



Furlough and Unemployment Compensation Considerations
for Pennsylvania Municipalities

Vijay Kapoor
The Kapoor Company
April 20, 2020

With the COVID-19 crisis continuing and economic fallout likely, many Pennsylvania municipalities are discussing furloughs or reductions in hours for employees. Actions taken by Congress, the Pennsylvania General Assembly, and Governor Wolf have provided municipalities and their employees with options that help to minimize the impact on affected employees and in some cases actually make it advantageous for both the municipality and employees to furlough employees or to reduce their hours. This memorandum will highlight issues that Pennsylvania municipalities should consider when contemplating furloughing employees or reducing their hours. We consider these issues from both the employee and employer perspective.

Employee's Perspective

While it may seem strange for employees to want to be furloughed or to have their hours reduced, the COVID-19 crisis is not typical. Employees may be concerned about getting sick or need to take care of dependents who have also been affected. Furthermore, at least in the short-term, keeping people at home and away from others through social distancing is necessary to prevent the virus' spread.

Thanks to the federal CARES act and Pennsylvania's Act 9, employees who are furloughed or who have had their hours reduced as a result of COVID-19, are eligible for enhanced unemployment benefits. In some cases, employees will actually earn MORE if they are furloughed or laid off and collect unemployment than if they stay working or remain employed but use leave. Here's how.

Under the federal CARES act, an employee who, as a result of a COVID-19 related action, is eligible for at least \$1 in unemployment benefits from their respective state will receive \$600 per week over and above their state unemployment benefits.¹ The \$600 per week is a flat dollar amount and is paid regardless of whether the employee was full-time or part-time or if they were

¹ The U.S. Department of Labor issued a guidance letter to state workforce agencies which notes, "If the individual is eligible to receive at least one dollar (\$1) of underlying benefits for the claimed week, the claimant will receive the full \$600." (Guidance letter dated April 4, 2020 at I-5). The guidance letter can be found here: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_15-20.pdf.



furloughed or just had their hours reduced – as long as the qualifying event was COVID-19 related.² When the \$600 per week is combined with their state unemployment benefits, these employees can actually earn more than while employed. For reference, according to the Pennsylvania Office of Unemployment Compensation, “Your Weekly Benefit Rate should equal about one-half of your full-time weekly wage.”³

Let’s show an example. Assume that a Pennsylvania employee who was furloughed for COVID-19 related reasons earned \$40,000 during their base year for calculating unemployment and earned \$10,000 in their high quarter during that period. While working, that employee would earn around \$769 per week. That employee would be due around \$393 in weekly Pennsylvania unemployment compensation benefits. When you add the federal \$600 per week benefit, that employee will receive around \$993 in unemployment benefits - \$224 more per week than if he or she was working.

One would do a similar analysis for employees who had their hours reduced as a result of COVID-19 but who still were eligible to collect at least \$1 in unemployment compensation from Pennsylvania. The “breakeven” point (where money from unemployment benefits is equal to or greater than from working) for a Pennsylvania employee who has been furloughed (no hours working) as a result of COVID-19 is earnings of approximately \$60,000 during their base year with earning in the high quarter of that period of \$14,538 or more.⁴ We assume that many Pennsylvania municipal employees fall into this category.

There are, however, some possible drawbacks to this route. First, unless it is reauthorized, the federal \$600 per week benefit will expire after July 31, 2020. Eliminating the federal benefit clearly changes the analysis. Second, there may be delays between the time employees file for unemployment and when they actually begin to receive payment which would hurt those employees who essentially live paycheck to paycheck. Because the unemployment compensation system is so backed up with claims at the moment and (as of the writing of this memorandum) the Pennsylvania system has not yet been programmed to pay out the \$600, the employee may need to wait to actually receive payment. Although the employee would eventually receive the full benefits due to them, an employer may wish to wait until the system is ready to begin paying out benefits or make other arrangements such as low to no interest loans

² The Pennsylvania Office of Unemployment Compensation posted a FAQ page on the \$600 federal supplement which answered that “Yes. All individuals collecting regular UC or PUA are eligible for the \$600 per week” in response to the question “My job reduced my hours and I am collecting UC or will be filing for UC. Am I eligible for the extra \$600 a week?” Link here: <https://www.uc.pa.gov/COVID-19/CARES-Act/Pages/FPUC-FAQs.aspx>

³ See <https://www.uc.pa.gov/unemployment-benefits/benefits-information/Pages/Weekly-Benefit-Rate.aspx>.

⁴ The Pennsylvania weekly benefit rate depends on base year wages (the first four of the last five calendar quarters prior to the application of benefits) and the high quarter in that period.



through credit unions. Finally, this analysis assumes that the furloughed employee remains on the employer's health care plan assuming that they are eligible in the first place. For many self-insured employers, their health care costs have declined during this period since most elective procedures and visits have been cancelled. Most employers that are not self-insured would still see net savings even if furloughed employees remain on health care plans. Furthermore, from a purely humanitarian perspective, a municipality should try to keep furloughed employees on their health care plans during this pandemic if they can afford it.

Employer's Perspective

If looking to address its financial situation, the employer's perspective on furloughs begins with trying to answer the question of what its unemployment benefit costs will be compared to how much it will save from furloughed employee salaries. The federal CARES act and Pennsylvania's Act 9 provide opportunities to reduce the employer's unemployment benefit costs from furloughing employees, though this relief depends upon how employers pay for their unemployment benefits. Employers that are assigned a rate and pay unemployment insurance taxes are called contributory employers. Employers that are self-insured for unemployment insurance and pay only when employees collect unemployment benefits are called reimbursable employers.⁵ We'll consider each in turn.

Contributory Employers

For contributory employers, the analysis is easy. Pennsylvania's Act 9 provides automatic relief for contributory employers if the unemployment claim is related to the COVID-19 outbreak or the efforts of public health officials to contain and prevent the spread of COVID-19.⁶ Consequently, for Pennsylvania contributory employers, their rates are not going to be impacted for unemployment claims caused by COVID-19.

Reimbursable Employers

For Pennsylvania reimbursable employers (i.e., self-insured for unemployment compensation), it appears that the federal CARES Act will reimburse generally 50% for COVID-related unemployment claims. Separately, Pennsylvania's Act 9 provides automatic relief for those reimbursable employers who have elected to pay the solvency fee.

⁵ A similar concept exists for health insurance where employers who pay employee premiums are akin to contributory employers whereas employers who are self-insured for health care are akin to reimbursable employers.

⁶ See Sections 1603(a) and (b) of Act 9 which provides "Relief under subsection (a) shall be provided automatically for those claims related to the COVID-19 outbreak or the efforts of public officials to contain and prevent the spread of COVID-19. The employer shall not be required to apply for relief under section 302.1 to obtain relief under subsection (a)." See also <https://www.uc.pa.gov/COVID-19/Pages/Employer-COVID19-FAQs.aspx>



According to guidance from the House Ways and Means Committee, the CARES act covers 50% of the unemployment benefit costs for reimbursable employers during the period of national emergency.⁷ The following is from page 2 of the guidance:

Most nonprofits, Indian Tribes, and governmental entities do not pay per-worker unemployment taxes and instead have “reimbursable arrangements” with state unemployment programs, which require them to reimburse the state for 100 percent of the cost of unemployment compensation paid to their furloughed or laid off workers. During the period of the national emergency, the federal government would pay 50 percent of the reimbursement for those workers so that their employers could follow public health recommendations. Workers at these organizations are also eligible for the Federal Pandemic Unemployment Compensation supplement (\$600 a week).

The federal CARES act does not appear to require that the unemployment costs be COVID-19 related and appears to cover claims from March 13, 2020, to December 31, 2020.⁸

Separately, Pennsylvania’s Act 9 also may also be helpful to certain reimbursable employers. Section 1603(d)(1) of Act 9 of 2020, which was signed by Gov. Wolf on March 27th, provides that “an employer who has elected to pay the solvency fee under section 213 shall receive automatic relief from charges in accordance with subsections (b) and (c).” **The key here is that the employer must have elected to pay the solvency fee and that the unemployment must be related to the COVID-19 outbreak or the efforts of public officials to contain and prevent the spread of COVID-19.**

We understand that many Pennsylvania reimbursable employers did not choose to pay the solvency fee, however Pennsylvania’s unemployment statute may provide a possible path. The statute contains the following language with respect to the solvency fee: “The department may for good cause extend the period within which the fee must be paid.” Section 213(a)(1) of the Unemployment Compensation Law. Consequently, if a reimbursable employer is willing to pay the solvency fee and can convince the department to accept the COVID-19 pandemic as good cause, they may receive automatic relief from all COVID-related unemployment claims. At the moment, however, the Pennsylvania Department of Labor & Industry has not made such a determination. The Pennsylvania Municipal League (PML) is actively lobbying on all municipalities’ behalf to try to find a way for them to be fully reimbursed for unemployment claims related to the COVID-19 outbreak.

⁷<https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/UC%20FAQ%20CAR ES%20Act.pdf>

⁸ See section 2103(b) of Federal CARES act.



To sum up, if the municipality is a reimbursable employer and has paid the solvency fee and the claims are related to the COVID-19 outbreak or the efforts of public officials to contain and prevent the spread of COVID-19, the municipality will get automatic relief for unemployment claims during the period of emergency. If the municipality is a reimbursable employer but has not paid the solvency fee, it appears that the federal government will still reimburse for 50% of COVID-related unemployment compensation claims. If a reimbursable employer is willing to pay the solvency fee and can convince the Pennsylvania Department of Labor & Industry to accept the COVID-19 pandemic as good cause (or if additional legislation is passed permitting this), they may receive automatic relief from all COVID-related unemployment claims.

Other Considerations

Furloughing Employees vs. Hours Reduction

As noted earlier, as long as an employee is eligible for \$1 of state unemployment benefits, he or she will be eligible for the federal government's additional \$600 unemployment payment. In Pennsylvania, employees who have had their hours reduced through no fault of their own may qualify for unemployment benefits.⁹ Therefore, an employer who is contemplating furloughs should also consider the potential for employee hours reduction.

Offering Health Insurance

In the employee perspective section, we discussed the employer maintaining health insurance during any period of furlough. We noted that for many self-insured employers, their health care costs have declined during this period since most elective procedures and visits have been cancelled and that most employers that are not self-insured would still see net savings even if furloughed employees remain on health care plans. We also suggested that, from a purely humanitarian and human relations perspective, a municipality should try to keep employees on their health care plans during this pandemic. **Employers should first check with their health insurance providers to make sure that furloughed employees or those with reduced hours can still be covered.**

Collective Bargaining Impacts

While we assume that few collective bargaining agreements have provisions covering pandemics, many have furlough provisions that outline the process that an employer must go through before furloughing employees. Such provisions sometimes include bumping rights in which an employee with greater seniority can replace less senior employees if there is a furlough and the more senior employee is qualified to hold that position.

⁹ See <https://www.uc.pa.gov/faq/claimant/Pages/Reduced-Work-Hours-FAQS.aspx>



We strongly recommend contacting labor counsel to guide you through this process and to think creatively about how to structure or address your municipality's particular situation.

Additionally, several municipalities who are currently discussing furloughs have sat down with their unions to try to develop a specific memorandum of understanding that covers the process, health care, other benefits and call-back. As part of that process, municipalities should also discuss what will happen to seniority, leave accrual, pension, and leave payouts.

Documentation and Communication

Finally, we strongly recommend that you maintain clear records and documentation for the reasons why you are furloughing employees or reducing their hours and that you communicate clearly to employees what steps you are taking and why. As noted earlier, most unemployment benefit relief is for claims related to the COVID-19 outbreak or the efforts of public health officials to contain and prevent the spread of COVID-19. You need to make sure you document that. There is the possibility of audits, so a key reminder for places who are receiving relief is to make sure that you are documenting everything and ensuring that – at least if they are claiming relief for unemployment compensation – that the employees' unemployment claims are related to the COVID-19 outbreak or the efforts of public health officials to contain and prevent the spread of COVID-19.

This is a very uncertain and difficult time for employees. Just uttering the phrase “furloughs” will cause a great deal of confusion and anxiety. We recommend that you work with your unions to find a way through this situation that is fair to taxpayers and at the same time protects your employees. We hope that things get back to normal very soon, but municipalities need to plan for less-optimistic scenarios as well.

Should you have questions or comments about this analysis, please contact Vijay Kapoor at vkapoor@kapoorco.com or 215.840.6552.

*This analysis is intended to provide local officials with a framework with which to consider furloughs as a response to the COVID-19 crisis. It is not a substitute for legal advice from a qualified attorney. Additionally, information in this analysis may change. **Before taking any actions, consult with a qualified attorney to review your particular situation.***