Unemployment Insurance For Workers Impacted By COVID-19

On Wednesday, March 18, the President signed H.R. 6201, the Families First Coronavirus Response Act, the federal relief act aimed at mitigating the economic and public health consequences of COVID-19. H.R. 6201 includes several actions related to unemployment insurance (UI). The law goes into effect April 3. In this post, we summarize the UI-related provisions of the law, discuss how these interact with current state programs, and highlight options the Legislature may want to pursue in responding to the ongoing crisis. We are accurate to the best of our ability given the urgent response needed and the rapidly changing situation. We will continuously monitor the situation and provide updates as necessary.

State’s Existing Unemployment Insurance Program. Through the Employment Development Department (EDD), most employees are eligible to receive weekly UI benefits when they become unemployed through no fault of their own and intend to continue looking for new work. Benefits are available for up to 26 weeks. To fund the benefits, employers pay a payroll tax on the first $7,000 of employee wages. The payroll tax rate is based on the employers “experience rating,” in which the tax rate is higher for employers who have had many UI claims in the past and lower for employers with fewer claims. In 2019, the state collected $5.9 billion in UI taxes from employers and issued about $5.5 billion in total UI benefits. On average, in 2019, unemployed workers received about $330 per week for 17 weeks. During times of increased unemployment, state funds for unemployment benefits may run out. When this occurs, the state receives federal UI loans to continue paying out benefits. Once the economy recovers, the state and employers repay the federal UI loans.

Key Provisions of Federal COVID-19 Relief
**Grants Flexibility to Temporarily Loosen State UI Policies.** Changes in state laws governing the UI program must be approved by the U.S. Department of Labor. H.R. 6201 waives this requirement if the state pursues the following temporary changes: (1) eliminating the one-week waiting period before a worker is eligible for UI, (2) loosening work search requirements, (3) loosening so-called “good cause” requirements that limit when workers may receive UI benefits if they leave their job voluntarily, and (4) changing how employers’ experience ratings are calculated for COVID-19-related unemployment.

**Provides New UI Administration Funding for EDD.** H.R. 6201 makes available roughly $150 million in additional UI administration money to California. This funding would be made available to California in two parts. Half would be made available within 60 days to states that follow certain best practices in administering UI benefits. How the U.S. Department of Labor will enforce these administrative standards currently is unclear. We believe the state currently follows these basic administrative standards, though they are not necessarily spelled out in state law. There is a possibility the state will need to take some action to reaffirm these best practices via executive order or, time permitting, legislation.

The remaining funds would be made available to states with increased UI claims. Specifically, funds would be available once quarterly UI claims exceed the number of claims in the same quarter of the previous year by 10 percent or more. Given the preliminary state claims data from early March, we expect that the state will qualify for these funds. Additionally, to receive the second round of funding, the state would need to take actions intended to expand access to UI benefits for workers affected by COVID-19, such as (1) temporarily waiving work search requirement, (2) temporarily waiving the 7-day waiting time, and (3) change its calculation for employer experience rating to exclude from the calculation UI claims related to COVID-19. (The Governor has already waived the 7-day waiting time requirement.) Similar to the criteria for the first half of funding, the state may need to make some additional action to demonstrate its intent to meet these federal requirements. The Governor has already issued an executive order to eliminate the 7-day waiting period.

**Increased Federal Funding for Extended UI Benefits.** Existing law establishes the federal Extended Benefits program (Fed-ED) which extends the amount of
time a worker may claim UI benefits from 26 weeks to 39 weeks during periods of high unemployment. H.R. 6201 provides that the full cost of benefits paid during the 13 week extended period would be funded by the federal government instead of from UI payroll tax payments from California employers. This federal funding is available for extended benefits paid through the end of 2020. The state does not need to take any action to take advantage of these Fed-ED benefits. That being said, in order to be eligible for the Fed-ED benefits, the state’s unemployment rate must exceed a certain level before Fed-ED benefits become available. While unemployment in California almost certainly exceeds these thresholds at present, this high level of unemployment likely would need to be sustained for two to three months for the state to be eligible for Fed-ED.

**Suspends State Payments and Interest on Federal Loans to the UI Trust Fund.** During downturns, the state’s UI Trust Fund typically becomes insolvent as benefit payments exceed payroll tax collections. When this occurs, the federal government provides a loan to the state to allow EDD to continue to issue benefits. In general, the state must pay interest on these loans. These interest payments must be made from the state General Fund. H.R. 6201 suspends the accrual of interest on federal loans through the end of 2020. Given the magnitude of initial unemployment claims received so far, the state UI Trust Fund likely will become insolvent in the coming months, meaning this provision of the federal relief act could reduce state General Fund costs, at least to some degree, related to repaying interest on federal UI loans. During the Great Recession, the state’s federal UI loan balance peaked at $10.3 billion at the end of 2012 and the state General Fund paid about $300 million annually in interest on these loans.

**Key Issues Related to Unemployment Insurance**

**How Quickly Can the State Issue UI Checks?** Under normal economic conditions, EDD typically issues about 80 percent of first benefit payments within 21 days of receiving a worker’s application. Given the extraordinary number of applications received recently, as well as the expectation that claims will continue to increase over the coming weeks, the Legislature should anticipate that first benefit payments will take much longer than 21 days. Similar delays occurred during the Great Recession. At that time, the administration directed EDD to
immediately issue benefits based solely on information included in the claimants’ applications. (Normally, EDD claims staff take several intermediate steps before issuing benefits, including confirming employment by calling the worker’s former employer.) Based on our understanding, this directive significantly reduced benefit delays. At the same time, however, it created new administrative challenges for EDD and some confusion for employers. Despite these concerns, the Legislature may wish to consider directing the administration to similarly streamline benefit issuance.

**What Steps Can EDD Take to Streamline Processes?** Another option to accelerate benefit payments could be to direct EDD to cease non-essential workload related to UI benefit administration. Staff who typically work these activities could instead be redirected to claims issuance. Although several potential options may exist and the department would need to take the lead in identify them, one example would be to temporarily cease debt collection from non-complaint employers whose workers receive UI benefits. (Normally, if an employer does not pay UI payroll taxes but nevertheless employed eligible workers who receive benefits, EDD staff undertake efforts to collect benefit payment amounts from the employer.)

**UI Benefit Levels Difficult to Adjust in the Short-Term.** Due to the limitations of EDD’s current information technology systems, changing UI benefit levels—for instance, by increasing the maximum weekly benefit amount or setting a minimum weekly benefit floor—could take as long as a year to implement. For this reason, in our view, the Legislature probably has limited options to respond to the COVID-19 crisis by adjusting UI benefit levels.

**Delaying Upcoming Payroll Tax Payments Could Provide Business Relief.** Businesses pay UI payroll taxes to EDD at the end of each calendar quarter. Because payroll taxes are paid only on the first $7,000 in each worker’s annual wages, EDD receives the majority of annual UI payroll taxes at the end of the first quarter. In light of this timing and given the magnitude of the economic impact of COVID-19, the state could consider providing businesses a UI payroll tax extension or delay for first quarter payments. This would have the effect of delaying about $3.3 billion in business payroll tax payments. Delaying first quarter payments likely would cause the state UI Trust Fund to become insolvent more quickly, yet federal UI loans would nevertheless be available for the state to
continue issuing benefits. Moreover, as discussed above, H.R. 6201 waives the accrual of interest on these loans for calendar year 2020, meaning state costs related to this action would be somewhat smaller due to the federal relief package.

**Streamlining UI Benefits for Unemployed App-Based Workers.** In recent years, individuals who work for app-based companies have been treated as independent contractors by their employers. Independent contractors are not eligible for UI benefits and therefore their employers do not need to pay UI payroll taxes. Under a new state law related to employee classification, however, many of these workers may be reclassified as employees and therefore eligible to receive UI benefits. EDD recently requested additional staff to administer this new state law when reviewing UI applications. In order to speed up the process of issuing benefits to app-based workers who may be eligible for UI, the state may wish to direct EDD to consider individuals presumptively eligible for UI if they provide documentation of earnings from app-based companies. Furthermore, the state may wish to consider standardizing earnings determinations for these individuals. (Typically, UI benefit amounts are based on payroll earnings confirmed by EDD. Workers for app-based companies are not treated as payroll employees so these records may be difficult to confirm.) One option to simplify earnings determinations could be to issue benefits immediately based on worker-reported earnings and verify those earnings later. Another option the Legislature may wish to consider is providing a flat, standard, weekly benefit amount for UI applicants who attest that their primary income source prior to the COVID-19 pandemic was from app-based work. In either case, EDD would seek to recoup these benefit costs from app-based companies later.

**Explore Disaster Unemployment Assistance Designation to Address Self-Employed Workers.** Disaster Unemployment Assistance (DUA) is a federal program to provides financial assistance to self-employed workers and small business owners when they become unemployed as a result of a major natural disaster. (Self-employed workers and business owners are generally not eligible for normal UI benefits.) DUA is available upon the declaration of a disaster by the President. On Sunday, March 22, Governor Newsom requested that the President issue a disaster declaration in California, including the activation of DUA. Shortly thereafter, the President issued a Disaster Declaration for California, Washington, and New York. However, as of the time of this writing,
the current disaster declaration does not appear to activate DUA in California. The state may wish to continue pursuing DUA activation as it considers its options to respond to COVID-19. (Our office will update this post as more information becomes available.)