

## COVID-19 AND UNEMPLOYMENT BENEFITS

Unemployment claims related to COVID-19 are on the rise around the country and in Texas. Substitute teachers, hourly workers across all industries, and at-will employees are among the categories of workers that may be separated from employment due to the economic hardships related to COVID-19. The Texas Workforce Commission (TWC) administers the Unemployment Insurance (UI) program, paying benefits to those individuals who lost their jobs through no fault of their own. If your employee has been affected by COVID-19 and is not receiving pay because you are closed, or due to restricted and reduced hours, they may be eligible for UI benefits if they meet the unemployment eligibility requirements under Chapter 207 of the Texas Labor Code.

Although the circumstances are subject to changing rapidly, the United States government and Texas legislature have not yet changed laws, rules or regulations concerning unemployment benefits during the COVID-19 pandemic. For employers and claimants alike, the applicable processes and appeals in place prior to the COVID-19 pandemic remain in place as of today. The TWC will continue to determine a claimant's benefit eligibility based on past wages and the reason for separation, and in accordance with ongoing eligibility requirements. But due to the changing nature of the pandemic, we encourage you to review the TWC's [website](#) frequently for the most recent updates.

*Eligibility Waivers.* The State, however, does have significant flexibility under Federal law in providing UI services related to COVID-19. Under normal circumstances, the TWC does not pay claimants for the first week of their claim—the “waiting week”—until the claimant receives two times their weekly benefit amount and returns to full-time work or exhausts the available unemployment benefits. On March 17, 2020, Governor Greg Abbott instructed the TWC to waive the “waiting week.” Claimants affected by COVID-19 can now receive benefits for the first week of their claim to address their immediate economic hardships. Additionally, the TWC exercised its authority under Governor Abbott's declaration of a Statewide Disaster to waive work search requirements for all claimants effective immediately. Claimants must, however, meet all other eligibility requirements.

## **Emergency Unemployment Insurance Stabilization and Access Act of 2020**

On March 18, 2020, the Families First Coronavirus Response Act was signed into law by President Donald J. Trump. It includes the Emergency Unemployment Insurance Stabilization and Access Act of 2020, providing the States an additional \$1 billion in emergency grants to administer and pay UI benefits. In exchange, States must: (1) ensure employers notify separating employees of potential unemployment compensation; (2) ensure access to UI benefits applications are available by two of the following: in person, by phone, or online; and (3) provide claimants with information about how to ensure successful processing of their claim and the status of their applications. If you are an employer with workers separating due to COVID-19, be sure to provide them notification that unemployment compensation may be available to them.

### **Cost of Unemployment Benefits to Employer**

*Taxed and Government Employers.* Taxed employers will continue to report employee wages and pay unemployment taxes. Chargebacks are the amount of unemployment benefits paid by an employer and charged to the employer's tax account for use in determining the employer's unemployment tax rate. Because Governor Abbott declared a disaster relating to the pandemic, employer tax accounts may be protected from chargebacks if the employee's separation was related to COVID-19. Government employers are taxed as a group and have the same tax rate in a given year. The UI tax rates for taxed government employers are determined by how much government employers withdraw on the Unemployment Compensation Trust Fund in benefit payments to former employees compared to the amount of taxes they paid. The effective tax rate for 2020 is 1.60%.

*Reimbursing Employers.* Reimbursing employers, to include certain non-profit and government employers, report their employees' wages but pay no UI tax on the wages. Reimbursing employers will continue to reimburse the TWC for unemployment benefits paid to eligible former employees, including those impacted by COVID-19. At present, there are no identified COVID-19 reimbursement protections for reimbursing employers.

*Multiple Employers.* If a claimant's base period includes multiple employers, any employer that paid wages during any of the quarters will potentially be liable for chargebacks (unless applicable protections apply) or reimbursement. Chargebacks or reimbursements will be proportional to the amount of wages the employer paid in



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relation to the other base period employers. If you are one of the claimant's taxed employers during the claimant's base period, but not the claimant's last employer, you will receive a Notice of Maximum Potential Chargeback after the claimant receives their first benefit payment, showing the maximum amount of benefits the TWC may potentially charge to your account. If you disagree with the chargeback amount, respond to the TWC notice within 30 days. The TWC will then send a Charge Liability Decision regarding your chargeback amount. If you disagree with the Charge Liability Decision, appeal within 14 days. If you are a reimbursing employer and the TWC uses your wages paid to the claimant to calculate and pay benefits, it will send you a Wage Verification Notice. If the claimant was separated from your employment because of misconduct or quit without good cause connected to the claimant's work, then you may appeal within 14 days.

### **Stay Connected to the TWC**

COVID-19 is a rapidly evolving situation requiring us to adapt our responses as new information becomes available. With respect to employment and UI concerns, the TWC is encouraging employers to stay connected and manage claims and appeals through its free, online [Employer Benefit Services](#) portal. Sign up for Electronic Correspondence to receive the TWC's communications and updates as soon as they become available.

**For further information or should you have questions, contact your [Thompson & Horton](#) attorney. If you do not have a Thompson & Horton attorney with whom you currently work, please contact [Chris Gilbert](#) in Houston, [Holly McIntush](#) in Austin, or [Dianna Bowen](#) in Dallas/Fort Worth and they will put you in contact with the most appropriate T&H team member to assist you.**