

Governor Walz's Executive Order Requires Unemployment Benefits Notice to All Separated Employees

by Grant S. Gibeau - Wednesday, April 08, 2020



In an [Emergency Executive Order](#) issued on April 6, 2020 Minnesota Governor Tim Walz placed a new requirement upon Minnesota employers to explicitly notify separated employees that they can apply for unemployment insurance benefits.

This new requirement is intended to comply with the Federal Emergency Unemployment Insurance Stabilization and Access Act of 2020 (“EUISAA”), a piece of companion legislation to the Families First Coronavirus Response Act (“FFCRA”), which specifically addresses federal aid to state unemployment agencies.

Under the Emergency Executive Order, employers must provide separated employees with a notice containing basic information detailing how to apply for state unemployment benefits. Below are a number of questions and answers for employers to review regarding this new notice requirement:

When does this requirement go into effect?

The requirement to provide the unemployment notice is effective from April 6, 2020 through December 31, 2020.

When should this notice be provided?

This notice should be provided whenever a “separation” from employment occurs during the time period indicated above, regardless of whether the separation is COVID-19 related.

What counts as a “separation from employment”?

“Separation from employment” is undefined by Emergency Executive Order 20-29. However, it is recommended that the notice be issued whenever there has been a reduction or elimination of an employee’s hours. This would include any partial or full furlough or layoff, or any reduction in hours that would qualify the employee for unemployment insurance.

What should the notice actually say?

It is hard to know for sure because the Governor provided no specifics other than to say that separated employees needed to be notified “that they can apply for unemployment insurance benefits.”

However, the Governor’s Executive Order also says that this notice requirement is issued “pursuant to the EUISAA” and consistent with the Unemployment Insurance Program Letter 13-20 (“UIPL 13-20”). [UIPL_13-20](#) is an advisory memorandum that the U.S. Department of Labor (DOL) has promulgated to assist state unemployment offices around the country in complying with the new federal law that facilitates expanded payment of unemployment insurance benefits.

UIPL 13-20 specifically notes that separated employees must be notified of their right to file for unemployment benefits and then sets out a model notice that can be used for this purpose. Does this mean that the specific information in the model notice must be provided to employees? We are not sure – neither EUISAA nor UIPL 13-20 actually identify what information separated employees must receive. On the other hand, the DOL obviously thinks the information in the model notice should be provided, and the Governor’s Executive Order seems to incorporate this by reference. Therefore, providing this notice (or one substantially similar) is probably the best way of insuring that you are complying with the Governor’s order.

The DOL’s model notice can be found on the last page of [UIPL_13-20](#).

Do employers need to give this notice to employee who were separated from employment prior to April 6, 2020?

No. Although the Emergency Executive Order does not specify whether it applies retroactively to separations occurring prior to April 6, 2020, guidance issued by the Department of Labor regarding the EUISAA notes that the required notice is to be given “at the time of separation from employment.” Accordingly, the notice should be issued for all separations occurring after April 6, 2020, and an employer does not need to go back and send the notice to previously separated employees.

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What is the penalty for not providing this notice?

The Executive Order itself does not list any penalty to be imposed in the event that a company fails to provide the requisite notice. However, [Minnesota Statutes § 12.45](#) says that a person willfully violating an Emergency Executive Order “is guilty of a misdemeanor and upon conviction must be punished by a fine not to exceed \$1,000, or by imprisonment for not more than 90 days.”

Did the Executive Order Say Anything Else important?

Yes, it suspended the provision of the unemployment insurance statute that delays payment of benefits in any week in which the individual received or will receive vacation pay, sick pay, or personal time off (PTO) pay.

Bottom Line

Employers must begin complying with the Executive Order immediately. Fortunately, the model notice itself is not very onerous for employers to provide, and can simply be attached to or contained in any written notice to employees in conjunction with a layoff, furlough, or similar reduction in hours.