

Wisconsin's COVID-19 law provides employers and employees additional relief

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Yesterday, April 15, 2020, Wisconsin Governor Tony Evers signed [2019 Wisconsin Act 185](#) (Act 185) into law. Act 185 had bipartisan support and quickly moved through the legislature. Under the new law, several provisions will apply retroactively. Highlights of Act 185 include temporary changes to Wisconsin's unemployment, worker's compensation and personnel records statutes.

UNEMPLOYMENT INSURANCE RELIEF

Act 185 provides the following unemployment insurance (UI) relief for employees and employers:

Waiver of one-week waiting period

[Governor Evers has been advocating](#) for the waiver of Wisconsin's unemployment waiting week since March 2020. Act 185 temporarily waives the one-week waiting period for employees to receive UI for benefit years that began after March 12, 2020, and before February 7, 2021, if the employee's UI claim is related to the COVID-19 public health emergency.

No impact on employer UI account if claims are COVID-19-related

Act 185 requires the Wisconsin Department of Workforce Development (DWD) to determine if UI claims are related to the COVID-19 public health emergency and to solicit such information from employers. Notably, if the claim is related to the COVID-19 public health emergency for employees of an employer subject to UI contribution requirements, UI benefits paid to employees from March 12, 2020, through December 31, 2020, will not be charged to an employer's UI account.

Employers who fail to timely and adequately provide information to the DWD may be precluded from benefiting from this provision. For this reason, it is important for employers to respond to requests for information from the DWD regarding UI claims in a timely manner, and, if appropriate, to attribute affected employees' reduction in hours or employment loss to the COVID-19 public health emergency.

Lower thresholds for Work-Share Program

Act 185 temporarily amended Wisconsin's Work-Share Program (Work-Share) partial unemployment benefit to increase employer participation. [Work-Share](#) "is designed to help employers retain employees during slow business periods by reducing employees' hours and allowing affected employees to file for partial UI benefits to replace a portion of their reduced pay." The amendments simplify the application process and remove the "unit" constraint to allow for much more flexibility. For example, employers can develop a Work-Share with a minimum of 2 employees (instead of 20 employees or 10 percent of a work unit).

While employers must continue to seek approval from the DWD for such a program before implementing it and many requirements remain in place, Work-Share may be a more attractive option for employers seeking to retain employees during the pandemic.

WORKER'S COMPENSATION RELIEF

Act 185 provides the following worker's compensation relief for employers:

First responder work-related exposure rebuttable presumption

Act 185 creates a rebuttable presumption that first responders who become infected with COVID-19 after coming into contact with a person who has COVID-19 through their employment contracted the illness at work. This presumption assists in making the COVID-19 injury compensable under worker's compensation law for first responders who have received a specific diagnosis of COVID-19 from a physician or by a positive COVID-19 test. First responders include employees of or volunteers for an employer that provides firefighting, law enforcement or medical treatment of COVID-19. Employers can challenge this presumption with specific evidence that the injury was caused by exposure outside of the employee's work.

Rebuttable presumption is limited

It is notable that Act 185's work-related rebuttable presumption of a COVID-19 diagnosis is limited to those individuals who are considered first responders. At this point in time, there has been no such rebuttable presumption established for other employees and employers. In fact, recent interim enforcement guidance announced by the Occupational Safety and Health Administration (OSHA) indicates that assessment of a work-related COVID-19 diagnosis will be a focus for OSHA compliance officers. However, OSHA said it won't enforce its record-keeping requirements to make employers that are not hospitals, employers of first responders or correctional facilities conduct a work-related analysis unless "objective evidence" exists that a COVID-19 case may be work-related, and the employer had that evidence "reasonably available." While short of the benefit of a rebuttable presumption, OSHA's guidance is beneficial given that many employers are concerned about making that work-relatedness determination.

PERSONNEL RECORDS STATUTE

During the COVID-19 public health emergency declared by [Executive Order 72](#), employers are not required to provide employees with personnel records under Wisconsin Statute 103.13 *within seven working days* of a request by an employee and an employer is not required to provide the inspection at a location reasonably near the employee's place of employment during normal working hours. Though the seven-day deadline is temporarily stayed, Act 185 does not allow an employer to ignore a

request. For this reason, employers should make personnel file documents available to employees who request them as they are able during the public health emergency. Employers may provide such personnel files by mail or email.

MORE ON ACT 185 COMING SOON

While Act 185 makes temporary changes to Wisconsin's unemployment and worker's compensation laws, it also sets forth changes to health insurance, tax, liability and licensing laws related to COVID-19.

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