**WorkforceGPS**

**Unemployment Compensation for Individuals Affected by COVID-19**

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LAURA CASERTANO: I want to welcome everyone's to today's "Unemployment Compensation for Individuals Affected by COVID-19," our webinar. I'm going to turn things over to your moderator today, Gay Gilbert. She's the administrator for the Office of Unemployment Insurance with the Employment and Training Administration. Gay, take it away.

GAY GILBERT: Great. Thank you, Laura. And good afternoon, everybody. Thank you so much for being with us on this webinar today. We've had unprecedented registration for this webinar. There were close to 2,000 registrants. And so we know that some people may not be able to get in. Just want to assure you that the webinar will be recorded and made available through Workforce3One.

We will also make an effort to get the slides to – through our regional offices to be sure everybody's got the – at least the slide deck to refer to.

So I wanted to just say a few words generally at this point because the coronavirus has set the UI world on fire one more time. I know that you all are facing huge challenges in the state UI agencies, both in trying to accommodate a huge spike in workload as well as trying to keep all of you safe.

So I know that it's a challenging time. One of the things I know about the UI community, though, they have a candid spirit and they generally always get it done. So I just want to thank you for all the work that you're doing now and will do in the coming weeks because I think UI will be an important part of the safety net and the economic stimulus, quite frankly, as we move through the next few weeks.

We are here today to talk a little bit about our guidance. But before I do that, let me just acknowledge that was a first step. We wanted to immediately try to get some flexibility to states who were looking at their UI laws to see how they could better serve individuals impacted by the COVID-19 virus. And I think we managed to pry a fair amount of flexibility out of the federal law, which is good news.

There is a bill now currently moving today as we speak through Congress that will have other implications for UI. It currently contains more money to administer the program for states that meet certain conditions. It also includes the opportunity for interest-free loans should state trust funds go broke during this period and need to borrow and a bright of other provisions.

So we expect that this is just a first tranche. We can probably expect traditional packages moving through over time because clearly the entire country has been affected in an unprecedented kind of way. And again, you are – we don't have the capacity to answer just one off questions from everybody out there. So we want to be sure that we're getting you accurate answers and we're going to be looking to post Q&As along the way.

And so again, would ask that you instead of doing your questions in the chat today that you put them – that you bundle them through your UI director to our COVID-19 email box. And it's on the – one of the slides later in the deck.

So again, I'm going to turn this over to Michelle to walk you through the fundamentals of the flexibilities that we offer through the guidance. She's also going to share with you some of the Q&As we've had to date. So hopefully that'll answer a few of your questions.

One of the things that I would point out in the guidance and I'm sure Michelle will reinforce it, we did present several examples or scenarios in which state flexibilities could be use. We do know that those flexibilities – or those scenarios are not the only ones.

And again, I think we're – as states consider changing their laws and or policies related to expanded coverage for coronavirus impacted folks that you need to be sharing that and consulting with us through our division of legislation and through our regional offices. And Michelle will talk a little bit more about the how on that.

So I'm going to turn it over to Michelle right now. But again, thanks, everybody. We appreciate you being here today.

MICHELLE BEEBE: Thank you so much. And Laura, if you could help me out. I think there's an issue with internet connection. If you wouldn't mind showing the slides and I can tell you when to proceed on to the next one.

So good afternoon/morning, everyone. I also want to take a moment to acknowledge the pressure that states are under to address these issues while administering the program and watching out for the health and safety of their employees. So hopefully this can help answer some of your questions. But as Gay said, more guidance is forthcoming.

So I wanted to start with the next slide, summary and background. There are four things to point out regarding the – (inaudible) – as recently as shared.

First of all is that the unemployment insurance requires individuals be able to, available for, and actively seeking suitable work. The second is that states have significant flexibility in how they implement these requirements. The third is that an individual may be quarantined or otherwise affected by COVID-19 and still be eligible for unemployment compensation, depending on the state law. And the fourth is that the unemployment insurance program is not intended to be used as paid sick leave.

And so, as Gay mentioned, there are congressional proposals out there that could impact some of these items. We'll discuss a little – some of those a little later in the conversation.

So on the next slide, discussing unemployed status. State law will dictate if an individual has sufficient work history to establish a claim by using wages – (inaudible). Specific to COVID-19, there are three things we address in UIPL. One is the unemployment status of the individual. Two is the job separation. Three is the requirement to be able to work, available for work, and actively seeking work.

In regards to the unemployed status, we have a longstanding legal interpretation within the unemployment program that for purposes of receiving benefits, unemployment include the reduction of both work hours and earnings. An individual that's receiving paid sick leave or paid family leave is still receiving pay and therefore would generally not be considered unemployed for purposes of collecting unemployment.

As we go on to the next slide, as a condition of eligibility for unemployment in any week, a claimant must be able to work, available, and actively seeking work. We've interpreted and enforced able and available requirements since the inception of the federal/state unemployment program. These were codified in federal regulation as 20 CFR 604.4 in 2007 with work search inserted and this also further codified in Section 303 of the Social Security Act in 2012.

Federal law does make some exceptions to this, such as for state-approved training or participation in the Short-Time Compensation Program.

On the next slide, while not an explicit exception, federal unemployment law provides significant state flexibility for addressing the COVID-19 crisis. A state may consider an individual for the available for work during the week under any of the following circumstances.

First is the individual is available for any work for all or a portion of the week claimed, provided that any limitation placed by the individual on his or her availability does not constitute a withdrawal from the labor market. The second is the individual limits his or her availability to work which is suitable for such individual as determined under state law, provided that the state law definition of suitable work does not permit the individual to limit his or her availability in such a way that the individual has withdrawn from the labor market.

And third is the individual is on temporary lay-off and is available to work only for the employer. This does not exempt any of the requirements, but rather, it provides an alternative method to satisfy that requirement while maintaining attachment to that employer.

On the next slide, the regulation at 20 604 also provides but if an individual has previously demonstrated his or her ability to work and availability for work following the most recent separation from employment, the state may consider the individual able to work during the week of the unemployment claimed despite the individual's illness or injury, unless the individual has refused an offer of suitable work due to such illness or injury.

On the next slide, I want to emphasize that states have flexibility to determine what type of work is suitable for an individual and what it means for that individual to be able, available, and actively seeking work even when quarantined or otherwise affected by COVID-19.

The UIPL provides three examples that states may consider when reviewing their law in light of COVID-19's impacts. Other scenarios that are not listed may also arise. This is not intended to be comprehensive.

Under the first scenario, we talk about an employer temporarily ceasing operations. The second scenario addresses an individual who's quarantined with an employer. And a third scenario is an individual that is not returning to the employer.

For each of these scenarios, we're going to go through three eligibility assessments.

One is whether or not they have – they are considered unemployed. Two is the reason for the job separation. And three is if they meet the able, available, and actively seeking work requirement.

We're providing these points of flexibility within the federal parameters that state laws will determine if the flexibility is exercised. So on the next slide, slide 10, is the employer temporarily ceases operation.

This is when an employer or employing unit temporarily shuts down due to COVID-19 with the expectation that the individual will return when the business resumes. So to the question that is the individual unemployed? From a federal perspective, you would say that, yes. State law may find that because the individual has both reduced hours and pay, they are unemployed.

The second question is, is the job separation allowable? And from a federal perspective, we say that states are permitted to consider this a temporary layoff as the employer does not currently have suitable work and intends to call the individual back to work.

On the next slide, for scenario one, we address the third – available and actively seeking work. The answer from the federal perspective is yes, as provided under 20 CFR 604.5(a)(3), which is included in the slide deck for future reference, state law may find that the individual meets these requirements so long as the individual is able and available to work for that employer once suitable work becomes available again and that the individual is taking reasonable steps to preserve contact with the employer.

And so now on the next slide, we move into scenario number two. And this is when an individual is quarantined and plans to return to the employer. Where they're quarantined by a medical professional or under government direction, the perceived – the employer has instructed the individual to return to work after the quarantine is over or has not provided clear instruction to do so. So we go through our three questions again.

First of all, is the individual considered unemployed? From a federal perspective, state law may find that because the individual has reduced hours and pay, they are unemployed. Similar to the previous scenario, is the job separation allowable? Federal law permits states to consider this a temporary layoff as the employer does not currently have suitable work and intends to call the individual back to work.

And so on the next slide, continuing with scenario number two, we ask, is the individual able, available, and actively seeking work? And the response is similar to scenario number one. The state law may find that the individual meets these requirements if they're able and available to work for that employer once suitable work becomes available again and that the individual is taking reasonable steps to preserve contact with that employer.

Now, moving on with the UIPL, we go into scenario number three. And this is when an individual is quarantined or they leave employment due to a reasonable risk of exposure or infection, such as self-quarantine, or to care for a family member and either does not intend to return to the employer or the employer will not allow the individual to return.

So these are our three questions here. Is the individual unemployed? Yes. State law may find that because the individual has reduced hours and pay, they are unemployed. To the second question of is the job separation allowable? The answer here is maybe. State law will determine whether the separation is a quit or a discharge and whether the circumstances are allowable under the state's good cause/just cause provisions.

And it should indicate whether or not the individual has a reasonable risk of exposure or infection. States may want to consider if that individual falls within that identified list of – (inaudible) – population and what steps the individual – (inaudible) – to preserve their employer – (inaudible).

On the next slide, slide 15, we go through the third question. Is the individual able, available, and actively seeking work? The answer here, too, is a maybe. State law may find that the individual is still able, available, and actively seeking work that (inaudible) circumstances and that such a limitation does not constitute a withdrawal from the labor market.

We encourage states to review their laws in light of COVID-19's affects. [Inaudible] technical assistance.

Now, as we move on in the presentation, it's important to note that any decisions around employment eligibility will have subsequent impacts on trust fund solvency. And so on the next slide, 16, we talk about employer charging.

When determining in the context of COVID-19 whether certain unemployment benefits should be charged to employers, states should consider how to fairly distribute these costs to employers. If states consider changing their laws to increase the availability of unemployment benefits in the context of COVID-19, we ask that you be mindful of this impact.

Currently, we have 21 states and jurisdictions that are below the recommended solvency standard. Only 31 states currently meet the eligibility criteria for interest-free borrowing. And so it's important for states to be mindful when they're making that decision for employer charging.

Now, going on to the next slide, many states require that the first compensable week of a claim be considered a waiting week, for which no payment is made. This is a longstanding practice in the UI program that may give states time to assess eligibility and to deter fraud. In light of the emergent need to cover individuals impacted by COVID-19 and to allow the UI program to act as an economic stimulus, states should consider temporarily waiving such requirements.

We do note that if a state does waive their waiting week, if that state later triggers onto the extended benefits program while the waiting week is waived, they will not be reimbursed for the first week of all EB claims under current federal law.

As we move on to the next slide, slide 18, we want to acknowledge that the affects of COVID-19 extend beyond just individuals who are quarantined and that many employers will experience challenges with the curfews and group limitations occurring across the country. We strongly encourage states to promote the Short-Time Compensation program. This is also known as STC and work sharing.

There are currently about 25 states that operate an STC program. This can be an important resource for employers whose businesses temporarily decline as a result of COVID-19.

In terms of what the program does, employers with a state-approved STC plan reduce the hours of their employees in lieu of layoffs, while permitting those employees to receive payment for partial unemployment. This is advantageous to employees because they don't suffer a complete loss of employment and they're paid STC when their hours are reduced. This is advantageous for employers as they are able to reduce their labor costs temporarily while still maintaining their skilled workforce.

On so on slide 19, we list some resources for states. This includes the centralized email inbox that we set up to take questions. And as Gay mentioned earlier, we ask that you funnel those questions through your UI director and then you send them to the inbox that you CC the regional office.

Now, if you're proposing changes to state laws or rules, please include the division of legislation state team member. And I've listed those here on the slides so that we can review the proposals in light of federal – (inaudible). And in some cases, we may reach out to have further conversations to understand how the changes you're making align with this guidance.

We also provide a link to the most recent state unemployment insurance trust fund solvency report as well as additional guidance on short-time compensation.

So with that, as we're on the thank you slide, I'd like to take a moment to discuss some of the other UI related activities occurring in response to COVID-19.

And so we note that there are at least seven different bills that are currently pending in Congress to address various items impacting the UI program, one of which the Families First Coronavirus Response Act has passed the House and is awaiting action in the Senate. As written, this bill does provide for additional funding for UI administration under certain – with states that meet certain conditions. It permits states to enact laws and policies with respect to work search that cause an employer experience rating on a temporary basis.

It provides interest-free loans. It requires USDOL to assist states to improve take up of the Short-Time Compensation Program by providing technical assistance and guidance. And it provides federal funding for extended benefits through the end of the year, including a temporary – federal matching for the first week of extended benefits.

(Inaudible). We're awaiting guidance on whether this includes activation of individual assistance for purposes of implementing to that certain unemployment assistance.

There's available flexibilities that may change depending on the executive and legislative actions. We stand ready to provide guidance and offer technical assistance to states as things unfold in the coming days and weeks. If we're not able to address your question today in today's presentation, please do reach out to us via the email address with a CC to your regional office.

In lieu of taking questions, I'd like to cover some of what – of the questions that we've already fielded in these last couple days – from specific states. But I want to pause for a moment.

MS. GILBERT: No. Thanks. I appreciate that. I just would echo what Michelle said that it's a little bit of a moving target right now. I think it appears that the Senate's going to consider the House bill and if so we're already in the mode to get ready to provide guidance as quickly as possible as to what it means for implementation. And we know that states are starved for administrative financing. And one of the provisions of the bill is just that.

So we will work as quickly as possible to continue to keep states updated, including additional webinars and or calls as needed.

MS. BEEBE: Thanks, Gay. As I said, we have a handful of questions that we've already fielded from states that I just wanted to walkthrough so that the larger group had an opportunity to hear that conversation.

One of the first questions was regarding scenario number two, which was the individual is quarantined and plans to return to the employer afterwards. The question states, "While I understand the motivation to ensure the effected individuals are able to meet their basic needs while under quarantine, the scenario would classify these individuals as being laid off, which is not the case. Additionally, defining that these individuals are laid off would result in employer accounts being charged for any benefits paid to these individuals. Is it mandatory that we treat cases similar to scenario two in this manner?"

And my response is that this not a mandatory interpretation. The UIPL is intended to state that this permissible under federal law to consider the temporary layoff. And if states choose to interpret the situations as a voluntary case, then apply their good cause provisions, they must also consider the question of whether the individual is able, available, and actively seeking suitable work.

The next question is, "Can the work search requirement be waived for workers who are laid off as a result of the coronavirus? What about able and available?" Our response is that federal law provides for specific exceptions to these able, available, and actively seeking work requirements, such as for short – excuse me – such as for state approved training and short-time compensation. Outside of these explicit exceptions, the able, available, and actively seeking work requirement may not be waived.

However, states do have significant flexibility to determine what type of work is suitable for an individual and what it means for that individual to be able, available, and actively seeking work, even when quarantined or otherwise affected by COVID-19. The key is ensuring that a labor market exists for the type of work that they are seeking.

The next question is must these scenarios be limited to COVID-19 or can they be applied more broadly to all public health emergencies? Our response is that the UIPL is intended to address the parameters in state flexibility specifically when dealing with COVID-19. If states wish to include a more broad application, we ask that they engage the Office of Employment Insurance for technical assistance to ensure conformity with federal law.

The next question is about trust fund solvency. For businesses that temporarily shut down operations as an indirect result of COVID-19, could the state reimburse the trust fund for any benefits paid? In short, yes. We do recommend that keeping the employer non-charging provision and the state reimbursement process separate.

For example, the employer's either charged or not charged according to state law. For many states, non-charged benefits are accumulated in a pool that is then applied to all contributory employers. States could then separately choose to do an infusion of state money into that pool of uncharged benefits to cover those benefit charges related to COVID-19. By doing this as separate entities and employer non-charging provisions in the state reimbursement process, this provides a better alignment for purposes of – (inaudible) – calculation.

The next question has to do with educational institutions. And it states, since schools are going to online classes and other measures are being taken, how do we handle claims resulting from school layoffs, such as janitors, bus drivers, etc.?

And so generally, individuals who become unemployed as this question outlines, whether they – (inaudible) – services in a professional or non-professional capacity, they would be eligible for benefits. But between terms denial only applies between two success of academic years or terms.

So within terms denial only applies during established and customary vacation (inaudible) or holiday recess. Because the change in operation as a result of COVID-19 is not a period between two success of terms or during an established and customary vacation period or holiday recess, unemployed individuals who are otherwise eligible will generally receive unemployment.

While I note that we're still researching the implications of many different fact patterns for school employees, including what happens when the dates established and customary vacation periods are changed and when they're changed to the school's semester ending date. We're preparing additional guidance for states and welcome your suggestions for special circumstances that you're seeing in your state.

The last question that we have today is can RESCA be suspended during the period in which we're handling the effects of COVID-19? It's important to note that RESCA is a reemployment tool that connects individuals with the American Job Center. We do not intend to suspend the program. We ask that states consider alternative ways to comply with the social distancing recommendations. This can be occurred such as via Skype or by phone.

The alternatives to in-person appointments are already allowable under the most recent RESCA guidance and do not require special permission from the national office. [Inaudible] evaluating your staffing resources, you have additional questions, please contact us for technical assistance.

In closing, we know that participation in this webinar reached its maximum capacity and a recording of the events will be available on WorkforceGPS in the next couple of days. For any additional questions, please funnel them through your UI director to the COVID-19 email inbox and with a CC to the regional office. And know that we will continue to be available for questions and guidance as it becomes available.

Gay, at this point, I'd like to turn it back over to you.

MS. GILBERT: Thanks, Michelle. And just one clarification on RESCA. The person to person option using virtual technologies like Skype was definitely in the FY '20 guidance. Doing it by phone was a little further reach, but we think it's absolutely appropriate in this current circumstance right now with the coronavirus because of the social distancing. We do anticipate that that part is temporary. So just wanted to be clear about that.

Again, I think as we get your questions, we're – so we are compiling Qs and As, handing those back out to everyone as we can. Again, I would like to just – I said and Michelle said and that's we have a little bit of a moving landscape here. And if the Senate should pass the House bill today, we will – we're immediately in a new environment. And we'll need to issue new guidance very quickly to say.

So please, stay tuned. This is a federal-state partnership. So we're all in this together. So we do want to be in close communication and be responsive to your needs.

So please use that, our new email box. And obviously, if you're getting – doing legislation, you can contact – with us about that. And just this is going to be a tumultuous time, I think, for the UI program, but I think our system has proven again and again that we're up to the challenge. So I really, really appreciate, again, everybody's work and help as we guide the system through this period.

So thanks very much.

And Laura, I think we can get you to close us out.

MS. CASERTANO: All right. Great. I just want to thank all the presenters. I want to ask for some feedback. Let us know what you thought of today's webinar. Please let us know what you thought we did right or how we can improve; a copy of the PowerPoint as well as that resource and the recording of today's session and the track of today's session on WorkforceGPS in about three business days.

With that, have a great rest of your day, everyone.

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