



CRISIS MANAGEMENT FOR COVID-19

Phase 18 (Week 21): Updated Guidance, Legal Changes, and Legislation

*Presented by:
Hanna Resource Group
and
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INTRODUCTIONS



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WHAT WE'LL COVER

1

Updates
from
Washington

2

Legal Changes and
Legislation



1

Updates from Washington



John Yarmuth
Congressman/Chairman

Questions & Answers





2

Legal & Congressional Updates for Employers



James M. Morris, Esq.
Juris Doctor, MPA
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2

Legal & Regulatory Updates

Two Proposed Legislative Aid Packages – Reading the Tea Leaves

House and Senate (Democrats on the one hand, and Republicans on the other) continue to debate the relative benefits of various plans. Trump Administration and key Democrats have negotiated throughout the weekend. Key areas of dispute, currently:

- **Mail in Voting Mandate**: House = Yes; Senate = No
- **USPS**: House = \$25B ; Senate = \$5B
- **SAL**: House want more money; Senate wants flexibility on monies already allocated
- **Unemployment**: House and Senate (and Trump Admin) appear to agree to \$600, but House is insisting upon “full package” or no continuation of \$600 benefit
- **Food Stamps**: House demanding; Senate refusing
- **Housing**: House demanding; Senate refusing
- **Business, School, and Charity Liability**: House = No; Senate = Yes
- **Return to Work Incentives**: House = No; Senate = Yes

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Legal & Regulatory Updates

Two Proposed Legislative Aid Packages – A Few Apparent Agreements

- Apparently both agree to stimulus check based upon last Stimulus Calculation (\$75k)
- Continuation of Unemployment Payments (amount TBD)
- Back to School Financial Assistance
- COVID-19 Testing Assistance

Based upon the list of disputes versus those that apparently have “agreement,” US Congress has a long way to go before the issue is resolved!

- On July 27, 2020, the EEOC updated its April 6, 2020 Memorandum regarding processing of EEO Complaints during the Pandemic
 - The EEOC has previously indicated that applicants submitting complaints may have faced difficulties in meeting regulatory deadlines
 - The EEOC has resumed “regular” operations, issuing final actions unless there is a compelling reason
 - Instruction 6 is modified to “return to issuing final actions.”
 - Instruction 7 is modified to reflect that appellate decisions may be issued by both US Mail and by electronic means, instead of only electronic means
 - Instruction 8 is modified to encourage use of the EEOC’s Public Portal in lieu of U.S. Mail
 - All other instructions set forth in the April 6, 2020 Memorandum remain in effect

New CDC Guidelines on Safe Return to School

On August 1, 2020, the CDC issued key guidance for K-12 School Administrators for Safe Return

- COVID-19 transmission rates in the communities in which students, teachers, and staff live
- Approaches to interaction of students (class pods, staggering return to facility, 1 teacher, etc.)
- Utilization of unused or underutilized school spaces and outdoor spaces
- Concurrently implementing multiple strategies (e.g., social distancing, face coverings, hand hygiene, and use of podding, etc.)
- Communicate, educate, and reinforce personal protective behaviors to prevent the spread
- Limiting participation in activities where social distancing is not feasible
- Planning and preparing for when someone gets sick
- Working with state and local health authorities to develop a plan to conduct contact tracing
- Communicating appropriately to families about home-based symptom screening

New Guidelines Issued by the General Counsel for the NLRB in favor of Employers

On July 21, 2020, the NLRB's General Counsel issued several pieces of key COVID-19 guidance:

- Advice Memoranda are issued by the GC when NLRB Regional Offices request advice or guidance about whether a particular charge has merit and should be pursued
 - As such, while not "force of law," such guidance instructing an NLRB Office to dismiss an unfair labor charge or engage in other actions demonstrates the direction of the NLRB
- In Mercy Health General Campus, unilateral change of work-from-home and attendance policies were challenged by the applicable unions.
 - GC found that work-from-home policy did not apply to unionized employees, and, therefore, was no change to the unionized employees' working conditions
 - GC excused changes to attendance policies without notice to the union, explaining that it was "understandable in circumstances where time is of the essence during the Pandemic"
- More importantly, the GC explained that as a result of the Pandemic, "an employer should be permitted to, at least initially, act unilaterally during emergencies such as COVID-19 so long as its actions are reasonably related to the emergency situation."

New Guidelines Issued by the General Counsel for the NLRB in favor of Employers (Continued)

- In Larry Peel Co., an employer discharged an employee for requesting to work at home during COVID-19. The issue related to the ongoing text communications between the employee and the employer's controller regarding the Employer's COVID-19 safety concerns:
 - GC directed that the employee does not engage in "protected activity" because the controller is not, in the context of text messages, an employee, under the NRLA.
- In RS Electric Corp., union demanded right to job site during COVID-19. Employer requested one hour notice to prepare for safe access.
 - GC found that it was not clear that Union's demand was "reasonable in light of the COVID-19 pandemic, and the Union did not seek to bargain about the Employer's view of reasonableness."
 - GC also advised that, absent COVID-19, a one hour notice was reasonable
- In Children School Services, the re-assignment and lay-off of unionized school employees during the Pandemic was challenged by the Union.
 - GC determined that decision to lay off employees was "within the compass of the [CBA] allowing for employer the right to act unilaterally"
 - Regarding Temporary Assignments, GC held that Pandemic caused exigent circumstances allowing temporary assignments

2 Kentucky Unemployment Insurance Update

Kentucky's Workshare – KEWES Suddenly Has Attempted Voiding of 787 KAR 1:350E

- On July 21, 2020, I issued a formal Open Records Act Demand for Workshare Documentation

Please consider this a Kentucky **Open Records** Act Demand, pursuant to §61.870, *et seq.*, for:

- All communications sent by, or received from, any representative of the Kentucky Unemployment Insurance Commission, the Kentucky Office of Employer & Apprenticeship Services, and/or the Kentucky Career Center, to any employer or individual requesting information related to 787 KAR 1:350E, Kentucky's "Workshare," "short time compensation," or any request to submit employees for unemployment insurance based upon a reduced work schedule, from March 15, 2020 through the present.

- On July 22, 2020, KEWES suddenly requested "cancellation" of Workshare:



**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
OFFICE OF LEGAL AND LEGISLATIVE SERVICES**

Andy Beshear
Governor

500 Mero Street, 4th Floor
Frankfort, Kentucky 40601
Phone (502) 564-0372
Fax (502) 564-9990

Jacqueline Coleman
Lieutenant Governor/Secretary

July 22, 2020

Ms. Emily Caudill
Regulations Compiler
Legislative Research Commission 029
Capital Annex
702 Capital Ave
Frankfort, KY 40601

To Regulations Compiler:

The Education and Workforce Development Cabinet, Office of Unemployment Insurance is requesting the withdrawal of the Short Time Compensation Emergency Regulation 787 KAR 1:350E. The United States Department of Labor's Office of

2 Kentucky Unemployment Insurance Update

Kentucky's Application
for Workshare –
apparently available only
to the “select few”

KEWES declared, as
recently as Friday, that
“there is no workshare”

Kentucky's Workshare – The Long-Sought After Application!



Work Sharing (WS) Unemployment Insurance Plan Application

Mail: Office of Unemployment Insurance

ATTN.: Work Sharing Program

Kentucky Education & Workforce Development Cabinet

500 Mero Street, Frankfort, KY 40601

Questions? 502-564-2900

- 1) Please select the box of the type of Work Sharing plan you would like to file:

New

Renewal

Expanded Coverage

Requested plan start date (must be a Sunday): _____

Note: To renew a plan a new application must be received no later than 10 days after the expiration date of the prior plan. If renewing, how many additional Work Sharing Certifications, DE 4581WS do you need? _____

- 2) Employer Information

Name/DBA: _____

Business Type: _____

Employer Account Number: -- ____

- 3) Employer Contact Information

Primary Contact

Alternate Contact

Name: _____ Name: _____

Address: _____ Address: _____

2 Kentucky Unemployment Insurance Update

Kentucky's Workshare – Internal Communications Identifying Workshare

Sent: Thursday, April 23, 2020 1:30 PM

To: OUI Eclaims <Uleclaims@ky.gov>

Subject: Unemployment Mass Claim Benefit week April 28 - May 4th

Starting April 27th these employees hours will be cut from 40 a week to 24 a week. Our orders have decreased due to so many of our buyers being closed because of COVID-19. Our restart date is not definite because it depends on how soon the economy restores and our buyers reopen.

Any questions or problems please [REDACTED] the completed file was too large to send, so I had to zip it.

Thank you

From: [OUI Eclaims](#)
To: [Ransdell, Lindsey R \(OEAS\)](#)
Subject: FW: Unemployment Mass Claim Benefit week April 28 - May 4th
Date: Monday, April 27, 2020 4:06:06 PM
Attachments: [UnemploymentMassClaimHarrisEnc.zip](#)

This is a reduced hours file.

Rebecca Tabor

Administrative Specialist III
Office of Unemployment Insurance
500 Mero Street
Frankfort, KY 40621-0001
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Fax 502-564-4746
Rebecca.Tabor@ky.gov

2 Kentucky Unemployment Insurance Update

Kentucky's Workshare – Internal Communications Identifying Workshare

Sent: Tuesday, April 14, 2020 1:05 PM

To: OUI Eclaims <Uieclaims@ky.gov>

Cc: Mitchell, Meagan H (OUI-Qlty Cntl) <MeaganH.Mitchell@ky.gov>

Subject: UI E-Claim Furlough and Reduced Hours Files 2020.04.14

I have attached both the weekly furlough e-claim file and reduced hours e-claim file for [REDACTED]. I understand that this is required by the employer weekly. If you have any questions please contact me.

Can you share with me how the reduced hours are calculated. I am receiving numerous concerns from staff expressing they feel it may have been calculated incorrectly.

Thank you,

From: [OUI Eclaims](#)
To: [Ransdell, Lindsey R \(OEAS\)](#)
Subject: FW: UI E-Claim Furlough and Reduced Hours Files 2020.04.14
Date: Thursday, April 16, 2020 12:54:20 PM
Attachments: [UI E-Claim 2020.03.31 Furlough 004.xls](#)
[UI E-Claim 2020.04.02 \(Reduced Hours Staff\) 004.xls](#)

The file on the right is a reduced hours file.

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2 Kentucky Unemployment Insurance Update

Kentucky's Workshare – Internal Communications Identifying Workshare

Sent: Friday, April 17, 2020 10:21 AM

To: Mitchell, Meagan H (OUI-Qlty Cntl) <MeaganH.Mitchell@ky.gov>; OUI Eclaims
<Uleclaims@ky.gov>

Subject: KY Workshare Eclaim

I attached the Workshare eclaim for week 3/22/2020 – 3/28/2020 which is the first week of pay reduction.

██████████ worked the week of 3/22/2020 – 3/28/2020 with a reduced salary. Then she was temporarily laid off for weeks 3/29/2020 – 4/4/2020 and 4/5/202 – 4/11/2020. She returned to work with reduced salary on 4/13/2020.

██████████ worked the week of 3/22/2020 – 3/28/2020 with a reduced salary. Then he was temporarily laid off for weeks 3/29/2020 – 4/4/2020 and 4/5/202 – 4/11/2020. He returned to work with reduced salary on 4/13/2020.

██████████ worked the week of 3/22/2020 – 3/28/2020 with a reduced salary. Then she was temporarily laid off for weeks 3/29/2020 – 4/4/2020, 4/5/202 – 4/11/2020 and 4/12/2020 –

From: [OUI Eclaims](#)
To: [Ransdell, Lindsey R \(OEAS\)](#)
Cc: [Mitchell, Meagan H \(OUI-Qlty Cntl\)](#)
Subject: FW: KY Workshare Eclaim
Date: Friday, April 17, 2020 2:33:09 PM
Attachments: [KY Workshare E-Claim Template 3.20.2020.xls](#)
[KY Workshare E-Claim Template 4.13.2020.xls](#)

FYI: workshare files

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2 Kentucky Unemployment Insurance Update

Kentucky's Workshare – Internal Communications Identifying Workshare

Sent: Thursday, April 16, 2020 12:29 PM

To: OUI Eclaims <Uleclaims@ky.gov>

Cc: Sharon Egbert <sharon@andersoncommunities.com>

Subject: E-File Claim - [REDACTED]

Greetings,

Due to the Coronavirus COVID-19, we have seen a decrease in phone calls, leasing activity, leads, and general appointments with our residential operations. As a result we've had to reduce hours for certain members of our team. This went into effect this week – starting Sunday, April 12, but was not aware of the Workshare Program until after this week's deadline. I'm hopeful that the UI benefit will be available to our employees starting April 12.

Attached you will find the e-file claim file. I did not include a last day worked or return to work date, as the employees are still employed but at reduced hours.

Please let me know if you have any questions.

Thanks,

[OUI Eclaims](#)

[Ransdell, Lindsey R \(OEAS\)](#)

FW: E-File Claim - Anderson Communities

Thursday, April 16, 2020 2:58:43 PM

[E-Claim Anderson Communities 4-16-2020.xls](#)

Attachments:

This is a workshare per the employer.

Rebecca Tabor

2 Kentucky Unemployment Insurance Update

Kentucky's Workshare – Internal Communications Identifying Workshare

Sent: Friday, April 10, 2020 9:32 PM
To: OUI Eclaims <Uleclaims@ky.gov>
Cc: WFD Business Services <workforce@ky.gov>
Subject: Re: filing e-claim for workshare program

Here is the workshare claim for [REDACTED] salary employees for week April 12 - 18. I added one more employee, [REDACTED] to the group, otherwise the list is the same people. We are still continuing with the 20 reduction in wages.

Thank you for your help.

Subject: Re: filing e-claim for workshare program

Great. I'll get started on the claim. Thank you for your quick response.

Just to clarify, the **UI benefits would apply to both hourly reduction (non-exempt) and reduction in salary (exempt-level) employees?**

From: [OUI Eclaims](#)
To: [Ransdell, Lindsey R \(OEAS\)](#)
Cc: [Mitchell, Meagan H \(OUI-Qty Cntl\)](#)
Subject: FW: filing e-claim for workshare program
Date: Wednesday, April 15, 2020 7:21:08 PM
Attachments: [image001.png](#)
[E-Claim April 12 April 18 2020.xls](#)

This is a Workshare file.

Rebecca Tabor

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On Mon, Mar 30, 2020 at 7:01 PM WFD Business Services <workforce@ky.gov> wrote:

Yes ma'am!

Thanks!

Regards,

On Fri, Apr 10, 2020 at 7:43 PM OUI Eclaims <Uleclaims@ky.gov> wrote:

These employees will be mailed letters explaining when to claim benefits. However, these will not be mailed until Monday due to the late submission of this file. I would advise contacting your employees via email to instruct them to claim benefits on Sunday 04/12/2020 but not later than 7pm EST on 04/15/2020. They should not wait to receive the letter as they may miss their window to claim benefits.

2 Kentucky Unemployment Insurance Update

Kentucky's Workshare – Internal Communications Identifying Workshare April 29, 2020 E-mail to Kentucky Employer

Reduced hours or wages are an eligible criteria for unemployment benefits, they'll just be prorated similar to the percentage hours or wages have been reduced, As long as the wage or hour reduction is between 10% and 60% of their normal hours and wages, you qualify for workshare. If the employee's wages or hours are going to be reduced by more than 60%, then the employer should just temporarily furlough/ lay them off and the employee can file for traditional unemployment.

Here's some background: A furlough, or temporary layoff, is a short time of leave with the anticipation of being hired back – no hours, no job for a set period of time. A layoff is permanent and there is no return to work option. Workshare is a reduction in hours, you still have a job, you're just not working as many hours or your salary has been reduced. **Kentucky is allowing individuals to file for unemployment benefits in all three of these situations – and the process for filings the same in all three situations.** We're trying to let everyone know to not get hung up on what the program is called (workshare, layoff, furlough), that doesn't matter. **It's all the same unemployment system here in Kentucky, all filed and reported the same way.**

Kentucky is allowing unemployment benefits to be paid to employees who are experiencing a severe shortage in the number of hours being worked or the wage they are being paid. Some call this a workshare program. Workshare is different than traditional unemployment because the employee isn't truly separated from their job. This is an option for Kentucky employers to pursue in lieu of a complete layoff. This means that if an employer is working to keep employees during the pandemic, but it comes at the cost of reduced hours or pay, the employer can participate in a workshare program. With that reduction of hours, it would be a combination of the company paying the individual and the individual receiving benefits for their reduced time.

The system doesn't yet know what workshare is, so it's still processing everything the same way. **Your employees, whether they are working zero hours or partial hours, will file claims and request their benefit payments the same way.** We want it to eventually pay 20% of benefits if hours have been reduced 20%, but it is currently not configured that way. Our programmers are working on building that functionality as I type.

As long as an employee qualifies for state unemployment, they will get a flat \$600, regardless of reduction of hours or furlough or layoff. If someone is working full time one week, and not claiming unemployment that week, they will not receive the \$600. If an employee does not qualify for state unemployment program the employee would not qualify for the \$600 from the federal government. But hopefully, they'll qualify for even \$1 from state unemployment so they will get the \$600.

There have been some questions on workshare for hourly vs. salary and exempt vs nonexempt employees. We are allowing salaried employees to apply for benefits through workshare. Technically, if you're a salaried worker, you have a contract with your employer and are being paid a set salary regardless of how many or how few hours you work. So really it becomes a labor and contract dispute between the employee and the employer. Our UI office isn't not going to weigh in on a labor dispute, so if an employer and employees agree to reduced hours and salaries, we'll cover them through unemployment.

2 Kentucky Unemployment Insurance Update

Kentucky's Workshare – Internal Communications Identifying Workshare May 8, 2020 E-mail Exchange w/Kentucky Employer

From: Ransdell, Lindsey R (OEAS) [mailto:lindsey.ransdell@ky.gov] **On Behalf Of** WFD Business Services
Sent: Friday, May 08, 2020 3:05 PM
To: [REDACTED]
Cc: Mitchell, Meagan H (OUI-Qlty Cntl); Tabor, Rebecca A (OUI-Qlty Cntl); Ballard, Lindsey (OUI-Qlty Cntl); Ebbens Kingsley, Stefanie J (Education Cabinet); Kennesha [REDACTED]
Subject: RE: UI EClaim Workshare Questions

Go ahead and send us the file and we will process as an eclaim so your employees can get in the system and hopefully enjoy some benefits. Everything we have received as workshare has been put in the system and are active as traditional unemployment claims.

Thanks!

Regards,

Lindsey

From: Ransdell, Lindsey R (OEAS) [mailto:lindsey.ransdell@ky.gov] **On Behalf Of** WFD Business Services
Sent: Friday, May 08, 2020 2:27 PM
To: [REDACTED]
Cc: Mitchell, Meagan H (OUI-Qlty Cntl); Tabor, Rebecca A (OUI-Qlty Cntl); Ballard, Lindsey (OUI-Qlty Cntl); Ebbens Kingsley, Stefanie J (Education Cabinet)
Subject: RE: UI EClaim Workshare Questions

1. What is the process if an employee has reduced hours here at Rockcastle Regional and continues to work their second job; how do they report earnings?

The employee will report those wages from the second job the same way they report wages from the first job. When the employee logs in to request a benefit payment they report all hours worked and all wages earned at any employment in the previous week.

2 Kentucky Unemployment Insurance Update

Kentucky's Workshare – Internal Communications Identifying Workshare April 29, 2020 E-mail to Kentucky Employer

On Fri, May 8, 2020 at 5:17 PM WFD Business Services <workforce@ky.gov> wrote:

That order does not change the maximum weekly benefit amount. That is still in place.

When we get workshare, the way workshare will work is if you're reduced 20%, you'll get 20% of the benefits you would have received if totally laid off, i.e. if you're eligible for the maximum weekly benefit amount it will be 20% of \$552 or \$110.40. Unfortunately, no unemployment program is design to be pay a claimant all of their lost wages.

Thanks!

July 20, 2020 email exchange between a private employer and Workforce:

Question:

Will employees working a reduced schedule still receive state benefits even after the federal \$600 benefit stops after this week?

Thank you.

Answer:

Yes. They'll receive state benefit payments only, that is if they are programmatically and monetarily eligible for a payment.

Thanks!

Regards,

Lindsey

Unemployment Insurance

Employer Handbook for COVID-19

Workshare or Reduction of Hours

❖ If we continue to employ some full-time employees on a part-time basis, can they be compensated with UI and if so how is that determined?

Kentucky is allowing UI benefits to be paid to employees who are experiencing a severe shortage in their work hours. Some call this a **workshare program**. This is an option for Kentucky employers to pursue in lieu of a complete layoff. This means that if an employer is trying to keep employees during the pandemic, but it comes at the cost of reduced hours or pay, the employer can participate in a workshare program. With that reduction of hours, it would be a combination of the company paying the individual and the individual receiving UI benefits for their reduced time. Furthermore, employers must continue to provide benefits (health insurance, etc.) if they already provided benefits.

With the workshare option, employees report their gross earnings during the week they are earned and OUI reduces the workers' weekly UI payment by a pro rata portion of their gross earnings reduction.

If the employer qualifies for and is interested in using the workshare option, OUI can process it through our Workshare team, similar to the E-Claim process.

In addition, under the CARES Act, those approved for UI benefits will receive a separate payment each week for \$600 from the federal government. Eligibility for the \$600 payment began the week of March 29, 2020. Claimants enrolled in UI will receive the weekly UI benefit amount for which they qualify plus a separate payment of \$600.

For example, if a claimant qualifies for a UI benefit payment of \$320 per week plus a separate CARES Act payment of \$600, the total monthly amount will be \$920 per week. Under the CARES Act, the \$600 payment is paid 100% by the federal government and will not be charged to employer accounts.

Questions & Answers



SHRM CODE: 20-PXXQF

HRCI: (Strategic/ Business) 529796



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