

Legal Update Article

# **South Carolina Governor Authorizes Use of COVID-19 Support Payments by Employers to Employees**

By T. Chase Samples &

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## Meet the Authors



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South Carolina Governor Henry McMaster has issued [Executive Order No. 2020-22](#), which allows employers to make voluntary “COVID-19 Support Payments” to employees who are placed on furlough because of the COVID-19 pandemic without those Support Payments affecting employees’ eligibility for unemployment benefits.

The Order took effect on April 7, 2020, and is intended to combat the economic fallout caused by the COVID-19 pandemic.

The Order defines “COVID-19 Support Payments” as:

- A voluntary payment, or series of payments, made by an employer to an employee in response to furloughing the employee;
- Which is for services rendered by the employee in the past;
- Which the employee or the employee’s estate is not obligated to repay;
- Which is provided without obligation for the employee to perform or not perform any act in connection with the individual’s status as an employee; and
- Which is made pursuant to a plan provided by the Department of Employment and Workforce (DEW) and on the COVID-19 Support Payment Plan Application published on the DEW website (<https://dew.sc.gov/covid-hub/employerhub>).

The Order’s exclusion of COVID-19 Support Payments from consideration of a furloughed employee’s entitlement to unemployment benefits is consistent with existing South Carolina law. Indeed, the Order acknowledges that South Carolina employers have long been permitted to make severance payments to employees without affecting those employees’ entitlement to unemployment benefits.

The only apparent substantive differences between COVID-19 Support Payments and traditional severance payments are the requirements that employers who wish to make COVID-19 Support Payments must:

1. Submit a COVID-19 Support Payment Plan Application before making any COVID-19 Support Payments; and
2. File for unemployment benefits on behalf of each employee who will receive COVID-19 Support Payments.

Because COVID-19 Support Payments are so similar to traditional severance payments, employers should consider obtaining a release of claims from employees just as they would with traditional severance payments. Generally, a release of claims would bar an employee from filing a lawsuit against the employer based on conduct that occurred before signing the release.

Please contact a Jackson Lewis attorney if you have questions or need assistance. Jackson Lewis also has a [dedicated team](#) tracking and responding to the developing issues facing employers in this difficult time.

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