

On April 8, 2020, Governor Henry McMaster issued Executive Order 2020-22. This order recognized that employers have been financially strained by the significant economic impacts associated with COVID-19. As a result, businesses in our state have been compelled to place their employees on furlough (i.e., a temporary period of time during which an employee performs no personal services for the employer as a result of a layoff caused by the economic impacts of COVID-19).

Despite these challenges, some employers have indicated a desire to offset the financial impacts of such furloughs by making voluntary COVID-19-related support payments (“COVID-19 Support Payments”) to employees who may also receive unemployment insurance (UI) benefits. The Governor’s Executive Order clears the way for employers – who choose to take advantage of this voluntary option – to make these COVID-19 Support Payments without such payments affecting their employees’ eligibility for UI benefits.

Employers that are considering issuing COVID-19 Support Payments in response to Executive Order 2020-22 must submit a plan to DEW prior to making such payments. Submitting a plan involves completing the form found here and submitting the completed form electronically to legal@dew.sc.gov.

In this plan, employers will certify that the payments are made under certain conditions to ensure that the payments do not constitute “wages,” as that term is defined under South Carolina law. These conditions are that:

1. The payment must be made in response to furloughing the employee
2. The payment must be for services rendered by the employee in the past
3. The employee (or the employee’s estate) must not be obligated to repay the payment under any circumstances
4. The payment must not obligate the employee to perform or not perform any act in connection with the individual’s status as an employee.

After submitting the plan, employers do not need to wait on specific approval from DEW in order to proceed with making COVID-19 Support Payments. However, please understand that payments made without the necessary certifications or not in compliance with Executive Order 2020-22 may affect your employees’ eligibility for UI benefits.