

North Carolina Employers May Provide Financial

COVID-19 Response Resource Center: Timely Counsel for your Business

By William Cary on 04.28.2020

Posted in Employment

On April 20, 2020, North Carolina Governor Roy Cooper issued Executive Order No. 134 permitting employers to provide financial assistance to employees who have been temporarily furloughed for reasons related to COVID-19 without affecting their unemployment insurance benefits. Typically, such financial assistance would reduce, delay, or preclude employees' unemployment benefits. However, recognizing the unique circumstances presented by the COVID-19 pandemic, Executive Order No. 134 authorizes employers to make "COVID-19 Support Payments" to furloughed employees provided such payments:

- Are voluntarily made by an employer to an employee in response to furloughing the employee;
- Are for services rendered by the employee in the past;
- Hold no obligation for the employee (or the employee's estate) to repay the employer;
- Are provided without obligation for the employee to perform or not perform any act in connection with the individual's status as an employee; and
- Are made pursuant to a "COVID-19 Support Payment Plan."

A COVID-19 Support Payment Plan must include:

- The anticipated length of the furlough;
- The amount of the COVID-19 Support Payments;
- The names of the employees receiving COVID-19 Support Payments;
- A promise that the employer is not making the COVID-19 Support Payments as a form of remuneration for the employees' performance of personal services while furloughed; and
- A promise that employees are not required to return or repay the COVID-19 Support Payments.

Employers must submit COVID-19 Support Payment Plans to the North Carolina Division of Employment Security (DES). However, DES approval of COVID-19 Support Payment Plans is not required.

North Carolina Employers May Provide Financial Assistance to Employees Receiving
Unemployment Benefits

Importantly, COVID-19 Support Payment Plans should not be considered promises by employers to provide COVID-19 Support Payments to employees, and employers have discretion to stop providing payments before the scheduled end of the COVID-19 Support Payment Plan. Additionally, acceptance of COVID-19 Support Payments by an employee is not a promise that the employee will return to work for the employer. Employees retain the option to accept other employment should it become available.

Executive Order No. 134 directs DES to publish on its website a form for COVID-19 Support Payment Plans and additional guidance for employers regarding COVID-19 Support Payments. To date, DES has not published the form or any guidance.

The provisions of Executive Order No. 134 are effective immediately and will remain in effect until further notice.

Update:

On April 24, 2020, the North Carolina Division of Employment Security (DES) published on its website guidance regarding COVID-19 Support Payments and an application that employers must submit to DES.

Notably, the guidance issued by DES provides that employers planning to utilize COVID-19 Support Payments must first submit an employer-filed unemployment insurance claim (attached claim) for each employee who may receive COVID-19 Support Payments.

If you have questions regarding unemployment benefits, please contact a member of our Labor & Employment team linked below.

Brooks Pierce is dedicated to keeping our clients fully informed during the COVID-19 crisis. For more information, please visit our COVID-19 Response Resources page.

Tags: COVID-19 Support Payment Plans, North Carolina Division of Employment Security