



## Employment & Labor Law FLASHPOINTS July 2020

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### COVID-19 Changes to Claims for Unemployment Insurance Benefits in Illinois

Unemployment insurance claims have soared as a result of the COVID-19 pandemic. Federal and state governments, including Illinois, have made changes to the administration of unemployment insurance (UI) benefits in response to the pandemic. This article provides an overview of the changes made since March 2020. Additional information can be found on the Illinois Department of Employment Security (IDES) website [here](#).

#### *Emergency Rulemaking in Illinois*

On March 13, 2020, emergency rules (the emergency rules (44 Ill.Reg. 4,749 (Mar. 27, 2020) amended 56 Ill.Admin. Code §§2865.100, 2865.105, and 2865.110) were enacted making it clear that an individual may be eligible for UI benefits when laid off due to their employer's COVID-19 related temporary closure, provided they are able to, available for, and actively seeking work. In this case, the individual would be considered to be actively seeking work as long as they were ready to return to work as soon their employer's business reopened.

The emergency rule also provided clarity over other COVID-19-related situations that may deem an individual unemployed through no fault of their own, provided they meet all other eligibility requirements including that the individual be able and available for work, registered with the state employment service, and actively seeking work from the confines of their home. In this case, able and available for work includes if there was some work that they could perform from home (e.g., transcribing, data entry, virtual assistant services) and there is a labor market for that work.

Also, pursuant to Executive Order No. 2020-07, 44 Ill.Reg. 4,749 (Mar. 27, 2020), Governor Pritzker suspended the normal one-week waiting period for unemployment claims for individuals unemployed and otherwise eligible for benefits.

Notably, the IDES FAQ makes clear that an individual who quits a job over a general concern over COVID-19 may be disqualified from receiving UI benefits because they have a duty to make a reasonable effort to work with the employer to resolve the issue before quitting.

#### *Impact of Federal Legislative Changes*

The Pandemic Emergency Unemployment Compensation (PEUC) program is a federally funded program that provides an extension of regular UI benefits. This extension adds 13 weeks of UI benefits for eligible individuals for the period beginning March 29, 2020, and ending December 26, 2020. To be eligible, an individual must have exhausted all regular UI benefits, have a claim that expired after July 1, 2019, and must be unemployed due to a COVID-19 related reason.

The Federal Pandemic Unemployment Compensation (FPUC) provides for a federally funded \$600 per week increase to UI benefits during the period from March 29, 2020 through July 25, 2020. Anyone receiving at least \$1 of state or federal UI benefits is eligible

for this temporary increase in benefits.

*Public Act 101-633*

On June 5, 2020, Governor Pritzker signed **H.B. 2455**, 101st Gen.Assem. (2020), into law as P.A. 101-633 (eff. June 5, 2020), which, in part, amended the Illinois Unemployment Insurance Act (UI Act), 820 ILCS 405/100, *et seq.* Several of the statutory changes essentially affirm the emergency rules, executive orders, and federal legislation described above. For example, P.A. 101-633:

1. excludes the \$600 amounts of FPUC from the state's maximum weekly unemployment benefits;
2. waives the one-week waiting period for individuals to become eligible for benefits, at least through the end of state disaster proclamations in response to COVID-19 (Employers are not chargeable for benefits paid during this week.);
3. provides retroactive rulemaking authority for IDES to limit the requirements for recipients to search for work;
4. makes changes to chargeability of benefits, which are directly or indirectly attributable to COVID-19 (employer burden to demonstrate attributability to COVID-19) (When an employer can show that the unemployment "was directly or indirectly attributable to COVID-19," a taxable employer will *not* be charged for such benefits beginning on or after March 15, 2020, and ending December 30, 2020. 820 ILCS 405/1502.4. For employers that make direct unemployment payments instead of contributions ("reimbursable employers" (56 Ill.Admin. Code §2765.5)), they will be chargeable for 50 percent of the benefits paid but have the ability to seek federal reimbursement of 50-percent amount.).

One of the more significant temporary changes to the UI Act pertains to nonprofessional employees employed by an educational institution. Nonprofessional employees (defined as any services "other than an instructional, research, or principal administrative capacity" (820 ILCS 405/612)) *may* now be eligible for unemployment insurance benefits during summer months, customary vacation periods, holiday recess, and semester breaks occurring between March 15, 2020, and January 2, 2021. Prior to this change, Illinois applied the "between terms" denial provision under the UI Act to nonprofessional employees. *Id.* With this change, Illinois is exercising its discretion to carve out nonprofessional employees from the "between terms" denial provision. This means, for example, that educational support personnel (*e.g.*, teacher aide, bus driver, custodian, secretary, etc.), who were paid in full during the 2019 – 2020 school year and who have a reasonable assurance of continued employment for the 2020 – 2021 school year, may be eligible to collect unemployment benefits over the summer months. A recent communication sent by IDES to educational institutions states that the changes to chargeability as noted immediately above also apply to "between terms" benefits paid to nonprofessional employees. This will provide significant financial relief to educational employers.

Notably, instructional and administrative personnel *remain ineligible* for unemployment benefits over "between terms" periods. IDES has asked educational institutions to complete and submit a document titled Academic Personnel Reporting form for instructional and administrative personnel who have a reasonable assurance of continued employment in the next academic year. This would serve as the employer's protest for any individual included on the form that submits a claim for benefits "between terms."

*For more information about employment and labor law, see CONDUCTING THE EMPLOYMENT PRACTICES AUDIT (IICLE®, 2020). Online Library subscribers can view it for free by clicking [here](#). If you don't currently subscribe to the Online Library, visit [www.iicle.com/subscriptions](http://www.iicle.com/subscriptions).*

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