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Self-Insured Nonprofits and Unemployment Insurance

By: David Heinen

Over the past week, the United States has seen an enormous spike in unemployment due to layoffs in the business and nonprofit sectors stemming from the economic ramifications of the COVID-19 crisis. This sudden growth in unemployment is hitting 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). Without thoughtful policy solutions that address nonprofit-specific provisions in federal and state unemployment insurance (UI) laws, many charitable organizations and nonprofit employees could stand to lose out on new programs designed to provide protections for workers laid off due to Coronavirus without causing additional economic hardship for their employers.

As quick background, nonprofits fall into one of three categories for the purposes of UI laws:

1. 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. Charitable nonprofits have the option of **electing of self-insuring** 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.
3. 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 are also exempt. Employees of SUTA exempt charitable organizations are not eligible to receive unemployment insurance benefits if they lose their jobs.

As many businesses and nonprofits across the country are being forced to make difficult decisions about whether to continue paying some or all of their employees, Congress and state governments are taking steps to: (a) provide for temporary expansion or extension of UI benefits; (b) offer faster access to UI payments for laid off workers; and (c) prevent unemployment tax rates from spiking for businesses and nonprofits that pay SUTA. While these solutions are essential steps to prevent further hardships for many individuals, businesses, and nonprofits, they raise two important questions that could lead to significant problems for some nonprofits and their employees:

- **Who is covered?** Employees of nonprofits that pay SUTA or self-insure are generally eligible for UI benefits if they lose their jobs because of the COVID-19 pandemic. However, employees of most faith-based nonprofits and small charitable organizations (fewer than four employees) generally can't access UI benefits if they are laid off. There are two policy solutions that could provide coverage for these workers.
 1. If the President declares a major disaster (not to be confused with the national emergency, which has already been declared), workers who aren't covered by federal or state UI laws – including self-employed workers and employees of SUTA exempt nonprofits – can receive UI benefits under the [Disaster Unemployment Assistance \(DUA\)](#) program. Because President Trump has recently declared a major disaster in New York, California, and Washington, employees of small nonprofits and religious organizations who have lost their jobs due to the COVID-19 crisis in these states should now be able to receive UI benefits through DUA.

2. Even without a federal major disaster declaration, states could opt to extend temporary UI benefits to laid off employees of SUTA exempt nonprofits (and to self-employed workers who can't find work. While this may be a feasible option in states like Michigan, Oregon, and North Carolina that have large UI Trust Fund balances, this option may be too costly for other states unless Congress appropriates federal dollars to pay the states for this additional UI coverage.

- **Who pays?** 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 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, state legislators (or Governors taking executive action on UI) must 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.