

# STATES ARE OPTING OUT OF FEDERAL UNEMPLOYMENT BENEFITS TO INDUCE EMPLOYEES BACK TO WORK – YOUR 10-STEP PLAN TO FILL OUT YOUR WORKFORCE

Insights  
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The increase in vaccinations and decrease in the COVID-19 infection rate has led to a rapid reopening of the U.S. economy. But as the country starts to fully reopen and businesses ramp back up, the need to recall or rehire employees — some of whom have been collecting enhanced unemployment benefits — has created a new crisis point: labor shortages. A growing number of states are seeking to combat this crisis by moving to end federally funded pandemic unemployment benefits, including the extension of the number of weeks of available benefits and the extra \$300 per week in enhanced unemployment benefits received by most unemployed workers. What do you need to know about this development, and what can you do to try to turn the tide at your own place of business? Here is a 10-step plan to help you attract and retain former employees and new applicants.

## States Begin to Opt Out

The pandemic-related programs providing enhanced unemployment benefits in each state are authorized and governed by an agreement between the state and the Department of Labor. States choosing to opt out of these benefit programs have seized upon the language that permits the state to opt out of these programs upon 30 days' notice. As of the date of publication, nearly a dozen states have taken steps to end the federal pandemic unemployment assistance programs, including Alabama, Arkansas, Iowa, Mississippi, Missouri, Montana, North

## Related People



**Benjamin Dudek**

Partner

803.255.0000



**Robert M. Robenalt**

Partner

614.453.7611

Dakota, South Carolina, South Dakota, Tennessee, and Utah.

## Service Focus

### Counseling and Advice

- In support of his decision to opt out, Arkansas Governor Asa Hutchinson concluded that the federal unemployment measures “have accomplished their purpose.” Governor Hutchinson observed that “continuing these programs until the planned expiration date of September 4, 2021, is not actually necessary and actually interferes with the ability of employers to fill over 40,000 job vacancies in Arkansas.”
- Similarly, Iowa Governor Kim Reynolds supported her decision to end the state’s participation in the federal programs stating that since “our businesses and schools have reopened, these enhanced unemployment payments are discouraging people from returning to work.” She observed that in Iowa “vaccines are available to anyone who wants one, and we have more jobs available than unemployed people.”
- South Carolina Governor Henry McMaster supported the decision to end the federal mandate in his state by calling the enhanced unemployment benefits a “dangerous federal entitlement.” South Carolina officials pointed out that of all the workers who received unemployment benefits the week of its decision, over half made more money on unemployment than when they were working. He observed that South Carolina needed to act as the hospitality, tourism, manufacturing, and healthcare sectors in the state face “an unprecedented labor shortage.”
- Montana Governor Greg Gianforte announced that the state will opt out of the federal unemployment pandemic to address the labor shortage. He also has offered an incentive to entice workers to come off the unemployment rolls: a \$1,200 bonus for workers currently receiving unemployment who choose to return to work and complete four weeks of paid employment.

### **Will Other States Join Them?**

How many states will join this trend is uncertain, and there is pushback to those that are planning to opt out. The Biden administration has suggested that the state opt-outs are not needed as it does not see evidence that the enhanced unemployment compensation benefits are a significant

factor in the labor shortage. Others point to a recent Yale University study finding that the enhanced unemployment benefits do not dissuade people from seeking work. In fact, there has been a rise in women who have made the choice to leave the workforce.

But the Biden administration has also signaled a recognition of the problem, with President Biden stating that the White House will “make it clear that anyone collecting unemployment who is offered a suitable job must take the job or lose their unemployment benefits.” This guidance reflects that reality that almost all state unemployment agencies currently require or request that the employer notify the agency when an employee is called back to work after receiving unemployment. In addition, almost all states have created dedicated webpages where employers can report employees who have been recalled back to work but are continuing to draw unemployment benefits.

Rather than opting out of the pandemic unemployment programs, some states are taking other steps to control the pandemic unemployment benefits. Many states have already taken steps to reinstate unemployment requirements previously waived during the pandemic, including requiring the unemployed to document a job search each week to maintain their benefits.

## **10 Tips to Attract Applicants**

Regardless of whether your state is one that plans to opt out of the pandemic unemployment compensation programs, you cannot rely on former employees returning to their jobs. Many large employers recognize that the pandemic has changed how post-pandemic workers view the job market. This is particularly true for unskilled workers. In many ways, the worker shortage is reminiscent of the problems that employers faced just prior to the pandemic when the labor force at near full capacity. As the post-pandemic recovery has fueled a similar surge, you must become creative to attracting former employees and new applicants back to the workforce. Further, while the push to limit unemployment benefits may result in a reinvigorated job market in your state, you will need to take steps to attract or entice workers to return to the workforce. The following are 10 tips to attract workers back into the labor market:

- 1. Increased Pay.** Many employers have started to offer increased hourly wages or salaries. Some are also

offering immediate pay.

2. **Bonuses for New Applicants.** In the current job market, many employers cannot even attract prospective workers to apply for a job. To address these reluctant workers, some employers have provided a modest bonus (such as \$50 payment or gift card) just for completing an application.
3. **Hiring Bonus.** A new hire bonus can also be a way to attract employees. One employer in the fast food industry has provided signing bonuses (up to \$500) for successful applicants who stay for more than four months in the job.
4. **Referral Bonus.** You may also offer bonuses to current employees who refer individuals who are hired and complete a certain period of employment, such as six months.
5. **Assist in Paying College Tuition or Loans.** Some employers offer college tuition programs, while others are offering to pay off student loan debt.
6. **Promote Your Safety Protocols.** Your plan should include assurances that your company has taken steps to provide a safe work environment. Let these employees know how your company is taking steps to provide a safe working environment (for example, written safety protocols for employees, adoption of a vaccinations program for employees, etc.).
7. **Offer Paid Leave.** You could entice employees by promoting morale-boosting policies such as paid time off and parental leave.
8. **Offer Enhanced Benefits.** You could entice workers back to the workforce by offering enhanced benefits packages, such as generous medical or 401(k) policies.
9. **Offer Alternative Work Arrangements, Including Telework.** During the pandemic, employees were offered alternative work arrangements and telework. Some employers are adopting post-pandemic policies that include alternative work arrangements as a way to keep and attract employees.
10. **Provide Flexible Work Schedules.** Employees may be enticed to work if you offer flexible work schedules. Some

employers have started to offer work-share opportunities where employees can split time on a job.

## **Conclusion**

Keep in mind that these tips implicate many employment laws and you should consult with your legal counsel to ensure compliance. If you have any questions, please contact your Fisher Phillips attorney.

We will also continue to monitor this rapidly developing situation and provide any updates. In the meantime, make sure you are subscribed to [Fisher Phillips' Insight system](#) to gather the most up-to-date information.