

MINNESOTA EMPLOYERS NEED TO TAKE 5 STEPS TO COMPLY WITH NEW FRONTLINE WORKER BONUS PAY LAW

Insights
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Minnesota, a hotbed of COVID-19 at various times over the past two years, [has a new law that recognizes the state's frontline workers](#) by offering them the chance to receive part of a \$500 million bonus pool – and employers need to take specific steps to ensure they fulfill their obligations to this new “hero pay” law. Minnesota Governor Tim Walz signed the bonus-pay legislative bill, also informally referred to the “Frontline Worker Pay Law,” on April 29, and the period of time that workers will be able to apply for their share of these funds is expected to open on June 8, but certainly by mid-June. What are the five steps that you, as a Minnesota employer, should take to ensure you comply with this new law if it applies to you? [Ed. Note: this [Insight was updated on June 7](#) with new information about the application process.]

Quick Background: What Does the New Law Do?

Before diving into your specific action items, let’s make sure you understand what this new “hero pay” law does. It gives eligible frontline workers the opportunity to apply for \$500 million dollars of state-funded bonus payments. These funds are intended to thank them for showing up to work in-person and providing critical services during the height of the state’s COVID-19 emergency in conditions that may have exceeded those contemplated by their ordinary employment. Their work ensured Minnesota was “able to continue functioning during the pandemic,” the law states, and it enabled the continued flow of essential services and supplies throughout Minnesota.

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The bonus concept behind this new law was the subject of extended political debate and compromise. But it is now a new statute, and Minnesota employers need to take notice and act promptly, starting before the bonus application process starts. Although the law is funded by state monies, private employers still have an important role to play and need to take five steps to comply.

1. Determine Whether Your Business is Covered

First and foremost, only “frontline” businesses need to act. What are these frontline sectors? The law identifies 15 job sectors, specifically:

- long-term care and home care;
- health care;
- emergency responders;
- public health, social service, and regulatory service;
- courts and corrections;
- child care;
- schools (including charter schools, state schools, and higher education);
- food service (including production, processing, preparation, sale, and delivery);
- retail (including sales, fulfillment, distribution, and delivery);
- temporary shelters and hotels;
- building services (including maintenance, janitorial, and security);
- public transit;
- ground and air transportation services;
- manufacturing; and
- vocational rehabilitation.

2. Pay Little Mind to Whether Specific Workers are Eligible

Whether a worker is an eligible frontline worker is not something you should try to determine. Rather, if you are in one of the applicable industry sectors, you should proceed with your notice obligations and let your employees decide whether they are eligible to apply.

However, you may be interested in learning more about eligibility. In addition to working in one or more of the 15 identified job sectors and applying in a timely fashion, there are certain criteria that need to be satisfied for your workers to be eligible:

- the worker must have been “employed for at least 120 hours in Minnesota” between March 15, 2020 and June 30, 2021;
- due to the nature of their job, they must not have been able to telework;
- they must have “worked in close proximity to individuals outside their household;”
- “for at least one of the taxable years beginning after December 31, 2019, and before January 1, 2022,” any worker “employed in an occupation with direct COVID-19 patient care responsibilities” must have an AGI (adjusted gross income) that is less than \$350,000 if married and filing jointly or \$175,000 for any other tax filer;
- for all other workers, meaning those without direct COVID-19 patient care responsibilities, their AGI must be less than \$185,000 if married and filing jointly or \$85,000 for any other tax filer; and
- such workers must not have received unemployment insurance benefits “for more than 20 weeks on a cumulative basis” during the period from March 15, 2020 through June 26, 2021.

3. Satisfy Your Notice Obligations

Even though the bonus pool is state funded with no dollars coming directly from employers of frontline workers, the Frontline Worker Pay Law makes clear that, “[n]o later than 15 days after the [bonus] application period is opened” – which, again, is expected to be no June 8, but no later than mid-June – “employers in a frontline sector must provide notice” that advises “all

current workers who may be eligible” to receive the bonus pay “of the assistance potentially available to them and how to apply” for the bonus pay benefits.

The employer must give notice in a form approved by the Commissioner of Minnesota’s Department of Labor and Industry (DOLI) and must give such notice “using the same means the employer uses to provide other work-related notices to employees.”

The notice “must be at least as conspicuous as: (1) posting a copy of the notice at each work site where workers work and where the notice may be readily observed and reviewed by all workers working at the site; or (2) providing a paper or electronic copy of the notice to all workers.” The DOLI indicates that the required Commissioner’s notice form will be written in English, Hmong, Somali, and Spanish and will be posted soon on www.frontlinepay.mn.gov.

The new law’s stated need to apply to receive this bonus differs from some other COVID-19 financial assistance laws or executive orders where payments flowed automatically to the eligible worker. The DOLI, which is creating the application form for the employees to use, anticipates the application process will open on June 8 and remain open through July 22, 2022, but notes that these dates are subject to change. See www.frontlinepay.mn.gov. Regardless of when the application process opens, at that time, employers will have no more than 15 days to comply with their notification duties. Employers seeking to stay abreast of the status of the application process can [sign up for updates from the government here](#).

4. Take Steps to Prove You Provided Notice

In addition to providing notice using the same means as other employee notices, the prudent employer will provide notice in a fashion where you can prove notice was provided – even if that means providing the notice multiple ways. Although the law does not require this additional step, it may help you down the road. This new law does not address what happens if an employer fails to timely comply with the statutorily required notice obligations, but one can anticipate that affected employees may look to the employer to obtain the bonus

amount if they learned about it too late to apply with the State of Minnesota.

5. Take Work Location into Account, Not Residency

When providing notice, you should provide notice based on the work that was performed in Minnesota, not based on residency of the worker in Minnesota. That's because an eligible worker only needed to have worked in Minnesota for the required amount of time to be eligible, and there is no residency requirement.

What's Next?

Once the application process commences, it will be open for 45 days. State officials believe that about 667,000 workers will split the \$500-million-dollar bonus pool, resulting in each receiving approximately \$750. However, if fewer workers apply for the bonus, the pool will be split among eligible workers who have applied and they could receive up to \$1,500 per person. Employees who apply and are denied the bonus can appeal "within 15 days" of the denial notice, and the appeal decision will be final.

Now is the time for Minnesota frontline companies to pay attention and, when the application process opens, timely provide the required employee notice for this "hero pay." We will continue to monitor developments in this area and provide updates as appropriate – especially when the notice provisions come online and your obligations kick in. Make sure you are [subscribed to Fisher Phillips' Insight System](#) to get the most up-to-date information. For more information, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in [our Minneapolis office](#).