BULLETIN #76/2020
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_CORONAVIRUS UPDATE #62

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[*This bulletin supplements our previous bulletins #11 and #16 through #75 on this subject matter. These bulletins are intended to be cumulative so we can avoid repeating the same information*.]

U.S. House Approves Changes to PPP Loan Law

This afternoon the U.S. House of Representatives passed, on a 417-1 vote, the Paycheck Protection Program Flexibility Act of 2020. The U.S. Senate has yet to indicate when it will take up the bipartisan package of amendments to the PPP loan law. The Senate returns to session next week; additional negotiations are possible.

Here is a brief synopsis of changes to the PPP law, provided by O'Connor & Drew, MSADA accounting Partner:
· Extends the 8-week covered period to 24 weeks;
· Reduces from 75% to 60% the percentage of forgivable expenses that must be allocated to payroll costs, while increasing from 25% to 40% the amount allocated for non-payroll costs;
· Replaces the 6/30/20 safe harbor or rehire provisions with 12/31/20;
· Expands the exemption from FTE reduction if a borrower is able to document an inability to rehire individuals or similarly qualified employees OR is able to document an inability to return to the same level of business activity due to compliance requirements from various organizations as a result of the COVID-19 pandemic;
· Allows borrowers to continue to defer employer share of social security taxes even after receiving loan forgiveness;
· Adjusts the deferral period of the loan from six months to a timeframe tied to when the

· Adjusts the deferral period of the loan from six months to a timeframe tied to when the borrower obtains forgiveness or ten months after the covered period; and
· Provides five-year loan maturity date for new loans. Terms of existing loans are allowed to be changed by lenders, but not required.

NADA Joins Coalition Advocating Liability Protection

Employers deserve protection against opportunistic lawsuits as they re-open their doors, get employees back to work, and follow health guidelines to protect against COVID-19 exposure. NADA has joined more than 200 trade associations and other groups urging Congress in a letter to provide temporary and targeted liability relief legislation, as businesses work to bounce back from the pandemic. The groups are also asking Congress to protect health care workers and facilities providing critical care and services; manufacturers; donors; distributors; and public companies that may be targeted by needless lawsuits related to the Coronavirus.

PPP Loan Forgiveness Workbook Webinar Available

Yesterday MSADA associate member Albin Randall & Bennett conducted a webinar on how to complete its PPP loan forgiveness workbook. ARB is pleased to offer its PPP Loan Forgiveness Workbook to the business community as a powerful planning tool to help borrowers who want to maximize their loan forgiveness potential. In this webinar, ARB walks through the workbook step-by-step and provides detailed guidance for using this tool. If you missed the webinar, or want to watch again or share with your staff, it can be accessed here.

Massachusetts Employers Get Welcome Unemployment Relief
By Attorney Joshua Nadreau, Fisher Phillips

[*MSADA Note: Yesterday in MSADA Bulletin #75 we reported on a new law Gov. Charlie Baker signed making certain changes to the state's unemployment insurance program, including granting some tax relief to employers. Here is a more detailed discussion of that law, provided by MSADA associate member Fisher Phillips*.]

Massachusetts Governor Charlie Baker just signed a law that prevents Massachusetts employers from being charged increased taxes for unemployment benefits claimed by employees separated from employment during the COVID-19 pandemic. The new law, Senate Bill 2618, also extends the total number of eligible weeks of unemployment from 26 to 30 for any week in which unemployment claims exceed 100,000. This is welcome news for the Commonwealth's employers, many of which have been shuttered since the Governor's March 23, 2020 shutdown of non-essential businesses. Employers can now breathe a bit easier knowing they will not be on the hook for substantial unemployment tax increases in January 2021.

Unemployment Insurance Funding

As you may know, the state's unemployment insurance system is largely funded with quarterly payments by employers to a trust fund maintained by the Department of

Unemployment Assistance. For most employers, these payments reflect a percentage of wages paid based on an experience rating. The more an employer's employees apply for unemployment benefits, the "worse" experience rating the employer will have. Employers with worse experience ratings pay a higher percentage of wages into the fund. For established employers, their experience rating is calculated once a year and remains in place until the next benefit year.

The new law alters this process with respect to "an individual separated from employment as a result of any circumstance related to or resulting from" COVID-19 or Governor Baker's March 10, 2020, declaration of a state of emergency. Benefits paid to these individuals will "not be charged to the account of any employer nor included in the calculation of an employer's experience rate." In light of more than 1.23 million new claims for traditional unemployment insurance or the Pandemic Unemployment Assistance program, and an estimated unemployment rate of 16.52%, this statutory change will save employers thousands of dollars in 2021 as they attempt to emerge from the COVID-19 crisis.

Extension of Benefits

The law also provides an additional trigger to extend unemployment benefits from 26 to 30 weeks. Ordinarily, the number of weeks a claimant is eligible to collect unemployment benefits is tied to the unemployment rate. Under existing law, in any month where the average local unemployment rate is less than or equal to 5.1%, claimants are only entitled to 26 weeks. The existing system did not contemplate a near-total economic shutdown, and the rapid increase in unemployment. Under the new statute, the 30 weeks of benefits will also be triggered where claims for unemployment in any week exceed 100,000.

Other Changes

The law also eliminates the current "dependency cap" on dependents' benefits. Prior to the change in the law, unemployed individuals with qualifying dependents were entitled to $25 per week for each dependent, but the amount was capped at 50% of individual's weekly benefit amount. For example, a full-time minimum wage worker whose weekly benefit amount is $255, would have their dependency benefit capped $127.50. The law now permits claimants to receive 100% of their dependency benefits, regardless of their weekly benefit amounts for up to 18 months after the end of the COVID-19 state of emergency.

In a welcome change for the Bay State's non-profit employers, the law created a 120-day grace period for payments to the unemployment fund. Under existing law, many non-profits self-insure their unemployment claims, meaning that when they terminate an employee, the non-profit pays the costs of unemployment benefits dollar-for-dollar to the Department of Unemployment Assistance in the next quarter. The new law will provide a 120-day grace period to allow the state to assess whether additional changes are necessary to soften the impact of COVID-19 on the state's non-profit sector.

What's Next?

Questions concerning unemployment benefits have been at the forefront of most employers' minds since the start of the COVID-19 pandemic. To make matters more difficult, there has been rapid change in the way unemployment is funded, how it is awarded, and who is eligible. As the economy slowly starts to re-open, many employers are faced with employees who are being paid more money by unemployment than they would if they were working. Employers are reminded that in most circumstances, an employee's rejection of an offer of suitable employment will result in a loss of unemployment eligibility. An employee's failure to report an offer of suitable work constitutes unemployment fraud and should be reported to the Department of Unemployment Assistance.

In addition, both employers and employees should be aware that the governor has identified a "national unemployment fraud scheme" in which criminal enterprises with access to stolen personal information from prior national data breaches have been attempting to file large numbers of unemployment claims, not only in Massachusetts but across the country. The Department of Unemployment Assistance is urging employees and employers who become aware of fraudulent claims to contact the Department at 877-626-6800.

As you begin the process of reopening, you should also familiarize yourself with our alert: 5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance. You should also keep handy our 4-Step Plan For Handling Confirmed COVID-19 Cases When Your Business Reopens in the event you learn of a positive case at your workplace. For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers and our FP Resource Center For Employers.

Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information.

MTF: Slow Climb from Economic Mess Will Take Years - Analysts: Full Tax Revenue Recovery Seen in Fiscal 2025

[Courtesy of *State House News Service*]

Long-shuttered stores may be unlocking their doors. And manufacturers are starting to hire employees back to the assembly lines. But the economic recovery might not be a quick one, a state fiscal watchdog group warned today.

The hopes for a sharp and immediate rebound from the COVID-19 shutdown in Massachusetts are no longer realistic, according to the Massachusetts Taxpayers Foundation, which is now predicting a long and slow climb that will strain state resources. State revenues may not fully recover until 2025, MTF said.

The impacts of the economic downturn could be mitigated by tapping into the state's $3.5 billion reserve fund or if Congress sent more relief funding to states like Massachusetts, but even with stimulus the group said past recessions have proven that the state could be in for a multi-year period of austerity.

"To state the implications straightforwardly: the Commonwealth will have limited budgetary flexibility for the next several years as tax revenues slowly rebound, particularly if the demand for safety net services resulting from an ailing economy and an aging population drive up expenditures," MTF said in the report.

The paper published today was a follow-up to the foundation's report earlier this month downgrading its revenue estimates for the fiscal year that begins July 1 to reflect an anticipated $6 billion drop in projected tax collections. The foundation's newly pessimistic outlook on the length of the recovery is based on what it said was the severity of the decline and the widespread and fundamental changes the pandemic has wrought on pillars of the state's economy, like higher education and tourism.

After economic downturns in 2002 and 2009, the MTF analysis found that it took the state's economy three years before tax revenues rebounded to their pre-recession levels, making it "reasonable" to assume it would take at least as long this time for revenues to fully recover.

"When the potential structural changes to key pillars of the economy are considered, it could take considerably longer for the state to recoup tax revenues lost from this pandemic," the paper stated.

In the recession of the early 2000s, tax revenues fell 14.6 percent before they started coming back up, and at their low point in fiscal 2009 revenues were off 12.5 percent from their peak before the Great Recession. In that last recession, legislators turned to a 25 percent sales tax increase to prop up state spending, but even with that additional $1 billion in new revenue it took until fiscal 2012 for collections to rebound fully.

If tax revenues grew at 6 percent a year beginning in fiscal 2022, MTF said it would take until fiscal year 2025 -- which begins July 1, 2024 -- for revenue to fully recover, assuming a drop in tax revenues of 20 percent or more in the near term. That rate of growth would also be one point higher than the average rate of growth over the past decade.

The report said medical and economic experts now agree that a full recovery will not occur until there is a widely distributed vaccine, and MTF is no longer holding out for the possibility of a "V" shaped recovery, which would indicate a sharp rebound back to pre-pandemic economic activity.

The consensus now, MTF said, is that the recovery will like look more like a "U" or even and "L," and if a second surge of the virus occurs in the fall there could be peaks and valleys like a "W."

The Congressional Budget Office is using a new metaphor - the Nike "Swoosh" -- to describe what the recovery might look like on a graph.

"Key sectors of the Massachusetts economy, including health care, higher education, tourism, and commercial real estate, will likely emerge from the pandemic fundamentally altered and those changes could further prolong the time it takes for the economy to bounce back," the report said. "A complete and accurate picture of the state's budgetary challenges may elude us for some time."

Legislative leaders on Beacon Hill have been waiting and watching the trajectory of the COVID-19 pandemic, as well as the Baker's administration's approach to reopening as they try to put together a plan to tackle the state budget for fiscal 2021. The process is already well behind schedule, and leaders like Speaker Robert DeLeo ad Senate President Karen Spilka have hinted that they might try incremental budgeting, rather than trying to develop a year-long spending plan for July.

"The Massachusetts Taxpayers Foundation's latest forecast for a longer, slower recovery is consistent with what I am hearing from other economists, and I agree with that assessment," Senate Ways and Means Chairman Michael Rodrigues said in a statement to the News Service on Thursday.

"The biggest unknown is what will happen this fall, as a resurgence of the virus would send even this projection into upheaval," Rodrigues said.

The next move on the annual budget belongs to House Ways and Means Chairman Aaron Michlewitz.

"The Mass Taxpayers Foundation report signifies that our budget road is going to be long and challenging. We will need to be flexible on all fronts knowing that the difficult decisions do not end with FY21," Michlewitz said in a statement Thursday.

Revenues in April missed budgeted projections by $2.17 billion, with a substantial portion of the decline attributed to the delayed income tax filing deadline. Half way through May, tax collections of $794 million for the month where down another 16.7 percent from a year before, though state revenue officials consistently caution against using mid-month reports to project full month collections.

While income taxes were down $84 million, or 12 percent, through May 15, withholding taxes were actually up $59 million from mid-May 2019, due in part to taxes withheld on unemployment insurance benefits.

Sales taxes were down almost 38 percent, but the Department of Revenue said that most payments are not due until after May 20 and may not come in at all this month due to extensions given during the health emergency.

The Taxpayers Foundation said the "willingness of Congress and the administration to keep state and local governments functioning" will play a big role in determining how state services are impacted.

Massachusetts is in line to receive $2.6 billion in federal relief funding through the CARES Act, and House Democrats passed another round of spending that could send an additional $500 billion to state governments.

While the next round of stimulus has stalled in the face of opposition from Senate Republicans and the White House, Federal Reserve Chairman Jerome Powell warned earlier this month that loans from the federal government to states and businesses can be a bridge, but may not stave off solvency problems down the road.

"Additional fiscal support could be costly, but worth it if it helps avoid long-term economic damage and leaves us with a stronger recovery. This trade-off is one for our elected representatives, who wield powers of taxation and spending," Powell said in a speech on May 13.

The Taxpayers Foundation said rebuilding consumer confidence will also play a big role in how the state comes out of this recession.

"Ongoing adjustments will be necessary as we follow the trajectory of the virus, the timing of a vaccine, the ability of the economy to regain traction and consumers to regain confidence through inevitable fits and starts," the report said.

Still High, But New Jobless Claims Are Slowing Down - Unemployed Await Fate of Gradual Reopening Efforts

[Courtesy of *State House News Service*]

New unemployment claims continued their gradual downward trend last week from a mid-March high, but still outstripped pre-pandemic records as the national and state economic outlooks remain grim.

Massachusetts workers submitted 37,618 new claims for traditional unemployment insurance between May 17 and May 23, state officials said. The federal Department of Labor reported 2.12 million claims filed over the same span.

Both figures were the lowest one-week totals since March 15, when widespread business shutdowns were ordered to prevent COVID-19 transmission, triggering a flurry of layoffs.

However, even as the numbers decreased, new claims remain at a level that was once unprecedented: at both the state and national level, last week's new claims ranked the 10th-highest since 1987, surpassed only by the nine preceding weeks.

Thursday's numbers add more urgency to an ongoing debate about how to balance economic recovery with public health. Businesses are in the early stages of a phased reopening plan, and the Baker administration has warned that stringent restrictions could return if the virus that has killed more than 6,500 state residents rebounds.

Losses have been sharpest in industries that rely on face-to-face interactions, such as hospitality and food service. It remains unclear how many of the jobs will return and at what pace.

The gap between the current and previous records for one-week claims totals is more pronounced nationally, partly because of the difference between seasonally adjusted and unadjusted claims.

Before the pandemic, the record for most seasonally adjusted UI claims filed during a single week was 665,000, set in the throes of the Great Recession during the week ending March 28, 2009. While the number of claims filed last week was the lowest since the public health crisis began affecting employment, it was still more than three times higher than that March 2009 record.

In Massachusetts, for which the federal government publishes non-seasonally adjusted weekly claims, the pre-pandemic record was 34,412 claims submitted in the week of Dec. 28, 1991.

With Thursday's newest batch of numbers, total new claims for standard UI have surpassed 40.7 million across the country and 897,000 in Massachusetts, officials said. Those cumulative totals represent roughly one-quarter of the labor force as it stood before the virus hit.

The picture is made even more grim when accounting for affected workers who do not qualify for unemployment insurance, such as self-employed businesspeople, contract or "gig" workers, and those with part-time hours insufficient to qualify.

In late March, Congress created the Pandemic Unemployment Assistance program to make benefits available to those individuals.

Massachusetts officials reported receiving 147,594 more claims for PUA last week, bringing the total since the program launched in the state to more than 518,000 -- more than half as many as the entire traditional unemployment system.

As of May 9, the most recent date for which cumulative data was available at the federal level, 7.8 million American workers claimed benefits in the expanded program.

While states cover the costs of traditional unemployment insurance through premiums charged to employers, the federal government will pay for PUA benefits as outlined by Congress.

Last week, Gov. Charlie Baker's labor secretariat announced that the state unemployment rate surged to a 15.1 percent in April, a record since the 1976 start of the data series. Massachusetts is not alone: all but seven states and the District of Columbia reported record unemployment in April.

Payment of benefits may be delayed, the administration said Wednesday, because of a "national unemployment fraud scheme" involving false claims based on previously stolen personal information.

Officials announced the problem Wednesday but still have not revealed how many fraudulent claims were filed in Massachusetts or how much the state paid toward them.

NADA Dealership Lifeline Webinar for Tomorrow

NADA will conduct the following webinar tomorrow:

- Friday, May 29, 1pm-2pm ET: *The Best Ideas from NADA 20 Groups, Part 5: In Times of COVID-19 Pandemic*. Tom Carney, NADA 20 Group consultant, will review some of the best ideas from the NADA 20 Groups in part 5 of the series.

Recordings of all webinars in NADA's Lifeline Series are available to NADA and ATD members 24/7, free of charge. Click here.

Daily Massachusetts COVID-19 Tracker

The state's COVID-19 Dashboard with up-to-the-date data can be found here.