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## COVID-19 Update: Recent Changes Impacting State and Federal Unemployment Benefits

In an effort to help support businesses, their owners and their employees, Congress has passed sweeping legislation over the last few weeks. While much of the focus of the legislation has been on job retention, Congress is well aware of the economic realities facing businesses in these unparalleled times. For that reason, Congress took specific steps to aid workers that are, or will be, suffering from COVID-19 related unemployment circumstances, regardless of the size of their employer.

Specifically, the recently-passed CARES Act (as detailed in prior [Maynard Cooper Client Alerts](#)) provides qualifying unemployed individuals with up to an additional 13 weeks of unemployment benefits, provides qualified unemployed individuals with an additional \$600/week in unemployment benefits until July 31, 2020, and even expands the classification of workers eligible for unemployment benefits to include self-employed individuals, independent contractors, gig workers and similar service providers. When combined with similarly-focused state-level changes, the landscape of unemployment law in the United States has experienced significant changes in the last month.

As unemployment benefits are ultimately state-administered programs, this Client Alert will provide insight on what the Maynard Cooper team has seen as the most frequently asked questions and answers for Alabama employers facing the unenviable decision of whether to reduce employee hours, place employees on unpaid leave status or layoff employees as a result of COVID-19. However, out-of-state and multi-state employers will find many of these questions and answers applicable in other states and the Maynard Cooper team is prepared to assist clients with their questions beyond Alabama.

If you have any questions or comments about your employer-related unemployment options or obligations in light of these recent changes in law, whether in Alabama or in another state, please reach out to [Beth Beaubé](#), [John Holmes](#), [David Humber](#) or your Maynard Cooper relationship contact.

It is important to note that all unemployment benefit eligibility determinations for Alabama workers will be made by the Alabama Department of Labor, so these questions and answers should not be interpreted as a conclusion that eligibility for any particular individual will be granted.

- **Q1: What is the maximum number of weeks an Alabama employee may obtain unemployment benefits?**
  - A: As the result of a change in law effective January 1, 2020, Alabama provides between 14 and 20 weeks of unemployment benefits depending on the State's unemployment rate. During the first three months of 2020, Alabama provided 14 weeks of unemployment benefits because of the low unemployment rate in Alabama prior to COVID-19. The maximum coverage amount is subject to change as the unemployment rate in Alabama increases. Accordingly, Maynard Cooper will continue to monitor this in the weeks to come. As noted above, the recently-passed CARES Act has extended this maximum duration by an additional 13 weeks.
  
- **Q2: Does Alabama provide unemployment benefits to employees who have had their hours reduced at work?**
  - A: It is possible to receive unemployment benefits in Alabama if the employee is working and his or her gross weekly earnings are less than his or her weekly benefit amount. In order to determine what an employee's weekly benefit amount would be, an unemployment claim must be filed.
  
- **Q3: How does Alabama calculate the amount of unemployment benefits an employee working reduced hours is entitled to?**
  - A: Alabama law provides that each eligible individual who is totally unemployed or partially unemployed shall be paid with respect to such week a benefit in an amount equal to his or her weekly benefit amount, less that part of the wages, if any, payable to him or her with respect to such week which is in excess of one third of the weekly benefit amount.
  
- **Q4: Does Alabama have a requirement on how much of a reduction in hours is required to qualify for unemployment benefits from the State?**
  - A: Alabama does not have a specific requirement for eligibility, but if the employee earns too much in the form of wages, he or she would not qualify for any additional unemployment benefits from Alabama. Whether or not a person is eligible for unemployment benefits is determined by the weekly benefit amount for which such person qualifies (NOTE: the current maximum in Alabama is \$275/week) and such person's gross weekly earnings. If the person's gross weekly earnings are less than his or her weekly benefit amount, he or she would receive a reduced payment for that week. If his or her gross weekly earnings are greater than the weekly benefit amount for which he or she qualifies, such person will not be eligible for unemployment benefits.
  
- **Q5: If an Alabama employee's hours are reduced and the employee is not entitled to any payment from the State, how does this impact the CARES Act additional federally-funded unemployment benefits?**

- A: Under the recently-passed CARES Act, the federal government has agreed to pay an additional \$600/week in unemployment benefits to individuals otherwise eligible for state unemployment benefits. This extra \$600/week lasts until July 31, 2020, and will be reimbursed to the states, which will make the payments directly to the eligible individuals. Importantly, if the employee receives \$0/week from the applicable state (which is possible in a partial unemployment scenario), the employee would not qualify for the additional \$600/week, which is tied to eligibility for state unemployment benefits.
- **Q6: If an Alabama employee has been placed on temporary unemployment or unpaid leave status, can the employee still receive benefit coverage under the employer's benefit plans without jeopardizing qualification for Alabama unemployment benefits?**
  - A: As benefits are not considered Wages for purposes of Alabama's unemployment benefits, an Alabama employee who otherwise qualifies for unemployment benefits should be able to remain on the employer's welfare benefit plans without jeopardizing eligibility for unemployment benefits. However, whether an employee is eligible for welfare benefits during a period of unemployment is generally determined by the terms of the benefit plan and any underlying insurance policy. As to health insurance specifically, employer-paid premiums for otherwise eligible employees are excludable from the employee's gross income under Internal Revenue Code Section 106. An employer should consult benefits counsel or its regular benefits adviser to determine whether coverage continues under a welfare benefits plan during a period of unpaid leave or unemployment, as well as the application of COBRA, FMLA and the cafeteria plan rules during the period of unpaid leave or unemployment. Additionally, if the employee is still receiving pay from the employer for paid vacation or paid time off in excess of the maximum weekly benefit amount, the employee may not be eligible for unemployment benefits at that time.
- **Q7: Does Alabama allow retroactive filing of unemployment claims for previous weeks?**
  - A: Alabama will allow an employee to apply for unemployment benefits retroactively. However, the CARES Act \$600/week is not available until the week of March 29, 2020.
- **Q8: Is an Alabama employee eligible for unemployment benefits if he or she has not worked for the current employer for the minimum required time frame?**
  - A: Assuming the employee has previously worked before joining employment with the current employer, the employee should be able to apply for unemployment benefits.
- **Q9: Has Alabama expanded the classification of workers permitted to apply for unemployment benefits (independent contractors, gig workers, self-employed workers, etc.)?**
  - A: It is our understanding that Alabama has extended unemployment benefit coverage to a broader group of individuals as required under the CARES Act.

- **Q10: Do the unemployment provisions in the CARES Act apply to employees of employers with over 500 employees?**
  - A: The specific unemployment provisions of the CARES Act discussed in this Client Alert will apply regardless of the size of the employer.
- **Q11: If an employee lives in one state and works in another state, in which state should that employee file for unemployment benefits?**
  - A: In general, an employee should file within the state where the wages are earned even if the employee lives in another state. Ultimately, the applicable state departments of labor will determine the appropriate state to provide the unemployment benefits to a particular eligible individual.
- **Q12: Can an Alabama employer file for unemployment benefits on behalf of its employees?**
  - A: Alabama is currently encouraging Alabama employers to file on behalf of its employees. As an incentive to do so, Alabama will not count the filings against the employer's experience rating, which determines the employer's unemployment tax rate moving forward.
- **Q13: Will the unemployment benefits be considered taxable income to the employee?**
  - A: Unemployment benefit payments are considered taxable income under current federal and Alabama law. However, Alabama does provide an exemption for Alabama income tax purposes for the first \$25,000 of such benefits. Each employee will have the option to have federal withholding of 10% withheld from his or her unemployment benefit paid by Alabama.
- **Q14: What other changes to Alabama unemployment benefits have been made in response to COVID-19?**
  - A: Alabama has suspended the one week waiting period for receipt of unemployment benefits, meaning employees are immediately eligible to start receiving payments as soon as approved by Alabama.

Maynard Cooper's [COVID-19 Coronavirus Task Force](#) is closely monitoring all updates to pending legislation related to the Coronavirus pandemic. We are dedicated to providing client-focused services, and it is the goal of the [Task Force](#) to continue this level of service to each and every client as they face challenges about planning for and responding to the threats posed by the virus. If you have any questions, please reach out to your relationship partner or any of the lawyers serving on the [Task Force](#).

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