

## **UNEMPLOYMENT INSURANCE (UI) BENEFITS RELATED TO COVID-19**

On March 19, 2020, the Georgia Department of Labor (GDOL) adopted an [Emergency Rule](#) currently in effect for 120 days from the adoption date that mandates circumstances resulting from the COVID-19 public health emergency under which employers are required to file partial UI claims online on behalf of their employees. This summary provides a general overview to assist counties with the application of the GDOL's Emergency Rule.

### **1. Under what circumstances is an employer required to file a partial UI claim on behalf of an employee?**

In general, the Emergency Rule mandates all Georgia employers to file partial claims online on behalf of their employees for any week during which an employee works less than full-time due to a partial or total shutdown caused by the COVID-19 public health emergency. For counties in particular, the situation may be that certain county departments are partially or totally shut down on a temporary basis or there has been a county-mandated furlough or temporary lay-off of certain employees during the COVID-19 public health emergency. Under such circumstances where the employee is temporarily furloughed/laid off or has had his or her hours temporarily reduced because of a lack of work due to COVID-19 and is otherwise eligible for partial UI benefits (see further discussion below on exceptions to eligibility), the employer would be required to file a partial UI claim on behalf of the employee.

### **2. Would the employer be required to file a partial UI claim on behalf of the employee when the employee is unable to work because of testing positive for COVID-19 or being exposed to the virus?**

Yes, if the employer prohibits the employee from returning to duty such that the employee's absence is involuntary. In the situation where the employer directs the employee not to report to work due to the employee having the virus or having been exposed to the virus, and further assuming that the subject employee is not already on an approved leave of absence under the Families First Coronavirus Response Act ("FFCRA") or is not otherwise using other forms of employer-provided leave, then GDOL guidance indicates that this circumstance would also trigger mandated employer-filing of a partial UI claim. The key in the determination of whether an employer is required to file a partial UI claim on behalf of the employer is whether the employee's inability to work is *involuntary*. For example, if the employee voluntarily chooses not to report to work based on exposure to the virus, rather than the employer mandating that the employee not report to work, then the employer would have no obligation to file the partial UI claim, but instead,

the employee would be required to file his or her own partial UI claims. It would then be up to the GDOL to determine eligibility of benefits for such a claim on a case-by-case basis.

3. **Are there exceptions impacting whether an employer is required to file a partial UI claim on behalf of an employee in the case of there being an involuntary reduction of hours or furlough/lay-off for COVID-19 related reasons affecting an employee?**

Yes. The [GDOL's posted filing instructions for employer-filed UI claims](#) list several exceptions to employer-filing of partial UI claims on behalf of an employee. The GDOL instructs employers not to file partial UI claims on behalf of an employee who:

- is employed by a temporary agency and is currently working at the employer's place of business;
- was employed in another state in the last 18 months;
- was employed with the federal government or on active military service in the last 18 months;
- is a 1099 employee/independent contractor;
- is voluntarily out of work, e.g., quits, requested leaves of absence, self-quarantined, etc.
- has been permanently separated from the employer's place of business company and is not expected to return to work when the COVID-19 emergency ends. (These employees must file their own claims)

4. **Is the employer required to file a partial UI claim on behalf of an employee if the employee has available unused accrued leave under the employer's policies?**

While the GDOL has provided guidance (see the above) instructing that an employer-filing partial UI claim should not be filed for someone who is already on a requested leave of absence (i.e., requested and approved FFCRA leave under the Emergency Paid Sick Leave Act or Emergency Family and Medical Leave Expansion Act, or other approved leave under the employer's policies), we are unaware of any GDOL rules or guidance at this juncture that requires employees to first exhaust any available accrued leave benefits as a prerequisite to being eligible for partial UI benefits. In particular, we do not believe that the GDOL's rules pertaining to the Emergency Rule suggest that an employee may be forced to exhaust available paid leave prior to the employer being required to file a partial UI claim on behalf of that employee.

Because the emergency laws impacting employee leave and/or UI benefits were promulgated by the GDOL and/or the U.S. Department of Labor ("USDOL") with the intention of benefitting

employees with further guidance encouraging employers to be “flexible” in working with employees on leave issues during the course of the COVID-19 public health emergency, it would be our recommendation that employers take the most conservative approach in not requiring an employee to utilize accrued PTO before filing for the partial UI benefit on behalf of the employee.

Nevertheless, we believe that in the context of an employer-filed partial UI claim, it would be important for the GDOL to be made aware if the employee has available leave and how much leave is available. The employer’s furnishing of such information to the GDOL could weigh into the GDOL’s decision as to whether to grant the UI benefit at that time, to deny it, or to defer it until such time as no paid leave is available to the employee.

In communicating with an employee in relation to an employer-filing of a partial UI claim on the employee’s behalf, there could be a circumstance where the employee communicates the desire to first use accrued available paid leave in lieu of the employer-filing of a partial UI claim on that employee’s behalf. If that circumstance presents itself, it would be highly recommended for the county human resources department to document in writing the employee’s decision electing to forego or postpone a partial UI claim filing in favor of first using accrued and available paid leave.

**5. Does the employer-filing of a partial UI claim on behalf of an employee apply to both full-time and part-time employees?**

Yes. Despite GDOL regulations stating that the employer-filing rule applies to “otherwise full-time employees”, the Emergency Rule and other GDOL-issued guidance, including the GDOL’s posted filing instructions referenced above, clarify that the rule applies to both part-time and full-time employees. As a result, for purposes of the employer-filing rule specific to the COVID-19 public health emergency, both part-time and full-time employees should be considered covered unless the GDOL issues any guidance to the contrary in the future.

**6. Could an employee be eligible for UI benefits if the reduction of hours or being unable to work is not based on action taken by a county, but is based on an employee’s decision based on COVID-19 related-circumstances affecting them?**

Although the employer-filing requirement would not apply to the situation where the employee decides to *voluntarily* reduce hours or not work for COVID-19 related reasons, based on the Emergency Rule, an employee may still be determined to be involuntarily employed through no fault of their own and presumably entitled to UI benefits even when voluntarily deciding to reduce

hours or to not work. For example, under the Emergency Rule, an employee shall be treated as being involuntarily unemployed through no fault of their own and presumptively entitled to UI benefits if the employee expects to return to work upon the end of the COVID-19 public health emergency, but is not currently working for the following reasons:

- (a) being quarantined or self-quarantined on the advice of a licensed medical professional;
- (b) being sixty (60) or more years of age;
- (c) having a recognized medical condition making that individual particularly susceptible to COVID-19;
- (d) being a caregiver who resides with someone identified in (b) or (c) above;
- (e) being a custodial parent or legal guardian of a minor whose school is closed due to COVID-19 and is unable to secure childcare.

Employees under these circumstances who may not be eligible for other forms of leave, including leave under the FFCRA, may very well be deemed eligible for UI benefits under the Emergency Rule. The GDOL would determine eligibility on a case-by-case basis for such employees who may file their own claims in the situation where the employee is making a voluntary decision to reduce hours or not work.

**7. Are there consequences for employers who fail or refuse to file employer-filed partial UI claims when mandated to do so under the Emergency Rule?**

Yes. Employers are responsible for paying GDOL back any amount of benefits that the employee secures based upon an employee-filed claim for when the employer was otherwise required to file the claim on behalf of the employee.

**CONCLUSION**

Given the GDOL's mandate requiring employers to file partial UI claims on behalf of their employees under the circumstance of the employer forcing an employee's reduction of hours or inability to work based on the COVID-19 public health emergency, it is important for county governments to recognize when they are required to file such claims and to execute the filing of such claims as long as the Emergency Rule remains in effect. While the GDOL's rules, procedures and guidance with regard to UI claims during this public health emergency may be subject to change or further updates by the GDOL, the GDOL has provided useful resources for employers

in terms of required procedures, forms, and other information to further assist employers with the employer-filing process during this public health emergency. Such resources include: (1) a [frequently asked questions page](#), (2) an [employer-filed claims tutorial](#), (3) the aforementioned [employer claim filing instructions](#), (4) an [employer-filed claims desk aid](#), and (5) a [next steps for employers to follow after filing a claim](#) document.

As always, you are advised to consult with your County Attorney on any specific questions and applications of the laws as the information contained in this document should not be construed as legal advice. Moreover, the state of the law is changing rapidly as developments in public health recommendations and emergency orders continue to evolve. If you are an ACCG-IRMA member, you are also welcome to contact Angela Davis through the ACCG-IRMA HR Legal Services by visiting the ACCG website or by email to [adavis@jarrard-davis.com](mailto:adavis@jarrard-davis.com) or by phone at Jarrard & Davis, LLP at 678.455.7150.