



## **COVID-19: Does the CARES Act have an impact?**

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was signed into law as a response to the COVID-19 pandemic in the United State. The CARES Act is an economic relief package that expands unemployment insurance benefits and other relief for individuals and small businesses affected by the economic downturn. One of the particular provisions of the CARES Act is the Federal Pandemic Unemployment Compensation (“FPUC”) program is able to provide money to individuals who are unemployed.

Pursuant to the FPUC, any person who is eligible for another state or federal unemployment program such as Unemployment Compensation for Federal Employees (“UCFE”), Short Time Compensation (“STC”), and payments under the Self Employment Assistance (“SEA”), is able to receive an additional \$600 a week. This means that an injured worker is permitted to receive state unemployment benefits, as well as, the FPUC \$600 a week. For an injured worker who is receiving indemnity benefits, this leads to the question of whether the employer/insurer can take credit for the \$600 a week (\$2,400 a month) that the injured worker received from the FPUC unemployment benefits.

In Georgia, the Worker’s Compensation Act allows an employer to take a credit or a reduction of benefits when an injured worker is receiving unemployment benefits. In particular, O.C.G.A. § 34-9-243 states:

“(a) The payment by the employer or the employer's workers' compensation insurance carrier to the employee or to any dependent of the employee of any benefit when not due or of salary or wages or any benefit paid under Chapter 8 of this title, the "Employment Security Law," during the employee's disability shall be credited against any payments of weekly benefits due; provided, however, that such credit shall not exceed the aggregate amount of weekly benefits due under this chapter.”

(b) Except as otherwise provided in this Code section or in a collective bargaining agreement, the employer's obligation to pay or cause to be paid weekly benefits under Code Section 34-9-261 or 34-9-262 shall be reduced by the employer funded portion of payments received or being received by the employee pursuant to a disability plan, a wage continuation plan, or from a disability insurance policy established or maintained by the same employer from whom benefits under Code Section 34-9-261 or 34-9-262 are claimed if the employer did contribute directly to such a plan or policy. The employer funded portion shall be

based upon the ratio of the employer's contributions to the total contributions to such plan or policy.

Essentially, this statute allows an employer to take credit for direct payments, payment made by the employer or their insurance carrier, or any payments made under the Employment Security Law, which is an unemployment insurance tax account. However, since the CARES Act is funded through an emergency relief fund by the federal government, Georgia employers have not been able to request credit or a reduction for payments. Generally, Georgia authorizes the employer to take credit for state unemployment benefits paid to an injured employee while they are also receiving workers' compensation payment. *Georgia Forestry Com'n v. Taylor*, 241 Ga. App. 151 (1999).

At this time, the Georgia courts have yet to consider how federally funded unemployment benefits, specifically those issued under the CARES Act, affect weekly workers' compensation payments and to what extent.

It can appear to be somewhat unfair that employers and insurers may still be required to pay maximum indemnity benefits while an injured worker receives \$2,400 a month from FPUC. For example, let's say an injured worker has a maximum TTD rate of \$675, receives \$300 in state unemployment benefits, along with federal unemployment benefits of \$2,400 a month. In Georgia, the employer and insurer would only be able to take credit for the state unemployment benefits, amounting to a credit of \$300. This allows the \$2,400 to remain untouched.

Georgia courts have yet to rule on whether employers and insurers will be able to take credit from the FPUC benefits in the future. However, various law firms and agencies in other states have unequivocally opined that federal unemployment payments issued to claimants under the CARES Act do offset, or credit, their workers' compensation benefits. It wouldn't be a surprise if Georgia courts indicated that federal unemployment payments issued under the CARES Act can and will credit weekly workers' compensation payments in Georgia. In doing so, Georgia courts would be upholding the legislative intent of O.C.G.A. § 34-9-243, to prohibit an injured worker from being unjustly enriched with double payments.

Based on various arguments from other states, Georgia courts may find that injured workers are double dipping and being unjustly enriched with double payments. *Georgia Forestry Com'n* at 153. If Georgia courts decide that an employer is entitled to the \$600 a week credit, then O.C.G.A. §34-9-245 gives some guidance as to the terms and statute of limitations surrounding this request.

Pursuant to O.C.G.A. §34-9-245, the State Board of Workers' Compensation ("Board") has the authority to determine that there is an overpayment in income benefits and order repayment. In order to do so, the employer must file the proper application to receive credit within two years from the date of which an overpayment is made. This statute, which can be applied retroactively, is intended to ease employers for any offset

or reimbursements that they may be entitled to in their claim by giving them a 24-month time period to take credit.

In the meantime, while a decision has yet to be made in Georgia, employers and insurers may lay the foundation to take any qualifying credit for overpayment upon immediate notice of an injured workers' additional source(s) of income. By filing the appropriate WC-243 Board Form, the employers can ensure that they are on the right path to receiving credit for any benefits owed should that eventually be allowed.

**If you have any questions or request further information, please feel free to contact:**



Marsha Ambroise  
Ambroisem@deflaw.com  
(404)-885-6456