

Arizona Legislature Considers Emergency Measures on Unemployment Benefits; Governor Announces EO

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In response to the coronavirus (COVID-19) pandemic, Arizona has enacted a new provision appropriating \$55 million from its budget stabilization fund to the public health emergencies fund to pay the expenses of public health emergency responses. In addition, the Arizona Legislature is considering two bills on unemployment insurance that will affect businesses in Arizona directly. Meanwhile, Governor Doug Ducey is expected to issue an Executive Order that will affect employers in the healthcare and restaurant industries.

Bills

House Bill 2911 and Senate Bill 1694 are competing emergency measures that would permit the Arizona Department of Economic Security (DES) to “establish an alternative unemployment insurance (UI) benefit program for people impacted by the Coronavirus” (HB 2911) or to “implement alternative UI benefit eligibility and employer contribution requirements consistent with federal guidance” (SB 1694).

Both bills provide that employees who become unemployed through no fault of their own may be eligible for UI benefits, even if they do not meet the usual requirements. Both bills also would be effective retroactive to March 11, 2020, the day Arizona Governor Douglas Ducey declared a Public Health Emergency.

Currently, unemployed workers are eligible to receive UI benefits after a one-week waiting period if they earned wages for insured work, register to work, and fill out the necessary claim forms. Unemployed workers seeking UI benefits must report regularly to the DES employment office, be able to work, be available for work, and demonstrate they are searching for work, as prescribed, at least four days a week, making at least one job contact each day. A.R.S. § 23-771. If the legislation is enacted, some of these requirements would likely be waived by a subsequent bill, in order to more easily allow employees affected by the COVID-19 to collect UI benefits. Weekly UI benefits are calculated according to wages earned from employers who paid unemployment taxes to the State of Arizona. The benefit amount is four percent of the wages paid in the highest quarter of the worker’s base period, with the current maximum set at \$240 a week. A.R.S. § 23-779.

The proposal is part of an effort by the Arizona Legislature to take advantage of additional flexibility provided by the U.S. Department of Labor (DOL) in response to the COVID-19 outbreak. On March 12, 2020, the DOL announced guidance allowing states to amend their laws to provide UI benefits in many situations related to COVID-19, including where:

1. An employer temporarily ceases operations due to COVID-19, preventing employees from coming to work;
2. An individual is quarantined with the expectation of returning to work after the quarantine is over; and
3. An individual leaves employment due to a risk of exposure or infection or to care for a family member.

Federal law does not require an employee to quit in order to receive benefits due to the impact of COVID-19; however, an individual receiving paid sick leave or paid family leave is not considered “unemployed,” and, therefore, is not eligible for UI benefits.

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A provision in Arizona's Earned Paid Sick Time law (A.R.S. § 23-371, et seq.) provides for "public health emergencies." When an Arizona employer closes a facility because it is ordered to do so by a public health official because of a public health emergency, all affected employees are entitled to use their earned paid sick time while they are not working because of the closure. A.R.S. § 23-373 states that earned paid sick time "shall be provided" under the following circumstances:

1. Closure of the employee's place of business by order of a public official due to a public health emergency;
2. An employee requires leave to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; and
3. An employee requires leave to care for oneself or a family member when it has been determined by the health authorities or a health care provider that the employee or family member's presence in the community may jeopardize the health of others because of their exposure to a communicable disease.

In the third case above, if an employee (or employee's family member), for example, is directed to self-quarantine due to having been in contact with another person who contracted COVID-19, earned paid sick leave must be provided to that employee before the employee becomes eligible for UI benefits.

Executive Order

On March 19, 2020, Governor Ducey announced that he will be issuing an Executive Order that included the following additional directives affecting employers in the healthcare and restaurant industries to help combat the spread of COVID-19:

- Halting all elective surgeries in the state to free up medical resources and to maintain the capacity for hospitals and providers to continue offering vital services.
- Requiring restaurants in counties with confirmed cases of COVID-19 to provide dine-out options only, and closing bars, movie theaters, and gyms. Restaurants will be allowed to deliver alcoholic beverages with food purchases.

Jackson Lewis attorneys will continue to monitor these rapidly developing measures. For more guidance, please contact a Jackson Lewis attorney or the dedicated [COVID-19 Task Force](#).

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