NATIONAL COUNCIL OF NONPROFITS
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Statement to the Senate Finance Committee on Nonprofits and Unemployment Insurance

June 9, 2020

Since shortly after enactment of the CARES Act, the broad nonprofit community has been calling on Congress to treat fairly the nonprofit employers that self-insure under state unemployment insurance systems by increasing the federal coverage to 100 percent of costs.[1] In most cases, for-profit employers (contributing employers) and exempt employers will experience no increased expenses this year despite the extraordinary impact of the COVID-19 pandemic and economic shutdown that has led to job loss for 40 million Americans. ***As currently written***, Section 2103 of the CARES Act provides that the federal government will cover only 50 percent of the costs of unemployment benefits paid to laid off and furloughed employees of self-insuring employers (also known as reimbursing employers) – nonprofits, local governments, and federally recognized tribes that have elected to pay the state after benefits are paid rather than contribute taxes on regular basis. ***And as currently interpreted*** by the U.S. Department of Labor, that provision of the CARES Act requires reimbursing nonprofits to pay 100 percent of the benefits costs upfront, immediately when billed, and get reimbursed the federal share at some unknown later date.

New survey data demonstrate the urgent need to correct these statutory and administrative challenges. Charitable nonprofits across the country are immediately facing crippling bills requiring payments to their state unemployment systems as early as this month for 100 percent of unemployment bills. In a recent survey of nonprofits that self-insure under their state unemployment systems, a sample of about 350 nonprofits from 42 states report having had to lay off or furlough nearly 20,000 employees as a result of the COVID-19 pandemic and economic shutdown. In the states that bill for unemployment benefits paid to former workers, those reimbursing nonprofits must pay more than $3 million immediately. Worse, the responding nonprofits estimate that their next bill, quarterly in most states, will require paying more than $20 million. Extended to the tens of thousands of reimbursing nonprofits throughout the United States, the current flawed policies are on the verge of diverting billions of dollars away from nonprofit missions and putting too many nonprofits out of business at a time when Americans are relying on their local nonprofits like never before.

The nonprofit community asks that Congress correct this significant and unfair treatment that threatens to the existence of charitable organizations dedicated to the public good by amending CARES Act Section 2103 to:

1. Ensure that federal support for reimbursing employers shall be used exclusively to reduce the amounts required to be paid in lieu of contributions into the State unemployment fund; and

[1] Nonprofit Community Letter, initially delivered to Congress on April 8, 2020, updated most recently on May 14 listing the support of 450 national nonprofit organizations.

2. Increase the federal unemployment insurance reimbursement for self-funded nonprofits from 50 percent to 100 percent of costs.

The Statutory Challenge

All employers and employees are facing a crisis that the unemployment system was never created to handle. Through the CARES Act, Congress took major steps to protect both employees and employers by ensuring that workers who lost their jobs due to the pandemic got the unemployment assistance they need. Most employers – those that contribute taxes to the state unemployment system – will likely experience little or no additional costs resulting from mass COVID-19-related layoffs thanks to CARES Act support; any potential costs are far down the road and well after the crisis has passed. Exempt employers will suffer no costs at all, even though their employees are currently being covered by Pandemic Unemployment Assistance. Self-insured (also known as reimbursing) employers, however, are suffering the immediate and costly application of a policy that they pay 50-percent of the costs of benefits paid to employees they were forced to lay off or furlough due to the pandemic. While others are able to conserve resources to weather the pandemic storm, reimbursing employers must make major outlays of cash, now, while the pandemic continues to rage. The better policy, as the nonprofit community has repeatedly communicated to Congress[2] and the Administration[3], is for the federal government to cover the full costs of claims of coronavirus-related job disruptions.

This urgent call for 100 percent federal coverage is supported by a bipartisan group of Senators, including several members of the Senate Finance Committee.[4] The Senators recognized the impact of the COVID-19 crisis on both their state unemployment systems and on nonprofit employers. In supporting increasing the federal coverage, they wrote, "States will be greatly challenged to distinguish among employers in an already overburdened system due to the unprecedented surge in new applicants." Further, they explained their concern that many "nonprofits will be hit with a bill for reimbursement to states at a time when they will be in the highest demand for providing services. This could actually inhibit nonprofits' ability to perform."

And the law must be corrected now, not later. This is not a hypothetical challenge or an off-in-the-distance concern. Thirteen states bill reimbursing employers on a monthly basis, meaning bills have already been sent to nonprofits in **Connecticut**, **Delaware**, **Hawai`i**, **Indiana**, **Massachusetts**, **Maine**, **New Hampshire**, **Ohio**, **Pennsylvania**, **Rhode Island**, **Tennessee**, **Utah**, and **Wisconsin**.

Nonprofits and other employers elected the reimbursing method, often upon the advice of government officials. Both Montana and Ohio have advised nonprofits that if they have little or very low turnover, reimbursing status is the better option. The state unemployment system was not built to withstand the economic impact of the pandemic. No one anticipated the enormous challenges, least of all the states themselves.

The financial threat to the ability of nonprofits to continue to support people in their communities is significant in size of dollars – hundreds of thousands of dollars for many – and scope of nonprofits,

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[2] Don't Let Senseless Unemployment Policies Sink Nonprofits—Act Now!, Tiffany Gourley Carter, Policy Counsel of the National Council of Nonprofits, The Nonprofit Quarterly, May 8, 2020.

[3] Action Needed Now By the Administration to Support the Work of Charitable Nonprofits on Which the Nation Relies, Memorandum submitted by 24 national nonprofits, April 27, 2020.

[4] Letter to Senate Leadership, May 7, 2020, signed by 30 United States Senators.

from rural to urban to statewide, and red states and blue states. Here are a few examples of comments submitted to the survey discussed in the attachment to this statement:

- An organization that provides services for children and adults with disabilities like autism, cerebral palsy and Down syndrome, and that normally serves 800 people, reports receiving a bill for $83,649 covering the first 6 weeks of benefits paid to 134 former employees. Simultaneously, its revenues have already dropped $1.1 million, more than 12 percent of its budget, before counting the costs of reimbursing for unemployment claims. – nonprofit in Lehigh Valley, **Pennsylvania**
- The head of a human services provider wrote: "The unemployment bill, when it comes will most likely bankrupt my nonprofit if greater than 50 percent relief is not obtained." – nonprofit with multiple locations in **Oregon**
- An organization reports it anticipates a bill of $100,000. The professional completing the survey expressed certainty that "This will cause a complete dissolution of the organization within 5 months." – nonprofit in **South Dakota**
- An arts organization has received initial notices from the state about some of the 145 artists with which it works, but no bill has yet been delivered. The professional completing the survey expresses a concern common to all reimbursing nonprofit employers: "I worry for the fiscal health of the organization if we are required to pay these unemployment claims. Thank you for your help." – nonprofit outside Indianapolis, **Indiana**

The Administrative Challenge

Through most of April, the nonprofit community had been eagerly awaiting interpretation of CARES Act Section 2103 because Congress expressly directed the Department of Labor to interpret that provision to provide "maximum flexibility" and relief.[5] Specifically, the community expected the Labor Department to instruct states to automatically reduce invoices by 50 percent, as dictated in the Section, and to encourage states to extend deadlines for timely payments and waive liability for various obligations.[6] Instead, on April 27, the Department of Labor issued Unemployment Insurance Program Letter No. 18-20 that inexplicably amplified the unemployment costs and burdens on reimbursing employers. The guidance instructs states to bill reimbursing employers immediately for 100 percent of the costs of unemployment benefits paid to employees laid off as a result of the COVID-19 pandemic. Equally troubling, the guidance informs states that if they show compassion – as several have, recognizing how much the public is relying on nonprofits right now – and forgive nonprofits of the burden of these crippling expenses, the federal government will shortchange the state for much of those costs. This point was included in the guidance despite express language in the CARES Act to allow states to interpret their own unemployment compensation laws "in a manner that would provide maximum flexibility" to those nonprofit employers.

The practical implications of this interpretation is devastating to many organizations. **Ohio** recently sent out "Notice of Benefits Paid" statements explaining that "Upon payment of the amount owed in lieu of contributions, Ohio will reimburse employers 50%." However, this will not come in the form of direct payment to the nonprofit that needs the cash. Rather, the statement explains, "This will be

[5] CARES Act Section 2103 states: "(a) FLEXIBILITY IN PAYING REIMBURSEMENT.—The Secretary of Labor may issue clarifying guidance to allow States to interpret their State unemployment compensation laws in a manner that would provide maximum flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest pursuant to such State laws."

[6] See Nonprofit Memorandum, page 2.

reflected in as a credit on your account once the funds have been received from the federal government." The example provided in the statement is troubling: "Employer A owes $100 for charges incurred in March. This will be reflected on the May billing statement. Once the employer pays the $100, Ohio will credit the employer's account $50. The credit will show in the future, once the federal reimbursement funds are received" by the state. As one recipient of the statement observed, "Thus, the state will be funding the shortfall of its unemployment compensation system on the backs of nonprofits."

Opposition to the DOL guidance has been immediate. The National Council of Nonprofits issued a statement explaining that the "Labor Department's draconian guidance declares that affected nonprofits must pay, they must pay now, and any state that cuts the nonprofits slack will be punished by the federal government. At a time when nonprofits are dealing with unprecedented levels of need in their communities, DOL decided to take even more money away from this vital work – and threaten more jobs in the process."[7] Members of Congress have responded with at least two bills to repudiate the punitive guidance and clarify that federal support for reimbursing employers shall be used exclusively to reduce the amounts required to be paid in lieu of contributions into the State unemployment fund.[8]

Background: Self-Insured Nonprofits and Unemployment Insurance[9]

The devastating growth in unemployment since mid-March 2020 hit charitable nonprofits both as employers (who must make difficult decisions about whether to continue to pay staff if social distancing and other public health measures make it impossible for them to perform their regular work duties) and as service providers (who must help provide for the basic needs of many Americans suddenly finding themselves or others in the family out of work). As quick background, nonprofits fall into one of three categories for the purposes of UI laws:

1. **Contributing Employers**: Some charitable nonprofits **pay state unemployment taxes** (SUTA) like other businesses. These organizations pay quarterly taxes based on their "experience rating," a formula based on the recent history of unemployment claims by their former employees.
2. **Reimbursing Employers**: Charitable nonprofits have the option of **electing to self-insure** rather than paying SUTA. Nonprofits that elect to take this option are required to reimburse their state unemployment insurance trust funds for the amount of benefits their terminated or laid off employees claim. For this reason, they are often referred to as "reimbursing employers."
3. **Exempt Employers**: Some nonprofits are **exempt from unemployment laws.** These include houses of worship, religious organizations that are affiliated with houses of worship, and religious schools. Nonprofits with fewer than four employees who work during 20 weeks of the year usually are also exempt. In normal times, employees of SUTA-exempt charitable

[7] DOL Issues Breathtakingly Cruel Guidance Inflicting Billions in Immediate Costs onto Charitable Organizations Struggling to Serve Their Communities, National Council of Nonprofits statement, April 28, 2020.

[8] H.R. 6800, Health and Economic Recovery Omnibus Emergency Solution Act (HEROES Act Section 50005), and H.R. 7066, Reopening America by Supporting Workers and Businesses Act of 2020 (Section 4).

[9] This section of the report is excerpted from Self-Insured Nonprofits and Unemployment Insurance, David Heinen, Vice President for Public Policy and Advocacy, North Carolina Center *for* Nonprofits, posted on National Council of Nonprofits blog, March 23, 2020.

organizations are not eligible to receive unemployment insurance benefits if they lose their jobs.[10]

The CARES Act took several steps to relieve employees and employers of the burdens that the pandemic is inflicting on unemployment. Among other things, it (a) provides for temporary expansion or extension of UI benefits; (b) offers faster access to UI payments for laid-off workers; and (c) prevents unemployment tax rates from spiking for businesses and nonprofits that pay SUTA. These solutions work well for most employers, and certainly for the exempt employers and their employees that have never been covered under federal and state unemployment laws.

Many states are taking steps to protect businesses and nonprofits that pay SUTA from taking a financial hit from Coronavirus-related layoffs by enacting laws that prevent UI claims related to COVID-19 from affecting their experience ratings. However, these laws do not hold harmless nonprofits that self-insure for UI benefits, since freezing state unemployment tax rates does nothing to relieve these organizations of the need to reimburse their states immediately for the full amount of the UI benefits that their employees receive when they are out of work due to COVID-19. To prevent further economic harm to these already struggling groups, the nonprofit community is also calling on state legislators (or Governors taking executive action on UI) to temporarily waive requirements that self-insured nonprofits repay state UI trust funds for claims arising for Coronavirus-related reasons. Congress can help encourage states to provide this protection for nonprofits by offering federal funding to state unemployment trust funds to offset the potential cost of holding self-insuring organizations harmless for UI claims arising due to COVID-19.

The networks of the National Council of Nonprofits stand ready to answer any questions and assist members of the Senate Finance Committee in improving the unemployment insurance law as it relates to self-insuring nonprofit organizations.

Respectfully submitted,

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Attachment: **Unemployment Insurance Survey of Nonprofit Employers: Preliminary Results**

[10] The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) at Section 2102 Pandemic Unemployment Assistance (PUA) provides automatic and complete coverage and unemployment benefits for individuals whose employers are exempt from unemployment laws without recourse to those employers.

Unemployment Insurance Survey of Nonprofit Employers

Preliminary Results

June 8, 2020

In late May through early June 2020, the National Council of Nonprofits asked charitable nonprofits that self-insure under their states' unemployment system to put numbers and faces to the public policy issue of funding reimbursing employers fairly. More than 350 nonprofits from 42 states participated in the survey, answering questions about their current invoices from the state unemployment office, how many of their employees have been laid off or furloughed, anticipated bills (if not yet received), and additional background information.

- Job Loss: The more than 350 organizations reported nearly 20,000 (19,958) jobs lost or put on hold because of the pandemic.
- Due and Payable Now: Survey participants acknowledged bills currently pending in the amount of more than $3 million ($3,064,950). This amount reflects bills that have been delivered, typically by the 13 states that send invoices on a monthly basis. In some cases, the amounts due reflect benefits paid in the first quarter, only the last two weeks of which reflect layoffs and furloughs caused by shutdowns resulting from COVID-19.
- Exploding Costs: The second quarter will be more devastating to the finances of the nonprofits participating in the survey. Based on claim notices and other calculations, the survey participants estimate bills from their state unemployment offices in excess of $20 million ($20,335,350).[1]

Extended to the tens of thousands of reimbursing nonprofits throughout the United States, the current flawed policies are on the verge of diverting billions of dollars away from nonprofit missions and putting too many nonprofits out of business at a time when Americans are relying on their local nonprofits like never before.

In addition to providing data on unemployment claims, respondents were encouraged to share additional details about their efforts to retain staff, maintain operations, and attempt to advance their missions. Their responses, and context about the state unemployment insurance systems, are provided below on a state-by-state basis.[2]

Colorado

The Colorado Department of Labor and Employment sends bills to reimbursing or self-insured employers on a quarterly basis two weeks after the quarter ends. One large nonprofit employer in the Denver area has received notices that will total more than $750,000, a figure that is expected to grow based on additional layoffs before the state sends out bills at the end of July. A smaller

[1] Eight nonprofits reported what they estimate will be their total employment costs by the end of the year. They foresee bills totaling $10 million, ranging from $40,000 to $5.3 million.

[2] Nonprofits responding to the survey were asked if we could identify them when sharing their stories. Those granting permission are included here by organization name and bold text. Others are included by general reference to regional and mission identifiers to protect their privacy.

organization on the Western Slope reports the same thing, that the current liability of $20,000 for four furloughed employees is expected to grow by the time the bill is delivered.

A separate challenge occurs when employees leave a nonprofit for a higher paying job, only to be laid off by that new employer, and "credited" by the state back to the nonprofit as the employer liable for unemployment benefits. One nonprofit with this challenge is worried about a bill covering 510 employees. Because the state unemployment office is so backed up due to the avalanche of first-time claims, the nonprofit that focuses on serving people with intellectual and developmental disabilities expects a significant increase for the July quarterly statement. Another nonprofit, a youth serving organization in Northern Colorado, is also waiting for the bill from the state, having "completed many unemployment claims reports but none of them have been processed to date."

Delaware

Delaware's Division of Unemployment Insurance normally issues bills to reimbursing employers on a monthly basis, sending them one week after the month ends. Currently, the state is not sending bills for 90 days. While it is a relief that payments are not due and payable, the state reportedly is not letting nonprofits know who is collecting unemployment benefits, thereby preventing organizations from planning for anticipated costs.

Idaho

The Idaho Department of Labor normally bills reimbursing nonprofit employers on a quarterly basis for the benefits paid to their furloughed or laid off employees. A major statewide nonprofit employer was forced to furlough 90 employees due to COVID-19 and is facing a bill for more than $50,000 that is due and payable at the end of July. Instead of refunding half that money, the state reportedly will provide only a *credit* of 50 percent of that amount to the nonprofit's account for future invoices – and then only as it relates to COVID-19 related unemployment expenses.

Indiana

The Indiana Department of Workforce Development normally bills self-insured or reimbursing employers on a monthly basis two weeks after the month ends.

The YMCA of DeKalb County furloughed nearly 20 full-time staff for three weeks, but hasn't received a bill for an anticipated $10,000 charge. The lack of notice from the state is creating uncertainty. A nonprofit in northeast Indiana reports a bill of $19,000 for the benefits paid to 72 former employees. Similarly, the Boys & Girls Club of Evansville is waiting on a invoice for the benefits paid to two laid-off employees. Still another nonprofit official expects the organization will owe $15,000 to $20,000 for two months of claims. The individual's frustration is obvious: "We haven't received the bill from the state and are worried about how high it could be. We have some money built up in our unemployment trust but are worried that it won't be enough."

Not all Indiana nonprofits are in doubt about how much the state is demanding. Developmental Services, Inc., a nonprofit in the Columbus area providing services for adults and children with mental, physical and emotional disabilities, has received a bill for $17,000 due at the end of the month for benefits paid to 46 employees. YMCA of Greater Fort Wayne was forced to shut down operations on March 17 and has laid off or furloughed more than 150 employees. The bill from the state is for $58,000 and that is just for April.

An Evansville human services provider, forced to lay off more than 100 employees, has received a bill for more than $50,000 for the first month. A larger nonprofit in the southern part of the state is expected to come up with $301,000 for the first month of benefits paid to over 1,000 employees who were furloughed or laid off at the beginning of the pandemic shutdown.

An arts organization outside Indianapolis has received initial notices from the state about some of the 145 artists with which it works, but no bill has yet been delivered. The professional completing the survey expresses a concern common to all reimbursing nonprofit employers: “I worry for the fiscal health of the organization if we are required to pay these unemployment claims. Thank you for your help.”

Iowa

Iowa Workforce Development normally bills reimbursing employers on a quarterly basis for unemployment benefits paid to their former employees, typically sending invoices three weeks after the end of the quarter. The Department’s website explains that charitable nonprofits “may request a reimbursable status to reimburse the Iowa UI Trust Fund for any UI benefits paid rather than paying a contribution into the Fund (this status remains in effect a minimum of 2 years).”

Goodwill Industries Inc. Serving Eastern Nebraska & Southwest Iowa has been informed that the organization’s former employees are eligible for benefits but that the organization will not be charged. The Arc of Southeast Iowa is awaiting a bill for $5,000.

Kansas

The Kansas Department of Labor normally sends bills to reimbursing employers on a quarterly basis that cover the amount of claims paid to laid off and furloughed employees. The KDOL website explains the process for employers using the “reimbursing method”: “the employer reports total wages paid each employee each quarter, but pays no tax at the time. Instead, this option requires the employer to reimburse the fund 100 percent for any benefits paid to their former employees. If there were no benefits paid, nothing will be due. Also, this option does not have a noncharge provision for benefits, as do the other two options. ("Noncharge" is a common benefits term meaning that the wages paid by the employer are used in the calculation of benefits for the claimant but the employer's account will not be charged for the benefits.)”

In Kansas, nonprofits and other employers that elect the reimbursing method are locked in to that method for four years, and then can only change to the contributing method during a 30-day opt-in period each year. The Department website further informs that all reimbursing employers, including nonprofits, are required to obtain a surety bond or post a surety deposit with the KDOL or to purchase and deliver to an escrow agent a certificate of deposit in the amount of 5.4 percent of the organization's taxable wages (or estimated amount of taxable wages) paid during the one–year period immediately preceding the date of election.

Louisiana

The Louisiana Workforce Commission (LWC) normally bills reimbursable employers on a quarterly basis, sent four weeks after the close of the quarter. The Commission website explains that nonprofits that have more than four employees and are not subject to the Federal Unemployment Tax Act (FUTA) may elect to be either a taxable (contributing) employer or a reimbursable employer. Reimbursable employers “must submit quarterly contribution and wage reports, but are not experienced rated. These employers reimburse LWC on a dollar-for-dollar basis for UI benefits paid to their former employees. Reimbursable employers receive a quarterly Benefit Charge Statement of charges due." Once reimbursable employer status is elected, the organization cannot change to taxable status for two years, and conversion to taxable status can only be done during a 30-day open period each year. The LWC instructions make clear that reimbursable employers must pay the full amount of a "Benefit Charge Statement," and protest mistakes on the bill after the fact.

Maryland

The Maryland Division of Unemployment Insurance normally bills reimbursing employers on a quarterly basis, sending the "Statement of Reimbursable Benefits Paid" three weeks after the quarter ends. The Division explains on its website that nonprofits may "elect to finance their UI costs by reimbursing the state dollar for dollar for benefits charged against their accounts, in lieu of paying quarterly UI taxes." A "reimbursable" employer is required to post a bond of a specific dollar amount. Once electing the reimbursement method, "Maryland law only permits an employer to change [its] option after two years on written notice to the Assistant Secretary not less than 30 days prior to January 1 of the year the new options becomes effective (if approved)."

Survey respondents expressed concern about the costs of paying claims once billed. One nonprofit noted that it has received notices that employees have been approved for benefits, but that were not included on the March 31, 2020 quarterly invoice. A charitable organization in Western Maryland hasn't received a quarterly bill since stay-at-home orders forced layoffs, but anticipates a bill of $140,000 due to the pandemic.

Concern over payments for unemployment benefits is compounded when employees such as social workers work for several human services providers. One organization in the middle of the state reports that while it has not furloughed anyone, other nonprofit employers for whom staff also work have done so. The nonprofit explains that since unemployment benefits are based on the percentage of salary paid in previous time periods, the fully staffed nonprofit will owe unemployment costs for employees who are still working. Having not laid off employees, the nonprofit has no way of anticipating what its costs will be.

Michigan

The Michigan Unemployment Insurance Agency (UIA) in the Department of Labor and Economic Opportunity explains on its website, "A reimbursing employer is a liable employer that pays to the UIA, dollar-for-dollar, the amount the UIA paid in benefits in that calendar quarter (including the state portion of Extended Benefits) to its former workers who receive unemployment benefits based on wages paid to the worker by the reimbursing employer." It explains further that most reimbursing employers receive a bill from the UIA after each calendar quarter in which unemployment benefits were paid to the employer's former employees. Once reimbursing status is granted, it must be retained by the organization for at least two calendar years. Afterwards, the employer can select contributing status by notifying UIA by December 2 for the following calendar year.

The Agency requires that a nonprofit that chooses to be reimbursing and that pays $100,000 or more in wages per year, must file a surety bond, irrevocable letter of credit, or other security approved by the UIA before the organization can be allowed to become a reimbursing employer. The security must be in an amount equal to 4.0% of the employer's annual wage payments. The security may also be required of a reimbursing employer that becomes delinquent in paying its reimbursing payments for two or more calendar quarters, even if the charges are under protest.

The **YMCA of Metropolitan Detroit** has received a bill for $38,000 just for the last two weeks of March when the nonprofit was forced to close and furlough 96 percent of its workforce. The nonprofit is justifiably concerned that the next bills could seek payments of hundreds of thousands of dollars that could otherwise be dedicated to its mission of youth development, healthy living, and social responsibility in the Metro Detroit region.

Nonprofit Network in Jackson is facing furloughs of seven staff, a decision that would cost the organization dedicated to strengthening nonprofit governance and management more than $40,000. A Paycheck Protection Program loan has helped keep staff employed so far. The large unemployment costs for this small employer are factoring into if and when staff jobs are eliminated.

Terri Falkenbereg of the **Greater Marinette-Menominee YMCA** could have been speaking for all reimbursing nonprofits in the state and across the country when offering this observation: “We have very low usage of our unemployment insurance in normal times. We've kept a balance in our account of about $18,000. Our last quarter invoice was $444. We have no idea what this COVID related layoff will do to our account.” The system works well in normal times, but these aren’t normal times.

Montana

The Montana Unemployment Division in the Department of Labor & Industry normally bills reimbursing employers on a quarterly basis, sending invoices out two weeks after the quarter ends. Nonprofits that have chosen to be a reimbursing employer are required to keep records and file quarterly wage reports with the UI Division listing total wages paid to each employee and must pay an Administrative Fund Tax equal to 0.08% on total wages paid each quarter. Then, reimbursing employers must also pay into the UI Trust Fund an amount equal to the benefits paid to former employees. While nonprofit employers have the option of electing to be a contributing employer after two years, the Division counsels, “**Generally, if your organization has stable employment with very low turnover, reimbursable status may be to your advantage.**”

Montana policymakers were some of the first in the nation to recognize that the coronavirus pandemic is the antithesis of normalcy. The Division issued an emergency rule on March 17, at the beginning of the pandemic, that held harmless nonprofits and other self-insured or reimbursing employers. The rule states that “there is an immediate peril to the public health, safety, and welfare” and “widespread temporary layoffs by employers will cause serious economic harm to employees who are not paid during periods of layoffs caused by the COVID-19 pandemic.” The emergency rule is only effective during a declared emergency or disaster related to the COVID-19 pandemic and relieves the reimbursing employers of all charges “arising from a COVID-19 layoff and paid pursuant to” the emergency rules. The Labor Commissioner later clarified that the rule applied to all nonprofits in the state and offered assurances of full protections by the State for any unemployment claims, including employers that do not pay into the state unemployment insurance pool. The approach taken in Montana is being used as a model for other state executive orders and emergency rules to hold harmless nonprofits and reimbursing employers.

Nebraska

The Nebraska Department of Unemployment Insurance Benefits normally bills reimbursing employers on a quarterly basis. Confusion, however, reigns in Nebraska about when reimbursing employers will be billed for COVID-19-related layoffs or how much will be charged. One participant in the survey was informed by the state that a bill for $800 through March was sent in error and should not be owed. A professional at an Omaha-based nonprofit expecting a bill for $150,000 reported that the Governor “put forth a mandate that we do not have to pay through July 31.” Another nonprofit official was informed by the state that the person's nonprofit will not be billed until January 2021. Then again, **Goodwill Industries, Inc. of Omaha** has been informed that the organization's former employees are eligible for benefits but that the organization will not be charged.

Richard Lowery of the **Autism Center of Nebraska, Inc.** stated the challenge forthrightly, "I don't know how much we will get billed for UI benefits for the 2nd quarter of 2020. That is my biggest uncertainty/fear moving forward right now. Invoices for the quarter normally come out 30 days after the quarter end, but right now the State is also so backlogged with UI claims the first quarter invoice wasn't sent out till 60+ days after quarter end. So it is most likely we won't know the extent of what we owe till the end of August."

Nevada

The Unemployment Insurance Office of the Nevada Department of Employment, Training, and Rehabilitation bills reimbursing employers on a quarterly basis, sending invoices out one month after the end of the quarter. The Unemployment Insurance Office website explains that Nevada law grants nonprofits "an option to pay quarterly taxes, or they may elect to be self-insured under the 'reimbursement' method. If the 'reimbursement method' is chosen, the employer must file quarterly wage reports, but does not pay quarterly taxes for unemployment, nor for the Career Enhancement Program (CEP)." The FAQs go on to explain, "When choosing the 'reimbursement' method, instead of paying quarterly taxes, an employer must reimburse the state on a quarterly basis for all unemployment benefits charged to his account." Reimbursing employers cannot change back to the taxing method for at least two calendar years after making the selection, and must notify the division no later than December 1, to be effective for the following calendar year.

The above text describes a system that works well in normal times. These are not normal times. The **Las Vegas Philharmonic** reported in the nonprofit survey that it is facing a bill of $15,000. But that's not all: "We also are subject to unemployment claims made in states other than Nevada, as approximately 40% of our musicians do not live in the state of Nevada, but are W-2 employees."

Another nonprofit in Southern Nevada has received a bill for $5,300 related to benefits paid to 30 employees. That bill, however, is for the first quarter of 2020, when only the last two weeks involved shutdowns due to COVID-19. Since the beginning of the second quarter in April, the nonprofit has responded to over 200 unemployment claims, up from 20 to 25 claims in a typical year.

New Hampshire

New Hampshire Employment Security bills reimbursing employers on a monthly basis, sending invoices out one week after the end of the month. New Hampshire law provides that "reimbursing employers shall make payments of reimbursement in lieu of contributions by the last day of the month following the month in which demand for payment is mailed."

New Jersey

The New Jersey Division of Unemployment Insurance in the Department of Labor and Workforce Development bills reimbursing employers on a quarterly basis, sending invoices out one month after the end of the quarter.

The costs that New Jersey nonprofits are anticipating are staggering. Six youth-serving organizations operating in different parts of the state report likely unemployment costs of $1.5 million just for the second quarter of 2020. A small cultural organization in Central New Jersey has received a bill for

$4,700 for four employees. A Camden County nonprofit is only facing a bill in the hundreds of dollars so far, but that has caused the CEO to observe, “This could potentially bankrupt our organization.”

The **YMCA of Montclair** expects a bill for the second quarter for $275,000 based on the furlough of 300 employees. The nonprofit is deeply concerned that total liability could be over $1 million, an amount that would have to be paid upfront in full due to the U.S. Department of Labor interpretation. The leadership recognizes that half of that amount may be paid back at some time in the future. A better idea, according to CEO Buddy Evans, is this: “It would be an absolute game changer for us if the State of NJ would cover the other 50% of our liability as other States have done.”

Finally, a nonprofit CEO had a direct plea to all policymakers that is worth sharing here: “Please keep in mind. We received [a Paycheck Protection Program loan] and did the right thing and brought all of our employees back. Many PPP recipients did not do this right away and are now getting rewarded for "holding the funds. I will now have to do a second mass furlough of 94% of my employees. It is insidious.”

North Carolina

North Carolina is the only state that sends out bills to reimbursing employers on an annual basis. Payments are usually due to the Division of Employment Security in November.

In May, the North Carolina enacted the COVID-19 Response Act (S.704) that holds harmless all employers for unemployment benefits paid to employees laid off or furloughed as a result of the coronavirus emergency. The law specifically states, “Benefits paid to an individual under this section are not charged to the account of any base period employer of the individual.” This provision codifies language from Executive Order No. 118, which the Governor issued in March. Legal experts in North Carolina interpret the law to provide that self-insured, or reimbursing, nonprofits in the state will not be liable for the cost of UI claims by employees that they have had to lay off or furlough due to COVID-19.

The new law is welcome news to thousands of North Carolina nonprofits that would otherwise be incurring significant new costs stemming from their unexpected, unavoidable, and unwanted decision to lay off or furlough staff due to COVID-19. As just one example, an adult day care facility in the middle of the state was forced to lay off more than 40 employees and faces an unemployment cost of at least $20,000.

Ohio

The Ohio Office of Unemployment Insurance Operations bills reimbursing employers on a monthly basis, sending invoices for benefits paid to laid off and furloughed employees two weeks after the end of the month. The Employer’s Guide to Ohio Unemployment Insurance instructs that charitable nonprofits “have the option of becoming reimbursing employers and liable for payments in lieu of contributions or ‘reimburse’ the state for benefit charges on a dollar-for-dollar basis.” In making the decision on whether to be a contributing or reimbursing employer, the Guide advises that “**if the organization has little turnover of employees and is not likely to incur much in the way of benefit costs, then the reimbursing status would seem more desirable**.” Upon election of reimbursing status, organizations are required to file bonding with the Department of Job and Family Services equal to three percent of annual wages.

Ohio nonprofits were eager to share their experiences in the unemployment survey. Starting with good news, the response of the **Boys & Girls Club of Massillon** is instructive because of the factor of good timing. The youth-serving organization has not been forced to lay off staff largely because their annual fundraiser occurred a week before the state issued the shutdown and stay-at-home orders. It also is fortunate to have had the majority of philanthropic support for programming locked in prior to the beginning of the year. Most other nonprofits in the state and around the country have not been so lucky.

Nonprofits from Ohio consistently reported that the backlog of claims filed with the Office is so great that the bills they have received barely tell the true story. A recurring theme is that many former employees are still struggling to file claims for unemployment so they can begin to receive benefits. A nonprofit professional responding to the survey reported that her organization has received bills for the benefits paid to 50 employees in the amount of $45,000 to $50,000 for March and April 2020. She warns, however, that the state is "VERY behind on unemployment benefits so this is just a START." Noting that the next bill is due June 8, the amount owed is hard to predict "[s]ince data is so delayed in getting through Ohio to an employee and then to the employer we have yet to see any true impact to costs."

Goodwill Industries of Greater Cleveland & East Central Ohio, Inc. is having a similar experience. The bill from the state only covers 324 of the nearly 650 employees the organization has been forced to lay off, meaning that the pending bill for $233,000 is only half of what the nonprofit can expect to pay for just April. A central Ohio human services provider reports a bill of $20,311 for the claims of 66 former employees, and this is just for March 2020, "a small portion of what our full obligation will be."

The **Sidney-Shelby County YMCA** has received a notice that it owes nearly $14,000 for benefits paid to 23 former employees, but that charges will be later adjusted to reflect the Governor's Executive Order 2020-03D. That order provides that "any benefit paid on these unemployment claims shall not be charged to the account of the employer who otherwise would have been charged but instead shall be charged to the mutualized account, ***except reimbursing employers***…" (Emphasis added.)

Another organization operating between Cleveland and Columbus reported a pending bill for $8,500 for claims filed by 40 employees. A major nonprofit employer in and around the Cincinnati area (including parts of Kentucky) has been forced to layoff 1,500 employees and anticipates bills of between $200,000 and $300,000 per month. They have started to hire back, which is good news, but the delays in processing of claims and billing mean that high liabilities will continue to grow throughout the summer.

The U.S. Department of Labor guidance on repayments to reimbursing employers is creating special challenges in Ohio. The March "Notice of Benefits Paid" statement from the Office explains that "Upon payment of the amount owed in lieu of contributions, Ohio will reimburse employers 50%." However, this will not come in the form of direct payment to the nonprofit that needs the cash. Rather, the statement explains, "This will be reflected in as a credit on your account once the funds have been received from the federal government." The example provided in the statement is troubling: "Employer A owes $100 for charges incurred in March. This will be reflected on the May billing statement. Once the employer pays the $100, Ohio will credit the employer's account $50. The credit will show in the future, once the federal reimbursement funds are received" by the state. As one recipient of the statement observed, "Thus, the state will be funding the shortfall of its unemployment compensation system on the backs of nonprofits."

One nonprofit executive summed up the frustration of many when he wrote: "Sounds like legislators don't care enough about this particular feature of the crisis for nonprofits."

Oklahoma

The Oklahoma Employment Security Commission is responsible for sending bills on a quarterly basis to seek reimbursement of the cost of benefits paid to former employees of nonprofit employers that have opted to self-insure under the state unemployment system.

It appears that the state has set up a discriminatory system of waivers that favors for-profit employers at the expense of reimbursing nonprofit employers. In April, the Employment Security Commission issued Employer FAQs about Unemployment Insurance and COVID-19 announcing that "all benefit wage charges to *experience rated employers* for allowed claims of unemployment that are directly related to the COVID-19 pandemic shall be waived." (emphasis added.) The guidance goes on to make clear, "Reimbursing charges to reimbursing employers *shall not be waived and must be paid timely*." (emphasis added.) The result is that the state has made the decision to hold harmless for-profit employers from adverse consequences for laying off staff as a result of COVID-19. Reimbursing nonprofits, on the other hand, are required to pay 100 percent of claims upfront, pursuant to the U.S. Department of Labor guidance of April 27. These nonprofit employers must then wait for months until receiving payment back from the state for half of the amounts paid.

Oregon

The Oregon Employment Department bills reimbursing employers on a quarterly basis, sending out invoices two weeks after the end of the quarter. The Department explains on its website that charitable nonprofits have the option of paying unemployment insurance taxes or reimbursing the State Unemployment Trust Fund on a pro-rated basis for benefits paid. "This includes 100% of regular benefits and all additional benefits; and one-half of extended unemployment insurance benefits paid to former employees." The guidance warns, "**Please note that there is no provision to grant relief of charges for benefits attributable to reimbursing employers**."

Reimbursing employers are also required to provide a Surety Bond, or a deposit (made by check payable to the Oregon Employment Department) of two percent (2%) of their annual or anticipated annual payroll. The organization remains under the option selected for a minimum of two full calendar years. To change an option, a written request must be filed by January 31 of the year in which the option is to be effective.

Metropolitan Family Service reports that it is difficult to predict what the next quarterly bill will be because employees they were forced to lay off are seasonal and may have a primary job somewhere else. A nonprofit in the Salem area estimates a bill of up to $20,000 for seven furloughed employees, but is concerned that next invoice will include former employees that left for other jobs and are now applying for unemployment benefits. The CEO commented, "This is our second year being self-insured and it's really scary because we don't know how much our bills will be due to the number of claims that have been submitted and [the organization] being an employer listed as part of the wage record."

The network of YMCAs across the state and the country normally provide tremendous job opportunities as they serve young people and families in their local communities. The pandemic and economic fallout have been devastating. The **YMCA of Columbia-Willamette Association Services** is looking at a second quarter bill at a total cost of $1,240,000 related to benefits paid to 456 employees. The **Family YMCA of Marion & Polk Counties** estimates that the state will charge it $14,000 to cover costs of benefits paid to 15 former employees. Finance Director Karen Umeda phrased it well when she wrote, "When we elected to be self-funded we could not anticipate a situation like this." Similarly, Steve Meng of the **YMCA of Klamath Falls**, commented, "We have always been able to handle the Unemployment Insurance however when we are shut down it's impossible to manage." The organization anticipates the next quarterly bill from the state will be in the range of $30,000 to $50,000.

A large youth serving nonprofit in the western part of the state hopes to reopen soon, but still expects unemployment reimbursement costs of about $400,000. An educational enrichment program in the Salem area anticipates a bill in July of $75,000. A substance rehabilitation nonprofit reports that despite securing a Paycheck Protection Program loan that has helped retain staff, it still anticipates paying roughly $28,000 per month for benefits paid to laid-off employees. A nonprofit serving children and families reports that the benefits paid to its 20 former employees will likely cost $10,000 during the next billing cycle. On the eastern side of the state, a nonprofit serving over 3,500 youths and adults is facing a bill for more than $35,000, an estimated based on the number of employees that were laid-off due to the pandemic and economic shutdown orders.

The CEO of a nonprofit operating south of Portland summed up the challenges that all smaller charitable organizations are confronting: "The repayment while also trying to rebuild our program and payroll will be an impediment to our organization's capacity." More pointedly, the head of a human services nonprofit with multiple locations across the state wrote: "The unemployment bill, when it comes will most likely bankrupt my nonprofit if greater than 50 percent relief is not obtained."

Pennsylvania

The Pennsylvania Office of Unemployment Compensation bills reimbursing nonprofits on a monthly basis. The website of the Office explains that ordinarily nonprofit employers exempt under section 501(c)(3) of the Internal Revenue Code that elect the reimbursable method are required to reimburse the Fund for all regular benefits paid that are attributable to service with the employer. The Commonwealth has granted no-interest delays of 120 days in the hopes that Congress will clarify and alleviate the burdens on nonprofits and others. While this deferment is helpful, the confusion and burdens for nonprofits in the Commonwealth are immense.

Survey respondents shared numerous challenges with the processing of claims and bills, and the failure of systems. For example, The **Harrisburg Symphony Association** and many organizations are signed up to receive electronic notifications from the unemployment office, but beginning with the shutdown the state started mailing notices. This delayed everything due to reliance on the Postal Service and the fact that most offices were closed and there was no staff available to process the mail. Regarding the confusion, one nonprofit executive working in the western part of the state wrote, "We are unsure of all the claims filed during Covid-19 crisis," continuing, "We certainly know that paying even 50 percent of the anticipated claims will put us in a financial crisis."

Pennsylvania has a unique system that in normal times would appear to be a benefit but is turning out to be cruel irony to well-run nonprofits. Each fall, reimbursing employers are invited to pay a "solvency fee" of 0.18 percent of total wages paid that serves as an insurance policy against major spikes in benefits claims. As many of the responders to the National Council of Nonprofits' UI survey pointed out, the solvency fee was not deemed a reasonable expense because of their very low claims rate and the strength of the state and national economies. For example, Chris King, CEO of the **Richard G. Snyder YMCA** in Kittanning PA explained that the Commonwealth "has a solvency fee that we did not pay last Fall due to the fact that we rarely furlough staff and [have had] very few unemployment claims over the years.

Via of the Lehigh Valley, has received a bill for $83,649 covering the first 6 weeks of benefits paid to 134 former employees. The organization that provides services for children and adults with disabilities like autism, cerebral palsy and Down syndrome, typically pays unemployment claims ranging from $175 to at most $700 per month; their highest annual average would be $8,400. Michele Grasso wrote, "COVID-19 changed this completely." The organization normally serves 800 people through community participation supports, in-home services, and behavioral support services; they now are able to assist only 114 individuals each month. Seventy-one percent of staff have been affected by reduced hours or furloughs. The organization's revenues have already dropped $1.1 million, more than 12 percent of its budget, before counting the costs of reimbursing for unemployment claims. But while facing declining giving from individuals and businesses, they retain nonprofit optimism: "We are working hard to ensure that we are viable and able to provide our critical services once everything reopens, but this is a very difficult financial time for us and so many other nonprofits."

ArtsQuest in Bethlehem has paid less than $30,000 per year on average over the past 10 years. The organization's most recent bill for 53 employees is $33,000 and expected to increase. Since former employees over the past two years may be allocated to ArtsQuest, the organization could be facing liability of nearly $87,000 for benefits paid to 500 employees. The arts and cultural nonprofit normally presents more than 4,000 events per year, two-fifth of which are free to the community. The Governor's order on March 16 closing business operations brought their revenue to a halt. Like most mission-driven nonprofits, the organization has pivoted to virtual events to keep the community engaged, but the lack of revenue threatens the sustainability of operations.

The **Greater Valley YMCA** has received a bill for "only" $138,000 related to the benefits paid to 212 of the 450 furloughed or laid off employees. A cultural organization nearby has laid off approximately 110 employees but has not yet seen a bill, which could be related to bureaucratic snafus discussed above. To the west in the River Valley, another nonprofit that laid off 250 employees is looking at an initial bill of $85,000. Another nonprofit in the Lehigh Valley reported that it hasn't yet been forced to lay off staff, but is worried as a nonprofit reimbursing employer that its ability to adjust budget and operations to changing community needs will be hamstrung by unemployment costs. The organization's Human Resources Director wrote, "We request the same 100% relief being provided to for-profit employers for all unemployment costs as a result of the pandemic."

The self-defeating results of current federal and state law are evident to all, as articulated by one Pennsylvania nonprofit professional: "If we receive that many claims it ultimately may force us to lay off more staff, creating yet even more unemployment, compounding the problem for both the organization and the state."

South Carolina

The South Carolina Department of Employment and Workforce send bills on a quarterly basis to reimbursing nonprofit employers to cover the costs of unemployment benefits paid to furloughed or laid off employees. SC DEW explains on its website that a "reimbursable employer is required to pay back the UI fund on a dollar-for-dollar basis for all benefits paid to former employees." South Carolina law gives reimbursable employers a choice of payment methods. Under one option, "at the end of each calendar quarter, the department will bill reimbursable employers for the amount due." In the alternative, the "organization may pay two percent of its quarterly taxable payroll to the department within 30 days after the end of the each quarter." The Department then applies those funds to any outstanding balance owed.

The **YMCA of Greenville** is awaiting an expected bill of $175,000. The **Hilton Head Symphony Orchestra** likewise is a reimbursing employer and is also waiting for SC DEW to send out bills.

South Dakota

The South Dakota Office of Reemployment Assistance (formerly Unemployment Insurance) within the Department of Labor and Regulations bills reimbursing employers on a quarterly basis, normally sending bills out one week after the quarter ends. According to the Office, South Dakota law allows certain employers to elect the "Cost Reimbursement" alternative as a means of financing benefit payment costs. The Office website explains, "Nonprofit organizations as defined by Section 501(c)(3) of the Internal Revenue Code, hospitals and institutions of higher education operated by political subdivisions may be eligible to elect to repay benefit costs, instead of making the regular contributions required of other covered employers. This election must be made for a period of at least two years. The election can be initiated or terminated by filing written notice with the Reemployment Assistance Division no later than 30 days before the beginning of a calendar year."

Reimbursing employers may elect to reimburse the actual cost of benefit payments or pay equal amounts each quarter, with adjustments made at the end of each calendar year. Eligible employers electing the cost-reimbursement method may be required to provide a surety bond. However, in most cases, the "payments in advance" option will satisfy this requirement.

A significant nonprofit employer in the western part of the state reports that it anticipates a bill of $100,000. The professional completing the survey expressed certainty that "This will cause a complete dissolution of the organization within 5 months."

Texas

The Texas Workforce Commission bills reimbursing employers on a quarterly basis two weeks after the quarter ends. Texas law provides that a "reimbursing employer shall pay to the Commission an amount equal to the regular benefits … paid during that quarter that are attributable to service in the employ of the employer." Significant penalties apply when reimbursing employers fail to pay a reimbursement on the date due. Texas Statutes Section 205.016.

There is considerable confusion as to how Texas will treat unemployment bills to reimbursing employers. Survey respondents report that information published by the state so far indicates that it will not be reducing the burdens of ("cutting any slack for") self-insured employers or providing special consideration for nonprofits. Yet, **Goodwill Industries of Central Texas** reports that payment has been deferred until next year. **YMCA of Greater San Antonio** estimates that its bill from the state will be $1.3 million for the 1,700 employees on furlough, but they report that their bill has been deferred until December.

The **YMCA of El Paso** will owe $85,000 for the benefits paid to 220 laid off employees. A large nonprofit employer in Dallas expects unemployment costs of $1.4 million and is working to get the state to defer billing until 2021.

Virginia

The Virginia Employment Commission bills reimbursing employers for benefits paid to former employees on a quarterly basis, sending invoices one week after the quarter closes. As in other states, Virginia law provides that charitable nonprofits may elect to pay the Commission for the regular benefits that is attributable to service in the employ of such nonprofit organization. In addition, the Commission imposes on reimbursing nonprofits a charge of either one-tenth of a percent of the nonprofit's total payroll or such other percentage as the Commission shall determine.

The Arc of Harrisonburg and Rockingham has not yet seen a spike in unemployment costs due to processing delays by the Commission. The nonprofit expects that to change when the second quarter bill arrives, anticipating a bill for more than $20,000. Fortunately, The Arc received a Paycheck Protection Program loan and was able to rehire staff. But the unemployment bill persists.

The cost of unemployment bills can be crippling in the Commonwealth. **YMCA of Central Virginia** has a bill pending for $149,000 for the benefits paid to 97 employees it was forced to furlough. Another bill for $75,000 is expected. A nonprofit near Roanoke anticipates that the next quarterly bill will be for about $65,000. A 125-year-old Virginia charitable organization expects a bill for $20,000.

Washington

The Washington State Employment Security Department bills reimbursing nonprofits on a quarterly basis, sending invoices three weeks after the end of the quarter. The Department's website explains that "nonprofit organizations with 501(c)(3) status, as well as government agencies and public schools (reimbursable employers), have the option of being assigned an experience-based tax rate or paying the full cost of all unemployment benefits drawn by their former employees."

The **Y of Greater Seattle** has been forced to furlough more than 900 employees and expects a quarterly bill of $1.5 million. The Y recognizes that it should be eligible for reimbursement of 50 percent of costs under CARES Act Section 2103, but it still must remit the full amount and wait to be paid back. Because of COVID-19, Washington State waived a rule that workers must have worked at least 680 hours in the previous year to be eligible for unemployment benefits. "For employers like the Y that hire lots of [part-time] staff, it increased our exposure significantly overnight."

A human services provider is waiting on a bill for an estimated $500,000 due for unemployment benefits paid for 516 former employees. A cultural organization that has not yet received a bill from the Department anticipates a maximum unemployment liability of $1.1 million due to layoffs forced by the pandemic and economic shutdown.

Wyoming

The Wyoming Department of Workforce Services bills reimbursing employers on a quarterly basis, sending invoices for benefits paid to former employees four weeks after the close of the quarter.