

# RATH YOUNG PIGNATELLI

## **QUESTIONS AND ANSWERS REGARDING NH UNEMPLOYMENT BENEFITS**

**Q: If an employer needs to lay off employees because of business disruption or closure caused by COVID-19, can those employees file for unemployment benefits in New Hampshire?**

**A:** Yes, a layoff of an employee or employees due to business disruption or a temporary shutdown given current business issues and concerns caused by COVID-19 would allow employees to file for unemployment compensation. An individual is deemed “totally unemployed” under the NH unemployment statute (RSA 282-A) “in any week with respect to which no wages are payable to him and during which he performs no services.” Please note, there are other laws that also need to be considered when laying off employees, including federal and state WARN laws and notification to NHES of mass layoffs, and we recommend consulting with an attorney on such issues.

**Q: If an employer reduces an employee’s hours, will that employee be able to file for unemployment benefits in New Hampshire?**

**A:** It depends. An employee that has a full time job of at least 37.5 hours per week or a part-time job of at least 20 hours per week and has those hours reduced below these thresholds could apply for unemployment benefits and would be deemed partially unemployed if that employee’s wages for any week fail to equal the weekly benefit amount, which is the amount an individual would be entitled to receive for one week of total unemployment. There is a schedule in the statute and there are guidance books on the NHES website that match up annual earnings to weekly benefit amounts ranging from \$2800 minimum annual earnings to \$41,500 annual earnings maximum. The benefit amount schedule can be found in the statute <http://www.gencourt.state.nh.us/rsa/html/XXIII/282-A/282-A-mrg.htm> and here <https://www.nhes.nh.gov/forms/documents/des-1049.pdf>. Please note, reduction of an employee’s hours can implicate other laws including minimum wage and other concerns under the Fair Labor Standards Act and New Hampshire’s wage and hour laws and protective legislation with respect to employees and we recommend consulting with an attorney on such issues.

**Q: How does the Governor’s Emergency Order #5 affect current unemployment compensation laws in New Hampshire?**

**A: Emergency Order #5 includes the following:**

- Temporarily suspends the one week waiting period usually required to be served by individuals filing for unemployment compensation benefits.
- Includes the following employees as eligible for unemployment compensation that need to leave employment because such individual: (a) is currently diagnosed with COVID-19, (b) is quarantined (including self-imposed) at the instruction of a health care provider, employer or government official to prevent the spread of COVID-19, (c) is caring for a family member or dependent who has COVID-19 or is under quarantine related to COVID-19, or (d) is caring for a family member or dependent who is unable to

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care for themselves due to the COVID-19 related closing of their school, child care facility or other care program, provided such individuals meet benefit eligibility conditions. There are also certain self-employed individuals that are now considered eligible for unemployment compensation for the same reasons set forth above in (a) – (d).

- Unemployment benefits paid pursuant to the Order are charged against the unemployment compensation trust fund and will not be assigned against an employee's most recent employer. Reimbursement will not be sought against certain employers that elect reimbursement, except as applied to the state.
- If the Federal government passes legislation amending or establishing a federal program that provides eligibility for any week of benefits similar to those provided in the Order, or the President declares a national emergency resulting in other assistance or emergency paid leave benefits, eligibility for unemployment under the Order will be immediately terminated and paid for under the Federal program instead, unless the Order provides for benefits not available through the Federal program, in which event, the benefits pursuant to the Order will continue.
- The Governor may revise the order as necessary to meet any federal minimum standards

**Q: How would the new federal coronavirus stimulus bill (the CARES Act) impact unemployment benefits if enacted?**

**A: The CARES Act was passed the Senate on March 25, 2020 and remains subject to consideration in the House and signature by the President. If enacted, the CARES Act will:**

- Expand unemployment benefits to certain employees who would not otherwise qualify for benefits (such as “gig economy” employees) or who have exhausted benefits.
- Permit the states to enter into agreements with the federal government for enhanced unemployment benefits under existing state programs. The enhanced program would provide for additional compensation of \$600 per benefit week for individuals otherwise eligible for state benefits (this \$600 would be without regard to the wages earned by the individual). This enhanced benefit will be payable until July 31, 2020.
- The states will also be able to enter into agreements for extend unemployment benefits (including the enhanced payment described above) for individuals who have otherwise exhausted benefits for an additional period of 13 weeks.
- Finally, the law would permit state agreements for funding of “short-time compensation” programs to subsidize payments for employees who have had their hours reduced, where the federal government would fund the difference between reduced hours and total unemployment benefit.