid leave.
- Applicants will need to provide self-certification that they are (1) partially or fully unemployed, OR (2) unable and unavailable to work for COVID-19 related instances.
- Workers who are eligible for state UI are not eligible for the PUA program.
- Pays the amount based on Disaster Unemployment Assistance regulations in weekly benefit amount determined by the state and adds \$600/week (federally paid).

# Pandemic UI Comp (PUC)

- ❖ **Paid to individuals who qualify for regular unemployment compensation.**
  - **Paid as an additional \$600 to amounts that would otherwise be paid.**
  - **Can be paid with UI payment or separately on weekly basis**
  - **Available to individuals whose unemployment is due to the impact of COVID-19 (broadly defined).**
  - **Available beginning the week after US-DOL and the state sign an agreement and ending on or before July 31, 2020.**

## **Pandemic Emergency UI Comp (PEUC)**

- ❖ Paid to individuals who have exhausted all rights to state and federal unemployment compensation for benefit years on and after July 1, 2019.**
- ❖ Provides up to an additional 13 weeks of state UI benefits, which will become available after someone exhausts all their regular state UI benefits.**

# Expanded UI Eligibility

- ❖ **The following are now eligible for Emergency UI benefits:**
  - **individuals diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;**
  - **a member of the household including diagnosed individuals**
  - **individual providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19; or the employee has primary caregiving responsibility for a child or other person in the household for which is unable to attend school or another facility closed due to a public health emergency and such school or facility care is required for the individual to work; or the individual's place of employment is closed as a direct result of the COVID-19 public health emergency**

# Additionally Eligible

## ❖ More eligible for benefits:

- the employee is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency; or
- because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- the individual is unable to reach the place of employment the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;

# Additionally Eligible

## ❖ More eligibles:

- the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- the individual has to quit his or her job as a direct result of COVID-19;
- The bill expands traditional unemployment insurance to cover freelance, gig economy (i.e., Uber Drivers) workers



# MT UI Expansion

- ❖ **An emergency rule expands UI eligibility in cases where for Covid-19 related reasons:**
  - **A claimant directed by the employer to leave work or not report for work**
  - **A claimant who is a caregiver of a family member who is the subject of a COVID-19 quarantine is deemed, in order to further the public health, safety, and welfare, to also be subject to a COVID-19 quarantine.**
- ❖ **A claimant laid off as the result of being subject to a COVID-19 quarantine is ineligible for benefits if the claimant refuses work that can be performed while complying with the terms of the quarantine.**

# Waiting Periods

- ❖ **The CARES Act waives waiting periods to receives Cares Act related UI benefits**

# Duration of Benefits

- ❖ **The law covers weeks of unemployment, partial unemployment, or inability to work caused by COVID-19**
  - beginning on or after January 27, 2020; and
  - ending on or before December 31, 2020; and
  - as long as the covered individual's unemployment, partial unemployment, or inability to work caused by COVID-19 continues.

# IRS Form 7200

- ❖ **IRS Form 7200 is to be used to request advances from the IRS to pay:**
  - **Emergency Paid Sick Leave**
  - **Emergency paid Sick Leave**
  - **The Employee Retention Credit**
- ❖ **The form is available on the IRS website at <https://www.irs.gov/forms-pubs/about-form-7200>**

# Questions on UI from MNA Members

# Q&A

## ❖ Is a part-time employee eligible for UI?

### ➤ Part-time employee can be eligible for UI.

- Normally, benefits are generally determined by the amount of wages earned during the base period.
- The base period is the first four of the last five completed calendar quarters immediately preceding the date a claim is filed.
- Claimants will receive a monetary determination that will detail how much and how long they will receive UI benefits.
- Under the CARES Act, PUA benefit folks who otherwise would not be eligible for UI can be considered eligible for benefits for up to 39 weeks

# Q&A

- ❖ **Are partially laid off employees allowed to take advantage of the \$600 Federal contribution to their unemployment compensation , if they are partially employed? Is that prorated?**
  - It is my understanding they will still receive the full \$600 add on. Note the CARES Act requires an agreement with the state so beginning date is not yet determined.
- ❖ **Can an employee receive more than their wages earned when working their normal shift?**
  - The PUEC Act simply says unemployed individuals get \$600 extra per week on top of the amount they were determined eligible to receive under normal UI rules of the state.

# Q&A

- ❖ **Does the 80 hours paid leave for an Isolation or quarantine order, apply to essential businesses and their essential employees**
  - **Some business entities who are considered essential and exempt from shelter in place orders would qualify as either health care providers or emergency responders who can exempt their staff from the emergency FMLA provisions**
  - **Some small employers may exempt employees from the provisions related to paid sick leave and emergency FMLA if providing leave jeopardizes their business**
  - **The remainder of employers (non health care provider and not emergency responder employers) are subject to the requirement to provide leave because Governor Bullock has instituted stay at home isolation and traveler's quarantine orders**



# Q&A

## ❖ What is the difference between isolation and quarantine?

- Isolation and quarantine are public health practices used to protect the public by preventing exposure to people who have or may have a contagious disease.
- Isolation separates sick people with a contagious disease from people who are not sick.
- Quarantine separates and restricts the movement of people who were exposed to a contagious disease to see if they become sick. These people may have been exposed to a disease and do not know it, or they may have the disease but do not show symptoms.

# Q&A

- ❖ **Is the emergency paid FMLA a dated 12 week clock or 480 hour bank that can be used through 12/31/2020?**
  - **A reading of the rule suggests it is 12 weeks for the number of hours the employee is scheduled to work.**
  - **Remember if the employee is laid off or the business ceases operations, the eligibility for paid leave ends.**

# Q&A

- ❖ **Can an employee work 30 compensable hours and be paid for 20 FMLA 2/3 pay hours to get closer to 100% of normal wage?**
  - **Maybe, the guidance talks about using preexisting paid leave banks provided by the employer to supplement emergency leave to get close to normal pay.**
  - **In the case of intermittent employees there is a scenario that is similar but not the same as your scenario. It says: May I take my paid sick leave or expanded family and medical leave intermittently while teleworking?**
    - **Yes, if your employer allows it and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act.**

# Q&A

## ❖ Continued....

- In that situation, you and your employer may agree that you may take paid sick leave intermittently while teleworking.
- Similarly, if you are prevented from teleworking your normal schedule of hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you and your employer may agree that you can take expanded family medical leave intermittently while teleworking.
- You may take intermittent leave in any increment, with employer agreement For example, if you agree on a 90-minute increment, you could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

# Q&A

- ❖ **If my employer reduces my scheduled work hours, can I use paid sick leave or expanded family and medical leave for the hours that I am no longer scheduled to work?**
  - **No. If your employer reduces your work hours because it does not have work for you to perform, you may not use paid sick leave or expanded family and medical leave for the hours that you are no longer scheduled to work.**
  - **You may, however, take paid sick leave or expanded family and medical leave if a COVID-19 qualifying reason prevents you from working your full schedule. If you do, the amount of leave to which you are entitled is computed based on your work schedule before it was reduced**

# Q&A

## ❖ Continued...

- **If your employer permits teleworking and you are unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then you are entitled to take paid sick leave.**
- **Similarly, if you are unable to perform those teleworking tasks or work the required teleworking hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, then you are entitled to take expanded family and medical leave. Of course, to the extent you are able to telework while caring for your child, paid sick leave and expanded family and medical leave is not available.**

# New Resource Center Open

- ❖ Under the terms of a temporary agreement, Montana Nonprofit Association members are now eligible to access the Westaff HR Resource Room.
- ❖ To register, visit [www.westaffmt.com/forum](http://www.westaffmt.com/forum) or email [michelle@westaffmt.com](mailto:michelle@westaffmt.com)