

Top Workplace Lawyers Scramble To Master Unemployment

By **Braden Campbell**

Law360 (April 10, 2020, 8:43 PM EDT) -- Many employment attorneys pride themselves on breezing through their clients' thorniest legal quandaries, but the recent federal unemployment expansion has left even the savviest among them in an unfamiliar position: without all the answers.

The Coronavirus Aid, Relief and Economic Security Act, which boosts unemployment pay for a few months and extends regular benefits through the end of the year, has given peace of mind to employers whose shrinking revenues are forcing them to lay off or furlough valued employees.

It has also led to a deluge of calls to attorneys, who have been studying up on state unemployment programs that were an afterthought for them this time last month.

"I've been doing this for 26, almost 27 years," said Bret Cohen, who chairs the labor and employment practice at Nelson Mullins Riley & Scarborough LLP. "This is the first time in, say, 15 years where I find myself not having ready answers at my fingertips."

And he's not alone. Law360 spoke to a handful of employment practice leaders at top labor and employment law firms that have mobilized their attorneys to analyze states' programs in the wake of the CARES Act's March 27 signing.

The law aims to blunt the economic effects of the coronavirus pandemic in two main ways: by providing loans or rebates to keep struggling businesses afloat and by injecting federal funds into state unemployment programs to help them pay displaced workers more money for longer. The law gives unemployment-eligible workers \$600 per week through July on top of their state benefits, which are typically a fraction of their weekly paycheck. It also lets them collect state benefits for up to 39 weeks, up from the 26-week max most state programs provide.

In normal times, employers handle most unemployment questions in-house. If an employer lays off a worker for good cause — which typically makes them ineligible for unemployment — and the worker tries to collect, the employer may call in an attorney. But when it implements a larger layoff, unemployment isn't much of a concern because it ends the employment relationship and puts the onus solely on workers to collect.

But because most employers plan to bring back their workers down the line, they "are much more interested in making sure that during this pandemic, people are taken care of," Polsinelli PC labor and employment department chair Denise Drake said.

The firm has seen an uptick in unemployment questions since the beginning of the pandemic, when bars, restaurants and other businesses struggling with low traffic started considering or implementing layoffs, Drake said.

These employers asked whether their workers were eligible for unemployment and how much they could collect, among other questions. The answers vary depending on the program, but local Polsinelli attorneys could readily answer most questions about their states, Drake said.

"Then all of a sudden, states were changing their rules to be more accommodating, we had the federal law come into effect to provide more compensation" and federal agencies have put out a stream of guidance for attorneys to digest, Drake said. "It sort of evolved over time."

Other firms are facing a similar surge in questions about unemployment, and have started tracking and compiling the details of different state programs. Cohen, the Nelson Mullins employment leader, said his firm has put together a cheat sheet summarizing states' eligibility rules, how much they pay and how they've tweaked their programs in response to the pandemic.

"States are changing as we speak," he said.

For example, some states have waived rules making workers wait a certain amount of time to collect, relaxed requirements that workers look for jobs while on unemployment or even extended eligibility to workers who quit because of exposure risks. Ordinarily, workers who choose to leave their jobs can't collect.

The sudden focus on unemployment has been a change for management-side attorneys accustomed to advising clients on pay and discrimination, said Chai Feldblum, who directs Morgan Lewis & Bockius LLP's workplace culture consulting program.

"I don't think [unemployment] was something that lawyers paid attention to," said Feldblum, who recently joined BigLaw following two stints on the U.S. Equal Employment Opportunity Commission. But the firm's attorneys are up to speed after it appointed a team to survey each state's rules, she said.

That research has been handy as employers have increasingly asked about so-called workshare programs, which let workers continue to work part-time while collecting some of their missing salary through unemployment. About 30 states have such programs, and as with other facets of unemployment, their rules vary.

"We have this massive chart" detailing the rules, Feldblum said.

Building out a new knowledge base has been a challenge for attorneys, but weeks into their cramming, they're overcoming the unemployment learning curve.

Elena Baca, the chair of Paul Hastings LLP's employment law department, said her firm convened a "workforce planning" team that leaned on local counsel to collect details on states' programs and kept a close eye on the CARES Act as it moved through Congress.

From the time many employers started shuttering in mid-March until a few days after the new law's signing, this group of about 10 attorneys was "spending considerable amounts of time" studying unemployment, she said. But that effort has slowed since the initial scramble.

"There's still activity in the space, but we would've had more people [learning about unemployment] then," Baca said. "Now we just have more people who know it."

--Editing by Kelly Duncan and Michael Watanabe.

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