



COVID-19 & PUBLIC EMPLOYMENT LAW: ANSWERS TO FREQUENTLY ASKED QUESTIONS FOR GEORGIA MUNICIPAL EMPLOYERS

Public Employment Law/COVID-19 FAQs Series Three: Unemployment Insurance (UI) Benefits and Wage & Hour Issues

[UPDATED]

To keep layoffs to a minimum, our City plans to temporarily reduce the hours of several full-time and part-time employees by about half their current hours. A handful of other full-time employees will be laid off/furloughed due to lack of work subject to recall. We're hoping to be able to restore everyone within six weeks.

Q1. The employees whose hours are being cut are not being separated, so will they be eligible for unemployment benefits?

A: **[UPDATED.]** The Georgia Department of Labor's (GDOL) Unemployment Insurance (UI) Program accepts claims for [partial UI benefits](#) in certain instances. Relevant to your City's situation, whenever it is necessary, due to a lack of available work, either to temporarily reduce the work hours of employees or to lay off/furlough employees for a short period of time, the employer is required to file claims for [partial UI benefits](#) on their behalf.

It is unclear what length of time constitutes a "short period of time" within the meaning of the standard set forth above. There is some authority suggesting that, at least under normal circumstances, the standard contemplates a period of four (4) to six (6) weeks. During the current public health emergency, however, the DOL is advising employers – at least informally – that partial UI benefits should be sought whenever there is a shared expectation between the employer and the employee that the latter will return to work (or return to full-time status) once the emergency has abated.

Q2. Does this include employees who the City has temporarily prohibited from coming to work due to their having symptoms or their being exposed to COVID-19?

A: Yes. Due to the public health emergency, employees experiencing a complete or partial loss of hours as a result of being instructed by the employer temporarily to stay away from the workplace for reasons related to COVID-19, and who have an expectation of returning to work when the emergency ceases, are treated the same as employees who have experienced a temporary reduction in work hours or a layoff/furlough due to a lack of available work. Accordingly, while this may change once the public health crisis is concluded, for so long as the Emergency Rule remains in effect, the employer is required to file claims for partial UI benefits on behalf of such employees as well.



Q3. Is this true for both full-time and part-time employees?

A: Yes. While GDOL regulations contain language indicating that the employer-filing rule applies only to “otherwise full-time employees,” the aforementioned [Emergency Rule](#) and other recent GDOL-issued notices plainly state that the rule applies to both full-time and part-time employees. Accordingly, while this may change once the public health emergency is abated, while the Emergency Rule remains in effect, employers should proceed as if both full-time and part-time employees who experience a reduction in hours or who are laid off/furloughed due to the COVID-19 crisis are covered by the rule.

Q4. The City is required to file the claims? Normally, we just provide the DOL-800 Separation Notice form to the employee, and then it’s up to him or her to file the claim.

A: **[UPDATED.]** In the situation described (i.e., where employees are experiencing a complete or partial reduction of work hours for reasons relating to COVID-19), the employer must, in most instances, file the claims for partial UI benefits on their behalf. The GDOL recently reaffirmed this employer-filing requirement in adopting an [Emergency Rule](#) relating to the processing of such claims which took effect the week of on March 15, 2020. This Emergency Rule:

- Suspends all in-person reporting requirements for claimants (including job-search requirements);
- Requires that employers file all claims for partial UI benefits online via the [GDOL’s Employer Portal](#);
- Requires that such claims be filed for any week during which an employee experiences a complete or partial reduction in hours due to reasons related to the COVID-19 pandemic; and
- Penalizes non-compliant employers by requiring them to reimburse the UI fund for the full amount of benefits paid to the employee.

More information regarding the employer’s claim-filing obligations generally and as they apply to the COVID-19 crisis in particular may be found [here](#), [here](#) and [here](#). The GDOL has also created a helpful [video tutorial](#) to assist employers in filing claims for partial UI benefits.

Q5. **[ADDED.] What about employees who have accrued leave available to them? Can the City still file for partial UI benefits on their behalf, at least if they’re not using the accrued leave?**

A: We are unaware of any State or DOL requirement that employees must exhaust their accrued leave while experiencing reduced hours or while temporarily laid off/furloughed as a prerequisite to qualifying for UI partial benefits. When the employer files for partial UI benefits on behalf of an employee, only his/her gross earnings (which would include any accrued leave benefits paid out) during the week in question are reported. If the employee does not receive any accrued leave benefits during that week, then those benefits would not be reported as gross earnings – apparently irrespective of whether they were available to the employee.

This is not to say that the DOL would not inquire into the availability of accrued leave in its processing of the claim and take such information into consideration in making its determination. But employers are being encouraged by the DOL – at least informally – to err on the side of filing claims for employees so



long as there is an expectation of their returning to work once the public health emergency has abated. Accordingly, until further notice, it would appear that the best practice is for the City to file claims for partial UI benefits on behalf of those employees experiencing reduced hours or temporarily laid off/furloughed for reasons relating to the pandemic – even if they have available to them, but are not using, accrued leave benefits. Due to the lack of clear guidance on this issue, however, it would be appropriate to advise each such employee that the City’s filing of the claim(s) on his/her behalf should not be construed as a guarantee of eligibility, since only the DOL is authorized to make such determinations. It should also be noted that the City can only file such a claim for a given week after the week has ended, meaning that any partial UI benefits awarded may not be received by the employee when he/she would normally receive his/her paycheck. **[See Series 3, Q8, for explanation of what to tell employees regarding partial UI claims.]**

Q6. How are claims for partial UI benefits filed?

A: **[UPDATED.]** Employers filing claims for partial UI benefits on behalf of full-time and part-time employees whose hours have been reduced or eliminated due to the COVID-19 crisis should not use the GDOL Form 408; rather, the Employer Portal and specialized process outlined [here](#) should be utilized for this purpose. (Also, as previously noted, the GDOL has created a helpful [video tutorial](#) to assist employers in filing claims for partial UI benefits.)

If your City is not already registered to use the Employer Portal, these steps should be taken:

- Establish an administrator account.
- Download the [Administrator Guide](#) on the Employer Portal login page and follow the step-by-step instructions.
- If a third-party service provider is the administrator on the City’s account, have them add the City as a user to give the City the ability to file claims for partial UI benefits. If the City is already a registered user on the portal, but is not currently permitted to file employer-filed claims, contact the Employer Portal administrator for assistance.

Once registered to use the Employer Portal, the City should follow these steps:

- Log into the Employer Portal.
- Select the employer account number under Registered Account.
- Select the “File Employer Filed Claims” link under Common Links.
- Select the appropriate method of filing—[Multi-Claims Upload](#) or Single Claim Entry.
- Follow the on-screen instructions.



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Q7. How often is the City required to file these claims for partial UI benefits?

A: The City should submit claims for partial UI benefits on a weekly basis, following its standard work week. The initial submission must be after the workweek has ended. Once an initial submission is made, the City should file subsequent submissions every seven (7) days.

Q8. What should we tell employees for whom the City will be filing these claims for partial UI benefits?

A: **[UPDATED.]** GDOL recommends that these employees be provided the following information:

- They do not have to file their own claims for UI benefits – the City is doing that for them.
- Although the City is filing the claims for them, only the GDOL is authorized to make eligibility determinations.
- They can elect to have state and/or federal taxes withheld by the GDOL.
- They have the option of using direct deposit or the Georgia UI “[Way2Go](#)” Debit Card.
- Employees choosing direct deposit must enter their direct deposit information on the GDOL website by selecting UI Benefit Payments Method under Individuals on the Online Services page. A personal identification number (PIN) is required. A letter (DOL-8475) will be mailed to them notifying them of their PIN.
- Unemployment benefits are paid on a weekly basis. All weekly earnings over \$50 are deducted dollar for dollar from the benefit payment. (Note: this deductible is expected to increase as part of the GDOL’s COVID-19 response; no amount has been announced, but it may be as high as \$300.)
- The City can only file claims for a given week after the week has ended, meaning that partial UI benefits may not be received by the employee in accordance with the City’s normal pay practices.
- They are not required to report to a GDOL Career Center, register for Employment Services on [EmployGeorgia.com](#), or search for work.
- If any employee receives notification from GDOL that his/her claim is not monetarily valid due to insufficient wages, he/she should contact the local Career Center for assistance.
- Claims for non-citizens cannot be processed until their legal presence in the U.S. is verified by Homeland Security.

Q9. Our City has several employees whose hours have been reduced or who aren’t working at all – not because of any action taken by the City – but because they have decided on their own not to come to work due to the public health emergency. Are we required to file claims for partial UI benefits on their behalf as well? If not, would they be entitled to file their own claims?

A: Under normal circumstances, any employee voluntarily missing work would not be covered by the employer-filing rule for partial UI benefits and would have to file his/her own claim, which the GDOL would then resolve on a [case-by-case basis](#). Under a revised Emergency Rule adopted by the GDOL, however, certain categories of employees voluntarily missing work for reasons relating to COVID-19 will be treated as being involuntarily unemployed through no fault of their own (and presumed entitled to UI benefits). According to the revised [Emergency Rule](#), these include, without limitation, any employee



who has an expectation of returning to work when the public health emergency ceases but is not working because:

- He/she is quarantined or self-quarantined on the advice of a licensed medical professional;
- He/she is sixty (60) or more years of age;
- He/she has a recognized medical condition which makes him/her particularly susceptible to COVID-19;
- He/she is a resident caregiver for a person who is 60+ years old or who has a recognized medical condition making that person particularly susceptible to COVID-19; or
- He/she is a custodial parent or legal guardian of a minor whose school is closed due to COVID-19 and is unable to secure childcare.

Q10. Are there any other exceptions to this employer-filing requirement for partial UI benefits?

A: Yes. In addition to those just described, certain other categories of employees are excluded from this process and, as such, must file their own UI claims. Examples include employees who, in the eighteen (18) months preceding the reduction of hours or layoff, were employed in another state or by the federal government or were on active military service.

Q11. How long is the Emergency Rule in effect?

A: For 120 days from date of adoption, until superseded by subsequent rule, or “until the Public Health State of Emergency declared by Governor Brian Kemp is declared over.” The Emergency Rule applies to all claims for partial unemployment benefits filed commencing the week of March 15, 2020.

Q12. We don't yet know how many total employees our City will have to lay off as a result of the public health crisis. If it's a large number, will that change any of the above-stated answers?

A: No, but when twenty-five (25) or more employees are separated on the same day, for the same reason (e.g., lack of available work) and the separation is permanent, for an indefinite period or for an expected period of seven (7) days or more, GDOL regulations require the employer to submit both a [DOL-402](#) Notice of Mass Separation and a [DOL-402A](#) Mass Separation List of Workers. The DOL-402 and DOL-402A forms normally must be submitted by the employer within 48 hours after the date of separation; however, in a set of [FAQs](#) recently issued in response to the COVID-19 crisis, the GDOL states that employers filing claims for partial UI benefits on behalf of employees need not submit a mass separation notice. We have not been able to find any statutory, regulatory, or other legal authority for this stated exception.



Q13. We hope that the reduced hours and layoffs won't last any longer than six weeks, but there's just so much uncertainty. What happens if we're unable to restore the employees' hours/return them to work within that time?

A: **[UPDATED.]** Under normal circumstances, GDOL regulations require that if an employer is unable to provide a firm restoration/return-to-work date or is unable to restore the employees' hours/return them to work upon expiration of the approved time period for partial UI claims, it must immediately advise the employee "to report in person to the nearest GDOL field service office for the purpose of registering for work and reporting on his or her claim." However, pursuant to the Emergency Rule currently in effect, all job search and other in-person requirements have been temporarily suspended for claims filed on or after March 14, 2020. Accordingly, such employees should be directed to pursue their claims online in accordance with the [Instructions](#) developed by GDOL for use during the current public health crisis.

Notwithstanding the foregoing, as previously noted, the DOL is advising employers – at least informally – that partial UI benefits should be sought whenever there is a shared expectation between the employer and the employee that the latter will return to work (or return to full-time status) once the emergency has abated. Accordingly, unless or until otherwise advised by the DOL, it would appear that the best practice would be for the City to continue to file for partial UI benefits on behalf of such employees for so long as this shared expectation exists.

Q14. Some of the employees whose hours are being reduced due to lack of available work may be offered the option of voluntary separation. Would an employee who chooses voluntary separation still be eligible to UI benefits?

A: **[UPDATED.]** If offering employees this option was part of the City's plan for reducing labor costs, then the employee's voluntary separation would not be disqualifying. In this regard, [O.C.G.A. § 34-8-194](#), which sets forth various circumstances in which employees are disqualified from receiving UI Benefits – including where the employee voluntarily separates – carves out an exception in the case of an employee whose resignation was effectuated pursuant to an employer plan, program, policy, layoff, or recall which permits the individual, because of lack of work, to accept a separation from employment in lieu of reduced hours. An employee choosing to resign under such circumstances, however, would not be – at least at that point – subject to the employer-filing rule and, as such, should be provided with the traditional [DOL-800 form](#) and notified of the requirement that he/she pursue his/her own claim for UI benefits.

Q14. Our City is blessed with many community-minded residents, several of whom have reached out to us during this time of crisis to volunteer their services in various capacities. To what extent would the City be required to compensate these individuals?

A: Under the Fair Labor Standards Act (FLSA), an individual who volunteers his/her services to a public agency, such as your City, in an emergency capacity is not considered an employee legally entitled to compensation if he/she:



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- Perform such services for civic, charitable or humanitarian reasons without promise, expectation, or receipt of compensation (although the volunteer may be paid expenses, reasonable benefits or a nominal fee for such services);
- Offer the services freely and without coercion, direct or implied; and
- Is not otherwise employed by the City to perform the same or substantially similar services as those for which he/she proposes to volunteer.

This Public Employment Law FAQ Series was prepared by the [Public Sector Group](#) of Elarbee, Thompson, Sapp & Wilson, LLP, a legal practice group specializing in the representation of state and local government clients throughout Georgia primarily in matters relating to labor and employment. It was designed to serve as a comprehensive guide for the benefit and use of the [Georgia Municipal Association](#) and its membership during the declared public health emergency relating to COVID-19.

This series was prepared based on the most current information and legal analysis available; however, because the legal landscape relating to the pandemic is necessarily fluid, this resource will subject to periodic updates and revisions. As such, it is not intended, and should not be interpreted or relied upon, as legal advice. GMA members are encouraged to consult with their attorneys or outside counsel as needed. Elarbee Thompson’s Public Sector Group is also available for consultation by contacting R. Read Gignilliat (404.582.8442 / gignilliat@elarbeethompson.com) or Sharon P. Morgan (404.582.8406 / morgan@elarbeethompson.com). As always, GIRMA members may contact Elarbee Thompson’s Public Sector Group directly via the [GIRMA Helpline](#) (800.721.1998 / girmahelpline@elarbeethompson.com).



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