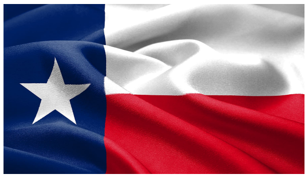

Texas Employers Risk Additional Expense if Action is Not Taken

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Weeks ago, no one – especially Texans – could have expected the effects COVID-19 would have on the state's economy and job market. The pandemic has left many with questions and little recourse for answers. According to the Texas Tribune, over 760,000 Texans have applied for unemployment benefits over the last four weeks. That is more than the total number of applicants for 2019. Local, state and federal officials cannot estimate a time for recovery but have offered some resources to attempt to lessen the blows to individuals and businesses affected by this pandemic.

The federal government reacted quickly passing the Coronavirus Aid, Relief and Economic Security Act (CARES Act) that is slated to provide approximately $104 billion for unemployment benefits. In the wake of such disaster, employers are left wondering where to turn to seek more than just financial relief. Businesses, business owners and human resource professionals can and should look to the Texas Workforce Commission (TWC) which is charged with managing federal disaster funds for Texas. TWC has enacted several emergency provisions for the assistance of employers and employees in the wake of the pandemic.

What Relief is Available to Texas Business Owners?

Employers should be aware that if their business shuts down because of a closure order, the Texas Labor Code may allow an employer to ask for unemployment chargeback protection. See Section 204.022(a) (1-2) of the Texas Labor Code. If that were to happen, the employer should include a copy of the shutdown order with its response to the unemployment claim and argue that the closure was mandated by local or state order. Texas employers risk additional expense and charge backs, if such action is not taken.

Nevertheless, the abrupt slowing, and in some situations complete halt of business poses an important question for owners and executive-level decision makers: Do we furlough, or do we fire? TWC has sought to assist with an answer. Employers have been encouraged to explore the shared work program. This program is intended to prevent layoffs when businesses slow down by allowing employers to cut employee hours or furlough workers. Employers are allowed to supplement their employees' lost wages with partial unemployment benefits. The shared work unemployment benefits affect the employer's tax rate in the same way as other benefit chargebacks. For more information, or to apply for a shared work plan visit or email.

If it becomes necessary to close your business either temporarily or permanently and you need to lay off employees TWC can assist by allowing your business to submit a mass claim for unemployment benefits on your employees' behalf. The Mass Claims Program streamlines the unemployment benefit claims process for employers faced with either temporary or permanent layoffs. Employers can submit basic worker information on behalf of their employees to initiate claims for unemployment benefits. You can submit a mass claim request on Employer Benefits Services 24 hours a day, seven days a week. This can lighten an already heavy load borne by your employees who are abruptly put out of work.

The increase in claims has made it necessary for the TWC to provide employers with an extension for the first quarter 2020 tax reports and payments. The new deadline is May 15, 2020, and businesses are encouraged to use the Quickfile reporting program which are available now.

How Can My Business Assist Employees?

As an employer, if you are forced to conduct layoffs or furlough you should be mindful of information to assist your employees with the transition in such uncertain times. Your employees should be advised that Texas Governor Greg Abbott instructed the Texas Workforce Commission (TWC) to waive the waiting period for unemployment benefits in the wake of the coronavirus epidemic. Normally, the TWC cannot pay for the first week of an unemployment claim until an individual receives two times their weekly benefit amount and returns to full-time work or has exhausted their benefits. By waiving the waiting week, unemployed workers can receive unemployment benefits more quickly.

In addition, the TWC announced that it was waiving the Unemployment Insurance work search requirements effective immediately. Under normal circumstances, employees seeking unemployment benefits are required to register for work search online and to meet minimum work search activities per week. It is expected that by waiving the work search requirements, more employees will be eligible for unemployment benefits and for longer periods of time.

For additional information regarding the State of Texas response to the increase in unemployment claims and the coronavirus, see the TWC announcement regarding the waiver of the waiting period.

There is also relief available for employees who do not meet the requisites for Unemployment Insurance (UI) benefits or have exhausted their UI benefits for the year. Under the Pandemic Unemployment Assistance (PUA) program, a claimant can file an individual regular UI claim (outside of the Shared Work program) and TWC will process and determine if the claimant is eligible for PUA benefits. PUA is an alternative to UI benefits and requires the claimant to request payment every two weeks and report their work and earnings. TWC will then deduct any earnings from their weekly PUA benefit amount.

To apply for benefits online, see Unemployment Benefits Services.

What to Remember as the Public Health Crisis Unfolds

While TWC is a vital resource available to Texans during this state of emergency, it should be noted that our state is seeing an unprecedented number of applicants in an unusually short time frame. If you have questions, inquiries or filings with TWC, be prepared for lag time, delay, and even complications with the normal processes of seeking and collecting UI or PUA benefits.

It should also be noted that if you are a business owner, the appropriate handling of your business affairs is paramount in these uncertain times. Making hasty, uninformed decisions regarding employees, benefits, sick-leave, layoffs or furloughs could have legal ramifications that outlast this crisis or even determine the survival of your business.

For more information, please contact Fred Gaona III, Faith Eaton or any attorney in Frost Brown Todd's Labor & Employment practice group.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.