

## **Key takeaways: Wisconsin emergency legislation**

Emergency legislation is advancing in an extraordinary session of the Wisconsin legislature. Key takeaways for business leaders include:

### **Unemployment Insurance**

#### **TEMPORARY SUSPENSION OF THE UNEMPLOYMENT INSURANCE WAITING WEEK**

Provide that the waiting week requirement under current law would not apply with respect to benefit years that begin after March 12, 2020, and before February 7, 2021. Require the Department of Workforce Development (DWD) to seek the maximum amount of federal reimbursement for benefits that are payable for the first week of a claimant's benefit year as a result of the application of this provision.

Under current law, a UI claimant's waiting period is the first week of a claimant's benefit year for which the claimant is otherwise eligible for regular benefits. During a claimant's waiting period, no benefits are payable to the claimant. The waiting period does not affect a claimant's maximum benefit amount, which is 26 weeks of regular state benefits. However, claimants who do not reach the state's 26-week limit effectively receive one less week of benefits due to the waiting week requirement. A claimant must serve one waiting week per benefit year.

The CARES Act provides 100% federal funding of the first week of regular UI benefits for states with no waiting week through December 31, 2020, plus administrative expenses incurred to implement this provision. Under the Act, states may enter into an agreement with U.S. Department of Labor (USDOL) for this funding if the state law, including a waiver of state law, provides that compensation is paid to individuals for their first week of regular unemployment without a waiting week. An agreement implementing this and other UI-related provisions of the CARES Act was signed by the DWD Secretary and USDOL on March 28, 2020. The Families First Coronavirus Response Act also requires states to commit to "ease eligibility requirements and access" to UI benefits, including waiving the waiting week, to be eligible for additional federal UI program administrative funding.

#### **NON-CHARGING EMPLOYER UNEMPLOYMENT INSURANCE ACCOUNTS**

Require the Department of Workforce Development, when processing claims for UI benefits and evaluating work-share plans, to determine whether a claim or plan is related to the public health emergency (PHE) declared by the Governor under Executive Order #72.

Provide that if a claim or plan is related to a PHE, regular benefits for that claim for weeks occurring after March 12, 2020, and before December 31, 2020, not be charged to an employer's UI account as normally provided. Instead, under the provision, UI benefits for those weeks would be charged to either: (a) the balancing account of the UI trust fund for contribution employers; or (b) DWD's existing interest and penalties account for reimbursable employers that are not subject to contribution requirements.

Under the provision, PHE non-charging provisions would not apply: (a) if the employer fails to timely and adequately provide any information required by the Department; (b) to any benefits paid or reimbursed by the federal government, including the portion of any benefits reimbursed by the federal government for reimbursable employers; (c) to a claim for regular benefits that is a combined wage claim; (d) to work-share benefits reimbursed by the federal government; or (e) to certain benefits chargeable based on employment with the federal government.

Require the Secretary of DWD, to the extent permitted under federal law, to seek advances to the state's UI trust fund from the federal government so as to allow Schedule D, the lowest unemployment tax rate schedule, to remain in effect through the end of calendar year 2021.

Under current law, some UI benefit payments are not charged to a specific employer's account but are instead charged to the balancing account. The state's UI balancing account is supported by the solvency tax paid by employers and any interest earned on the state's UI trust fund balance. There are seven basic categories of benefit payments charged to the balancing account: 10% write-offs, quits, misconduct, substantial fault, continued employment, approved training, and second benefit year. In the past, there have been other benefit programs that have been charged to the balancing account, including in 2002 when state temporary supplemental benefits were charged to the account.

#### Taxes

##### INTEREST AND PENALTIES ON 2020 PROPERTY TAXES

For any property taxes payable in 2020 that are due after April 1, 2020, allow local governments, after making a general or case-by-case finding of hardship, to waive any interest charges and penalties for a late installment payment, provided that the full amount of the payment is received on or before October 1, 2020. For any property taxes payable in 2020 that are delinquent after October 1, 2020, interest charges and penalties would begin accruing as of October 1, 2020. Consider any payment received on or before October 1, 2020, or by an installment date after October 1, 2020, to be timely for the purposes of allowing taxpayers to submit a claim to appeal unlawful or excessive taxes.

##### INTEREST AND PENALTIES DUE ON TAXES OWED DURING THE PUBLIC HEALTH EMERGENCY

Permit the Secretary of the Department of Revenue to waive interest and penalties for persons that owe, but fail to remit, general fund taxes, or taxes or fees that are deposited in the transportation fund, by the filing date if, in the Secretary's determination, that person failed to timely remit those taxes due to the effects of the coronavirus outbreak of 2020. Specify that the Secretary must make this determination on a case-by-case basis. Specify that this provision applies only to general fund taxes, or taxes and fees that are deposited in the transportation fund, with filing dates that fall within, and interest and penalties that accrue during, the public health emergency that was declared by the Governor on March 12, 2020, by Executive Order 72, including any extension of time authorized under a joint resolution by the Legislature. Estimate a minimal reduction in state tax revenues.

##### INCOME AND FRANCHISE TAX FILING EXTENSION

President Trump declared a national emergency in response to the coronavirus outbreak on March 13, 2020. Following this declaration, the Treasury Department and Internal Revenue Service (IRS) announced on March 21, 2020, that the deadline for filing federal income tax returns is extended from April 15, 2020, to July 15, 2020. The IRS subsequently expanded that guidance on April 9, 2020, to provide that the extension generally applies to all taxpayers with a tax filing due date falling between April 1, 2020, and before July 15, 2020. In addition, taxpayers who make estimated income tax payments that would otherwise be due between April 1, 2020, and before July 15, 2020, can make such payments by July 15 without incurring any interest or penalties, regardless of amounts owed by a taxpayer. A taxpayer need not file any additional forms in order to qualify for this extended due date.

Wisconsin law provides similar treatment such that state income and franchise taxpayers with tax filing due dates between April 1, 2020, and before July 15, 2020, will have until July 15 to file their state income or franchise tax returns for tax year 2019, or make any tax year 2020 estimated payment that

would otherwise have been due during that period, without interest, penalty, or underpayment interest applying until that date.

#### Health Care/Insurance

##### EXEMPTION FROM CIVIL LIABILITY FOR MANUFACTURE OF MEDICAL SUPPLIES DURING PUBLIC HEALTH EMERGENCY

Exempt manufacturers, distributors, and sellers of emergency medical supplies that donate or sell their products in response to the public health emergency, as declared under federal law by either the President or federal Secretary of Health and Human Services, from civil liability associated with injury or death caused by those products. The manufacturer, distributor, or seller would be exempt from civil liability only if the product were sold or donated to a nonprofit organization or unit of government at a price that does not exceed the cost of production, defined to include only the cost of inputs, wages, operating the manufacturing facility, and transporting the product. Define emergency medical supplies as any medical equipment or supplies necessary to limit the spread of, or provide treatment for, a disease associated with the public health emergency, including life support devices, personal protective equipment, cleaning supplies, and any other item determined to be necessary by the Secretary of the Department of Health Services. Specify that the exemption would not apply if the death or injury were caused by a willful act or omission.

##### NO COST SHARING FOR COVID-19 TESTING

Require any self-insured health plan offered by a local government or school district, any health insurance policy, and any state health plan that generally covers testing for infectious diseases to provide coverage of testing for COVID-19 without imposing any copayment or coinsurance on the individual covered under the policy or plan, for any such testing done prior to March 13, 2021.

##### PROHIBIT COVERAGE DISCRIMINATION BASED ON COVID-19

Prohibit any insurer, pharmacy benefit manager, or self-insured health plan from using a current or past diagnosis, or suspected diagnosis, of COVID-19, as the basis for doing the following: (a) establishing rules, applicable to an individual or employer or other group, for eligibility for enrollment, continued eligibility to remain enrolled, or renewal of coverage; (b) canceling coverage during a contract term; (c) establishing rates for coverage; or (d) refusing to grant a grace period for the payment of premium, if a grace period for payment of premium would generally be granted under the plan.

##### OUT-OF-NETWORK CHARGES AND PAYMENTS DURING A PUBLIC HEALTH EMERGENCY RELATED TO COVID-19

Specify that, during a public health emergency related to the COVID-19 outbreak that is declared by the Secretary of the U.S. Department of Health and Human Services or by the Governor under Executive Order 72, any defined network or preferred provider health plan may not require an enrollee to pay, including cost sharing, for a service, treatment, or supply rendered by a provider that is not in the plan's network more than the enrollee would pay if the service, treatment, or supply is rendered by an in-network provider, if the following apply: (a) the service, treatment, or supply is related to a diagnosis or treatment for COVID-19; and (b) the service, treatment, or supply is rendered by an out-of-network provider because no in-network provider is available due to the public health emergency. Specify that, in these circumstances, the plan must reimburse the out-of-network provider at 225 percent of the rate the federal Medicare program reimburses the provider for the same or a similar service, treatment, or supply in the same geographic area.

Specify that, during a declared public health emergency related to COVID-19, any health care provider or facility that renders a service, treatment, or supply to an enrollee of a defined network plan or preferred provider plan that does not include the health provider or facility in its network must accept as payment in full any payment that is at least 225 percent of the Medicare rate for a similar service, treatment, or supply in the same geographic area. Prohibit the provider from charging the enrollee an amount that exceeds the amount the provider of facility is reimbursed by the defined network plan or preferred provider plan.

Authorize the Insurance Commissioner to promulgate any rules necessary to implement these provisions.

#### PRESCRIPTION DRUG LIMITS

Prohibit any health insurance policy, state employee health plan, or self-insured health plan offered by a local government or school district, or a pharmacy benefit manager acting on behalf of a policy or plan from doing the following during the period covered by the state of emergency related to public health declared by the Governor on March 12, 2020, under Executive Order 72: (a) requiring prior authorization for early refills of a prescription drug or otherwise restrict the period of time in which a prescription drug may be refilled; or (b) imposing a limit on the quantity of prescription drugs that may be obtained if the quantity is no more than a 90-day supply. Specify that these restrictions do not apply to a prescription drug that is classified as a controlled substance by the Controlled Substances Board.