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## Unemployment Benefits in Georgia and Texas

### Chamberlain L&E Update - Unemployment Benefits in Georgia and Texas

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Due to the economic downturn associated with the spread of the coronavirus, many employers have been forced to significantly cut their workers' hours. As a result, there has been a significant spike in partial unemployment insurance ("UI") applications. This client alert provides a broad overview of partial UI benefits in Georgia and Texas.

### GEORGIA

The Georgia Department of Labor ("GDOL") has recently mandated that Georgia employers must file partial unemployment insurance claims on behalf of their eligible employees whenever it is necessary to temporarily reduce work hours or when there is no work available for a short period. Any employer found to be in violation of this rule will be required to reimburse GDOL for the full amount of unemployment insurance benefits paid to the employee.

As an initial matter, it is important to remember when employees are eligible for UI benefits (whether partial or full). Only those employees who meet the wage requirements are eligible for any type of UI benefits:

- An employee must have earned wages with a liable employer in at least two quarters of the "base period";
- Her insured wages must equal at least \$1,134 in the two quarters of the base period in which she earned the highest wages; and
- Her total wages during the base period must equal at least one and one-half times the amount of money she was paid in the quarter in which she earned the highest wages.[1]

The term "base period" generally means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.[2] If there are insufficient wages to establish a claim using the base period just described, an alternative base period may be used. The alternative base period is the last four completed calendar quarters immediately preceding the effective date of a claim.

The easiest way to determine the base period is to disregard the quarter in which the claim was filed and the quarter immediately preceding it (the lag quarter). Then, go back four quarters from that time. The base period refers to the year preceding the lag quarter.

### Quarter 1

## Unemployment Benefits in Georgia and Texas, Continued

Quarter 2

Quarter 3

Quarter 4

Lag Quarter

Quarter When Claim is Filed

X

X

X

X

It is important to remember that employees may be eligible for UI benefits even if technically still employed.[3] By regulation, eligible workers may receive partial UI benefits if their wages are reduced to amount equal or below to their "weekly benefit" amount plus \$50.[4]

The weekly benefit amount is generally computed by dividing the two highest quarters of wages paid to a worker in the base period (as discussed above) divided by 42.[5] For example, if an employee earned \$4,000 in his two highest quarters, the weekly benefit amount would be \$190.47 ( $(\$4,000 \times 2) \div 42$ ). Should this employee's weekly earnings be reduced below \$240.47, he would be entitled to partial UI benefits (assuming he is otherwise qualified to receive UI benefits generally, as explained above).

Employers who have employees eligible for partial UI benefits should file a Form DOL-408 with the GDOL via its online portal. The GDOL also provides the following guidance to Georgia employers regarding partial UI benefits:

- Do not submit a partial UI claim for a worker who has not been available for work for an entire week.
- Do not submit partial claims for employees hired for part-time work; employees who have quit, been discharged, or are on leave of absence; or who have base period wages earned in another state or with a federal or military employer. These employees should file their own claims for UI benefits.
- Give each employee for whom you filed a partial claim the option of having federal and/or state income taxes withheld by the GDOL during the claim year. The employee must indicate whether taxes are to be withheld. An employee is allowed one change in withholding status during the benefit year.
- Report any additional income employees are receiving to the GDOL, including the type of income, monthly amount, and whether it is a disability pension. For example, if an employee is receiving a pension, retirement pay, an annuity, or similar periodic payment from previous employment, report it to the GDOL.

## Unemployment Benefits in Georgia and Texas, Continued

### TEXAS

Generally speaking, to be eligible for UI benefits in Texas, a claimant must have earned sufficient wage credits during the claimant's "base period" (among other criteria):

- Have earned wages in more than one of the four "base period" calendar quarters; and
- Have a total base period wages of at least 37 times his/her weekly benefit amount.

The term "base period" generally means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.[6]

Assuming a worker meets this criteria, an individual is "partially unemployed"-and therefore entitled to partial UI benefits-if the individual's wages are reduced to an amount that is less than what she would receive in full UI benefits, on a weekly basis, plus the greater of \$5 or 25% of the benefit amount.[7]

This, of course, requires ascertaining the weekly benefit amount by dividing an employee's base period quarter with the highest wages by 25 and rounding to the nearest dollar.[8]

Therefore, to determine whether an employee is entitled to partial UI benefits due to reduced wages is a two-step process. First, Texas employers must ascertain the weekly benefit an employee would be entitled to if she were totally unemployed. Second, they must determine if her reduced wages are less than this benefit plus the greater of \$5 or 25% the totally unemployed benefit amount.

### **UPDATE:**

On March 27, 2020, the federal government passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Section 1202 of the Act creates a temporary, federal-funded "Pandemic Unemployment Assistance" program that greatly expands who is eligible for UI benefits and includes otherwise ineligible workers, including workers seeking part-time employment or who lack sufficient work hours and/or earnings under state UI rules.

The Pandemic Unemployment Assistance program covers any individual who: (1) is not otherwise eligible for, or has exhausted all rights to, unemployment benefits; and (2) is unemployed, partially unemployed, or unable to work because of any of the following COVID-19-related circumstances:

- The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- A member of the individual's household has been diagnosed with COVID-19;
- The individual is providing care for a family member or household member who has been diagnosed with COVID-19;
- The individual is the primary caregiver for a child or other person in the household who is unable to attend school or another facility that has been closed as a direct result of COVID-19 and such school or facility care is required for the individual to work;
- The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of COVID-19;
- The individual is unable to reach the place of employment because a health care provider has advised the individual to self-quarantine due to COVID-19 concerns;

## Unemployment Benefits in Georgia and Texas, Continued

- The individual was scheduled to begin employment and does not have a job or is unable to reach the job as a direct result of COVID-19;
- The individual has become the breadwinner or major support for a household because the head of household has died as a direct result of COVID-19;
- The individual has been forced to quit a job as a direct result of COVID-19; and
- The individual's place of employment is closed as a direct result of COVID-19.

Excluded from the Pandemic Unemployment Assistance program are any individuals able to telework with pay or currently receiving paid sick leave or other paid leave benefits.

[1] Ga. Code Ann. § 34-8-195.

[2] Ga. Code Ann. § 34-8-21.

[3] Ga. Code Ann. § 34-8-47.

[4] See Ga. Comp. R. & Regs. 300-2-4-.09.

[5] Ga. Code Ann. § 34-8-193.

[6] Tex. Lab. Code Ann. § 201.011(1).

[7] Tex. Lab. Code Ann. § 201.091(b).

[8] Tex. Lab. Code Ann. § 207.005.

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