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MEMORANDUM

To: Clients

From: Schultheis & Panettieri, LLP

Date: April 17, 2020

We are providing you this memorandum to ensure that you are aware of information concerning key unemployment insurance provisions and guidance regarding Short-Time Compensation programs under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act of 2020.

Background

On March 27, 2020, the President signed into law the CARES Act. This legislation provides emergency assistance and health care response for certain individuals, families, and businesses affected by the COVID-19 pandemic. The CARES Act includes the Relief for Workers Affected by Coronavirus Act which authorizes an emergency increase in unemployment compensation benefits and temporary financing of short-time compensation payments in states with programs.

The President also signed the Families First Coronavirus Response Act ("FFCRA") on March 18, 2020, which includes the Emergency Unemployment Insurance Stabilization and Access Act of 2020 ("EUISAA"). In addition to a number of provisions, EUISAA provides emergency flexibilities to states related to temporarily modifying certain aspects of their unemployment compensation laws. EUISAA also requires the Department of Labor ("DOL") to provide technical assistance and guidance to assist states in establishing, implementing, and improving employer awareness of the Short-Time Compensation program.

Short-Time Compensation Programs

Short-Time Compensation ("STC"), also known as Shared Work or Work Share, is an alternative to layoffs for employers experiencing a reduction in available work. STC preserves employees' jobs and employers' trained workforces during times of lowered economic activity. STC allows employers to reduce hours of work for employees rather than laying-off some employees while others continue to work full time. Those employees experiencing a reduction in hours are allowed to collect a percentage of their unemployment compensation benefits to replace a portion of their lost wages. STC eases the adverse effect of the reduction in business activity on workers by preventing layoffs and ensures that these workers will be available to resume prior employment levels when business demand increases.

Currently, 27 states have STC programs established in law that meet the new federal definition with 26 having operational programs (Arizona, Arkansas, California, Colorado, Connecticut, Florida, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Washington, and Wisconsin).

In order to receive benefits under the STC program, employers must have an approved STC plan in place with the appropriate state workforce agency. The STC application process is initiated by the employer and not the employee. Therefore, in order for employees with reduced hours to potentially be eligible for STC, the employer must submit an application to the appropriate state agency and the state must approve the employer's application/plan.

DOL Advisory Guidance

The DOL issued Unemployment Insurance Program Letter ("UIPL") No. 14-20 on April 2, 2020 which summarizes key unemployment insurance provisions and guidance to states regarding temporary emergency state staffing flexibility. The DOL also issued UIPL No. 15-20 on April 4, 2020 which provides states with operating, financial and reporting instructions for the Federal Pandemic Unemployment Compensation program.

In addition to a number of unemployment insurance provisions, the CARES Act authorizes an emergency increase in unemployment compensation benefits referred to as Federal Pandemic Unemployment Compensation ("FPUC"). This program provides an additional $600 per week to individuals including those collecting under a STC program. This is available for weeks of unemployment beginning after the date on which the state enters into an agreement with the DOL and ending with weeks of unemployment ending on or before July 31, 2020. FPUC is available in the United States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, provided the state/territory signs an agreement with the DOL.

DOL Advisory Guidance (cont'd)

The CARES Act requires the additional $600/week FPUC to be paid to individuals "in amounts and to the extent that they would be determined if the State law of the State were applied with respect to any week for which the individual is otherwise entitled under the State law to receive regular compensation." States will calculate the weekly benefit amount and if the individual is eligible to receive at least one dollar ($1) of underlying unemployment compensation benefits for the claimed week, the claimant will receive the full $600 FPUC.

Example:

An employee normally works a 40-hour work week and has an annual salary of $75,000. The employee's work week is reduced by sixteen hours, or 40 percent. If the employee had been laid off and determined eligible for unemployment insurance in New York State, the individual would have received a maximum weekly benefit amount of $504. The employer submits an STC plan and the plan is approved. Under the STC plan, the employee would receive $202 in unemployment compensation benefits (40 percent of $504) in addition to the 24 hours of wages earned from the employer. Furthermore, under the CARES Act, the individual would also receive the full FPUC benefit of $600/week through July 31, 2020.

Summary

We anticipate continuing developments in connection with FFCRA and the CARES Act and will keep you apprised of additional guidance as it becomes available. If your organization is looking for an alternative to layoffs, you may want to consider a Short-Time Compensation program. Please visit the U.S. Department of Labor STC website at https://oui.doleta.gov/unemploy/stc.asp for the most recent fact sheet and links to all participating state unemployment compensation agencies.