



Kansas State Council of SHRM, Inc.  
825 S. Kansas, Suite 502 • Topeka, KS 66612  
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## KS SHRM COVID-19 WEBINAR DISCUSSION

May 8, 2020

Topic: Legislative Update

### Guests:

- Cheryl Vincent – Staff Director for the Ways and Means Worker and Family Support Subcommittee
- Lisa Horn, SHRM – Director of Congressional Affairs and Leader of SHRM's Workplace Flexibility Initiative
- Natalie Bright, Bright & Carpenter Consulting – KS SHRM Lobbyist and Executive Director

### Questions answered on the call:

1. You mentioned a comparison chart on your website as well as valuable resources. Can you share that website with us?

*The website link is <https://gop-waysandmeans.house.gov/corona-virus-bulletin-resources-for-leading-during-the-crisis/>.*

2. Can you provide an update on unemployment for the self-employed?

*There have been some delays because the self-employed is not necessarily a group of individuals the state has served in the past. New processes and new ways to incorporate these individuals in the system are having to be created. One of the difficulties has been looking at prior earnings for self-employed individuals and independent contractors, which is trickier than if they were using wage data from employers. The base weekly benefit amount is going to be based on their previous earnings and I think that is where those delays keep coming from: to find the sources of those earnings and process them. I think that has been the biggest hang up of the PUA program.*

3. Do both provisions of the FFCRA apply to public school districts with more than 500 employees or just the Emergency Paid Sick Leave (EPSL) provision?

*The paid sick leave provisions apply to public sector employers with one or more employees, so I would assume that includes public schools. I have not heard differently.*



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4. Is there an update for local governments since we aren't eligible for the tax credits, but have substantial increased costs?

*For paid leave, there is a mandate for state and local governments to offer paid leave if they are a public sector employer with one or more employees, but the tax credit piece did not apply to them. For the paid leave mandate, there has been an awareness from members about that being problematic. I would not be surprised if Congress revisits that and aligns it with the policy for the rest of private sector employers, which is to reimburse for the full amount of wages they had to pay via the tax credit. That will be a debate in the next phase in how to handle that. For unemployment insurance, state and local governments receive the CARES Act which included the 50% federal reimbursement for costs for them for unemployment insurance to provide some relief to state and local governments. There is some discussion about whether or not that is enough so it will probably be part of the future conversation for unemployment insurance.*

5. Where do we get the exemption for employers less than 50 employees?

*That is in the paid leave section of the FFCRA and was added at the last minute as an exemption for small business to apply to the DOL. The parameters they put around it are related to whether or not it is going to create a hardship and they have some guidance out there now about how small businesses are to apply for that exemption under the paid leave. I think there was a concern for real small employers having a paid leave mandate and that it would be a big burden in terms of allowing them to stay in business, and that is why there was an exemption in there. The DOL Wage and Hour Division has provided guidance and put together paid leave resources and Q&A in how small businesses are to handle the exemption and what the parameters around it are.*

6. Do you have to wait a year if you had drawn unemployment in the last year? What if you are now self-employed and have lost your income? Are you eligible under this new act to start drawing again?

*This gets into how Kansas might run its program and the timing of it: when the claims ended, and the new ones can begin. I think that is very state specific. The law did not speak to that in terms of the process and timing piece of it, but what I have heard from other states are questions from residents about this. What I have heard the state workforce agencies saying is that they can apply as a separately new claim. I think it adds another level of complexity to their claim, because they had a prior one, but the intent is that the PUA program picks up anyone who would not otherwise be eligible under the state's regular unemployment compensation rules. And that program is very broadly defined, so the intent of Congress was to make sure the program acted as a safety net to pick up individuals that the state wouldn't otherwise be able to provide benefits to, for whatever reason.*



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7. With the huge amount of unemployment due to COVID-19, is this going to impact the employer Unemployment account or is this being forgiven?

*All the CARES Act benefits are fully federally funded and will not have an impact on individual businesses in the states in their experience ratings. However, there is a concern about this depletion of states' unemployment trust funds because the state is still paying out a tremendous amount of state dollars that they've collected from taxes from businesses and the federal dollars are really just an add-on. The federal dollars are not replacing those funds, they are supplementing them. In the FFCRA, there is a provision that requires states to hold employers harmless in order to receive the administration money for a period of time. I do not know the length of that period of time off the top of my head, but I think most of the provisions are at least through the end of the year. I think that is something that will come up again as we see more states go through their unemployment trust funds and begin asking for federal loans. Normally that would require states to go back to their businesses and adjust their SUTA (state) taxes in order to replenish those funds, so I think that will be something discussed in the next phase and whether or not to provide some relief to businesses in terms of the timing of when that happens. The timing to really lengthen that over a longer period of time.*

8. The federal government is paying out a lot of money right now. How will these billions be recouped by the government?

*I am not sure what recouping the funds means because that money comes out of Treasury. The CBO estimate of the amount of money this will ultimately cost is \$268 billion dollars and that is all federal dollars. Just like all the other provisions in the CARES Act, which ended up being close to a trillion dollars, there will have to be a reconciliation at some point about it and how we get back on track after spending so much money to respond to the virus. But there is no conversation about trying to recoup those dollars if you are referring to the FUTA (federal) tax. There is no conversation about changing that or increasing that as part of a payback mechanism.*

9. We've received some questions regarding FMLA provisions. Does the extended FMLA provision apply or just paid sick leave to applicable public businesses?

*For the public sector, it is just the emergency paid sick leave provision. The FMLA is for private sector employers with fewer than 500 employees. For both provisions, there is a good cause exemption for the businesses with fewer than 50 employees. The provisions in the law were very hard to decipher and it's easy to get confused about what covers what so I refer to this an at-a-glance chart.*



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10. Is there another stimulus payment in the works that you know of?

*There have been conversations about different ideas about how to get money to individuals in the same spirit. The President has been vocal about wanting a payroll tax cut and the administration has been pushing that for the next phase to help put more money in people's pockets. Now that we are reopening and getting back to work, there has been some discussion about the timing of the next bill. We've acted in very quick succession and put a lot of money out there and I think some members feel we need to wait to see how this plays out and how this money gets down to the people that need it and then circle back and figure out where the gaps are, as opposed to just putting another large tranche of money out there. That will play out in the next few weeks. There are different opinions about what needs to happen next and how to get additional money to people where we see there are gaps. It will depend on how the reopening goes and how quickly businesses can get back to work.*

11. Any changes to HSAs?

*Yes, but we do not know what they are yet. The priorities for FSA flexibility were generated from SHRM member input. Sen. Cassidy is interested in HSA flexibility, too. Please email to Lisa Horn ([lisa.horn@shrm.org](mailto:lisa.horn@shrm.org)) specific examples of what is needed in terms of policy changes so she can make recommendations based on the feedback.*

12. Natalie Bright shared a phased reopening plan from the state. What are the requirements for having locally different restrictions?

*Local government must be at least as restrictive as the state, but they are allowed to be more restrictive.*

13. Who can we reach out to for support and help with convincing our admin that higher ed is supposed to be closed through phase 4?

*Bright spoke with a technical college employee yesterday who noted they are bringing back their students for labs and similar small group settings that allow for social distancing. Schools will be decided by the Board of Regents in communication with the Governor.*

14. If someone has given birth, but also has an older child that they are taking care of because of school/daycare closures, will we be required to pay them the 2/3 pay after the first two weeks?

*We are unsure of the specifics but the DOL has provided great resources on their website and the SHRM Knowledge Center is a good resource, as well. You may also review some of the KS SHRM past event recordings at <http://ksshrm.org/covid-19/>. SHRM has monthly calls with a representative from the CDC,*



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*with the next one taking place on May 13<sup>th</sup>. Even non-SHRM members are allowed access to many of the SHRM resources.*