

76 St. Paul Street
P.O. Box 369
Burlington, Vermont 05402-0369

Telephone 802.658.0220
Facsimile 802.658-1456
www.gravelshea.com

Congress and Vermont Legislature Pass Significant Expansion to Unemployment Benefits

As the COVID crisis continues, both the federal and state governments are rapidly passing legislation that is intended to provide quick aid to all sectors of the American economy, including businesses and employees. This bulletin will focus on the expanded employment benefits in recent legislation passed by the Vermont Legislature and Congress.

On March 26, 2020, two pieces of legislation were passed by the Vermont Legislature (H.681 and H.742), constituting Vermont's first COVID-19 relief package. Together, these new laws aim to alleviate pressure the pandemic has placed on the administration of state and local government, our healthcare system, and Vermont businesses. While they have not yet been signed by Governor Scott, we expect that to happen very soon. This bulletin provides an overview of the changes to Vermont's unemployment insurance benefits contained in H.742, which aims to significantly broaden workers' eligibility for those benefits and to provide assistance to Vermont businesses during these unprecedented times.

Specifically, H.742 expands the availability of unemployment benefits to persons who are unable to work due to reasons related to COVID-19, and it exempts these benefits from employers' experience ratings.

Under H.742, Workers Who Cannot Work for Reasons Related to the COVID-19 Pandemic Can Claim Unemployment Benefits.

In most instances, workers who leave their employment voluntarily are prohibited from claiming unemployment benefits. Of course, certain exemptions exist, including for spouses of military personnel who leave their employment to accompany their spouse on a new assignment. H.742 adds a new series of exceptions to this general rule that allow workers to claim unemployment benefits if they cannot work for a reason related to COVID-19.

Under H.742 workers who leave their employment (either by virtue of a reduction of force, a furlough, leave of absence or otherwise) for the following reasons related to COVID-19 ("COVID-Related Reasons") now qualify to receive unemployment benefits:

- Workers who leave to self-isolate or quarantine after they receive notification by a health care provider or public authority that they have contracted COVID-19, are experiencing symptoms of COVID-19, have been exposed to COVID-19, or are at risk of having been exposed to COVID-19.
- Workers who leave due to an "unreasonable risk" that they might be exposed to or become infected with COVID-19 at the workplace. "Unreasonable risk" in this context means that the employer's workplace is out of compliance with the COVID-specific OSHA regulations (which follows the publicized CDC guidance), or other federal or state protocol that may apply.

- Workers who leave to care for an immediate family member or grandparent after the family member receives notification by a health care provider or public authority that they have contracted COVID-19, are experiencing symptoms of COVID-19, have been exposed to COVID-19, or are at risk of having been exposed to COVID-19.
- Workers who leave to care for a child under the age of 18 because the child’s school or child-care provider has closed due to COVID-19.

What is not specifically designated as a COVID-Related Reason is Governor Scott’s “Stay Home, Stay Safe” Order (the “Order”). For workers who cannot work or telework due to the Order but are not otherwise covered by a COVID-Related Reason, we have been advised by the Department of Labor that it intends to treat “furloughed” employees the same as employees who have been temporarily laid off. It is taking the position that any cessation of work or reduction in hours due to the Order will make the employee eligible for these benefits.

As is customary with unemployment benefits, other sources of paid time off (employer-provided paid time off or state or federal paid sick leave or paid family leave) must be used first. While dollars spent by the employer to maintain an employees’ benefits during a furlough (such as health care benefits) will not be treated as disqualifying funds paid to employees, the Department has cautioned that attempts to “make the employee whole” by providing cash supplements to employees will be treated as a disqualifying event (depriving the employee of unemployment insurance).

H.742 Helps Employers Maintain Their Unemployment Insurance Tax Rates by Exempting Certain Unemployment Charges from Their Experience Rating During the Pandemic.

Under H.742, employers are exempt from unemployment benefit charges on their account for up to 8 weeks for workers who qualify for benefits for a COVID-Related Reason. Additionally, to qualify for the exemption, the employer must rehire the worker after a reasonable period following the resumption of normal business operations or after the employee is no longer subject to quarantine.

The Federal CARES Act Aims to Expand Unemployment Benefits for Traditionally Ineligible People and Increases the Total Benefits Received

The U.S. Senate and House of Representatives today passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act” or the “Act”), a \$2.2 trillion stimulus package meant to keep businesses and individuals afloat during the COVID-19 outbreak. President Trump is expected to sign it soon. Once enacted, the CARES Act will be the largest economic stimulus package in American history.

The nearly 900-page CARES Act contains many provisions that address national economic, healthcare, education, and government priorities. Among those priorities is a temporary expansion of unemployment benefits that increase the number of people eligible for unemployment and the amount of money they receive.

Individuals covered by the unemployment expansion will include many who are traditionally ineligible for unemployment benefits, such as people who are self-employed, contract or “gig” workers, and those who have already exhausted regular unemployment benefits.

A person may be eligible for unemployment under the Act if they self-certify that they are otherwise able to work (as defined by state law) but cannot do so because any one of the following applies to them:

- They have been diagnosed with COVID-19
- They are seeking a medical diagnosis for COVID-19
- They are experiencing symptoms associated with COVID-19
- They are providing care for a family member diagnosed with COVID-19
- They are providing care for a member of their household diagnosed with COVID-19
- A member of their household was diagnosed with COVID-19
- They are the primary caregiver to a child or other household member who is unable to attend school or another facility that closed because of COVID-19, so long as school or facility care is required for the individual to work
- They cannot reach their place of work because of an imposed COVID-19 quarantine
- They cannot reach their place of work because they have been advised by a health care provider to self-quarantine
- Their place of work is closed because of COVID-19
- They had to quit their job because of COVID-19
- They became the primary breadwinner of a household after another household member died from COVID-19

States (like Vermont) that opt-in to the CARES Act's unemployment expansion will provide weekly benefits to approved individuals. Those benefits will include both the unemployment benefit amount already authorized by State law, plus an additional \$600 benefit established by the Act.

Self-employed individuals will be eligible for weekly unemployment benefits pursuant to a statutory equation plus the additional \$600 provided by the Act.

Notably, the CARES Act makes unemployment benefits retroactively available to covered individuals who were unable to work on or after January 27, 2020.

Please contact Heather Hammond (hhammond@gravelshea.com) at Gravel & Shea PC if you have questions or would like assistance.