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Unemployment Insurance Benefits and Work-Share Programs

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Practice Area: Compensation and Benefits/ERISA & Labor and Employment

Since Governor Evers first declared a public health emergency in the state on March 12, 2020, the Wisconsin Department of Workforce Development ("DWD") has experienced an unprecedented spike in the number of claims for unemployment insurance benefits. This abrupt increase in unemployment claims has prompted a legislative response, and on April 15, 2020, Wisconsin enacted Senate Bill 932. The bill is wide-sweeping and impacts employment, agriculture, economic development, local government, public utilities, education, insurance, and public health and human services in Wisconsin.

Among numerous other changes, Senate Bill 932 makes significant modifications to Wisconsin's unemployment insurance program. The bill's amendments to existing unemployment insurance laws appear to provide temporary economic relief to both claimants and employers by waiving certain requirements and restructuring the way in which benefits related to the public health crisis are charged.

Waiver of the One-Week Waiting Period
As expected, the bill temporarily suspends the one-week waiting period that previously applied to claimants prior to the payment of any benefits. Now, the one-week waiting period does not apply to benefit periods that begin after March 12, 2020 and before February 7, 2021. Claimants whose benefit year falls within this timeframe are eligible to receive benefits during their first week of eligibility. The suspension of the one-week waiting period does not affect the maximum number of weeks of a claimant's benefit eligibility. This first week of benefits likely will be funded through the federal CARES Act, not by the employer.

COVID-19 Related Unemployment Benefits Charged to the Reserve Fund
The bill provides relief to employers by charging unemployment benefit claims related to COVID-19 to the unemployment reserve fund, a pooled account to which all employers have contributed. This will apply to those claims that are payable after March 12, 2020 and before December 31, 2020. The bill also requires the Secretary of the DWD to seek advances to the reserve fund from the federal government. The federal CARES Act provides a mechanism to do so, if the DWD Secretary and the federal Department of Labor enter into an agreement for provision of funds.

Work-Share Program Requirements More Lenient
The bill suspends or relaxes numerous work-share program requirements until December 31, 2020:

- Work-share plans are no longer limited to a particular work unit. The bill permits work-share plans to cover any employees of the employer, providing flexibility for adjustments across the workforce.
- Working hours may be reduced up to 60%. Previously, work hour reductions under a program were not permitted to exceed 50% of normal working hours.
- During the suspension period, work-share programs only need to cover at least two positions that are filled on the effective date of the program. This suspends the requirement that at least 10% of an employer's workforce be included in a work-share program and that the employer must provide for initial coverage under the plan for at least 20 positions.

The DWD must allow employers to submit applications for work-share programs online. Employers must certify that the plan complies with all employer obligations under applicable federal and state laws and specify:

- The affected positions;
- The names of the employees filling those positions on the effective date of the work-share program;
- The period(s) when the plan will be in effect, which may not exceed 6 months in any 5-year period;
- The average hours per week worked by each employee and the percentage reduction in the average reduction of hours of work per week, exclusive of overtime hours;
- The estimated number of layoffs that would occur without implementation of the plan;
- The effect on any fringe benefits provided by the employer to the employees who are included in the work-share program other than fringe benefits required by law; and
- The manner in which requirements for maximum federal financial participation in the plan will be implemented.

The COVID-19 pandemic's operational and economic impact has been experienced in varying degrees by all businesses. As business leaders across Wisconsin continue to adapt to the changing economic environment, it is important for employers to make decisions as to their workforce with an understanding of the changes to the state's unemployment insurance program as a result Senate Bill 932' enactment.

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