

## **Unemployment Law in Kansas— FAQs**

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### **What laws apply to cities in Kansas when it comes to unemployment?**

Cities, as a political subdivision of the state and governmental entity, qualify as "employers" and are therefore governed by the Kansas Employment Security Law — Article 7 of Chapter 44 of the Kansas Statutes Annotated.

The Kansas Department of Labor ["KDOL"] is the office responsible for handling unemployment insurance benefits and claims in Kansas.

### **Who qualifies for unemployment benefits?**

There are several requirements that must be met in order to qualify for unemployment insurance benefits.

These requirements, put simply, are that the individual filing the claim for unemployment benefits be unemployed through no fault of their own. Being unemployed for no fault of one's own includes being laid off, losing a job in a reduction-in-force or "downsizing," and being fired so long as the firing was not a result of job-related misconduct. An individual must also be able to work, available to work, and actively seeking work to be eligible. Anyone who files an unemployment claim must also serve a one-week waiting period, non-payable waiting period before being eligible for benefits.

Finally, in order to qualify, an individual must have earned a certain minimum amount in wages prior to becoming unemployed. More specifically, the law requires that the unemployed individual has received wages from insured employment in two or more quarters of the base period and has total base period wages equaling at least 30 times their calculated weekly benefit amount.

### **What is a "base period"?**

A "base period" is a one-year period the state looks at to determine eligibility. The base period is the earliest four of the five completed calendar quarters that occurred before an individual filed his or her unemployment claim. For example, the "base period" for a claim filed in March of 2020 would be January 1, 2019 through December 31, 2019.

### **What is a "weekly benefit amount"?**

The "weekly benefit amount" is the amount of money an unemployed individual is entitled to if they are eligible to receive unemployment. Currently, an individual's weekly benefit rate is 4.25% of his or her wages in the highest paid quarter of the base period. The maximum weekly benefit amount for 2020 is \$488.

So, in order to be eligible to receive unemployment, an individual must have, prior to applying for unemployment, been paid by the city in at least two quarters and received at least 30 times more than the amount they would be entitled to weekly if they were to receive unemployment.

**Are employees who have been laid off as a result of COVID-19 eligible for unemployment benefits?**

Yes. In light of recent events, KDOL has interpreted the unemployment benefit requirements more liberally for COVID-19-related unemployment.

The Department has stated that individuals who have become unemployed for COVID-19-related reasons will be considered “able, available, and looking for work,” so long as that individual has taken all necessary steps to return to work for his or her regular employer and not withdrawn from the labor market. Individuals who have taken all necessary steps to return to work for their regular employer after becoming unemployed for COVID-19 related reasons do not need to look for work. KDOL has also waived the waiting week requirement for employees who have been laid off for COVID-19-related reasons.

Governor Laura Kelly affirmed these changes to the eligibility requirements in an Executive Order issued March 31, 2020, EO 20-17.

So as long as an employee meets the previously mentioned requirements for unemployment benefits, he or she may be eligible for benefits as a result of a COVID-19-related layoff.

**What about recent hires?**

One question that has recently come up, especially in light of COVID-19 and the rapid changes in employment the virus has caused, is whether employees who were hired and subsequently laid off in a fairly short time span, can collect unemployment. For example, imagine an employee was hired on a Thursday and scheduled to work the next week. That following Monday, however, that same employee was laid off. Is that employee eligible for unemployment?

No. Because the employee has clearly neither received wages in at least two quarters nor received 30 times their weekly benefit amount, that employee does not qualify for unemployment benefits.

**Can employees receive unemployment benefits if they are only being laid off temporarily?**

Yes. Unemployment insurance benefits are available to individuals who are unemployed through no fault of their own until they either find another job or are recalled by their employer. Individuals are considered “unemployed” in any week that he or she does not work and any week that wages are not payable to them. By definition, individuals are “unemployed” if they are not working and not being paid.

**Can employees receive unemployment benefits if they are working reduced hours?**

Potentially. An employee whose wages or hours have been reduced may be “unemployed” for purposes of the law. In order to qualify as such, that employee must be working less than full time and have gross weekly wages that are less than their weekly benefit amount.

**Can employees receive unemployment benefits while also receiving sick or vacation leave?**

Likely, no. Paid leave is considered “wages.” So, if these “wages” (in the form of paid leave) for a week are more than an individual’s weekly benefit amount, that individual is not eligible for unemployment benefits.

**What benefits are qualified employees entitled to/eligible for?**

As mentioned above, qualified individuals are entitled to a weekly benefit amount. Currently, this amount is 4.25% of the wages an individual earned in the highest paid quarter of the base period. There is a maximum and minimum weekly benefit amount, which is set by the Secretary of Labor. Currently, the maximum is \$488, and the minimum is \$122. The amount varies case-to-case and individuals are informed of what their weekly benefit amount would be when they file a claim.

The time period for which a qualified individual will receive these benefits varies depending on the unemployment rate at the time the claim is filed. Currently, qualified individuals can receive a maximum of 26 weeks of benefits. This state legislature increased the maximum number of weeks available in mid-March as a result of the pandemic. The 26-week maximum will remain in place through April of 2021.

Unemployment benefits are paid on a weekly basis and, after an initial claim has been filed and it has been determined that an individual qualifies for unemployment benefits, he or she must continue to file weekly benefit requests for every week they are unemployed.

**Can employees receive unemployment benefits while also receiving continued health insurance benefits from their former employer?**

According to information obtained from the Kansas Department of Labor, current practice is that continued health insurance benefits from former employers will not have an effect on the availability of unemployment benefits for Kansas workers. The KDOL will not make a deduction to a person's weekly unemployment benefit unless the employer pays the employee directly via cash or direct deposit to cover the costs of health insurance.

**How are deductions in unemployment benefits calculated due to certain continued benefits received (i.e. holiday or vacation pay)?**

In order to receive unemployment benefits, a qualifying individual must file a claim for benefits weekly. Any income, including benefits that qualify as wages as well as reduced earnings, must be reported each week. Certain types of benefits may reduce an individual's unemployment benefit amount each week. These deductions will occur automatically when an individual files and reports their earnings.

The way the KDOL calculates these deductions is fairly simple. If an individual's deductions are due to earnings, vacation pay, or holiday pay, the individual is entitled to receive 25 percent of the weekly benefit amount before any deduction occurs to the benefits because of the earnings so long as the earnings, vacation, or holiday pay for that week do not exceed the weekly benefit amount. This means any individual may earn up to 25 percent of the weekly benefit amount (WBA) without a reduction to his or her unemployment benefits.

The KDOL has provided the following example to assist in understanding how these deductions can affect an individual's available weekly benefits:

**Example 1: Wages LESS THAN 25 percent of your WBA**

\$400 (WBA) × 25 percent = \$100

Your Wages = \$90 for the week

\$90 is LESS than \$100, therefore, no deduction is made.

Your unemployment payment will be issued in the amount of \$400.

**Example 2: Wages MORE THAN 25 percent of your WBA**

$\$400 \text{ (WBA)} \times 25 \text{ percent} = \$100$

Your Wages = \$120 for the week

\$120 is MORE than \$100, therefore,

$\$120 - \$100 = \$20$

$\$400 \text{ (WBA)} - \$20 = \$380$

Your unemployment payment will be issued in the amount of \$380."

Payments received for severance and pensions are unique and will generally be deducted dollar for dollar from the weekly benefit amount. As previously noted, an individual will be informed of what his or her weekly benefit amount is upon filing a claim with the KDOL.

**Are there any additional unemployment benefits available to employees in light of the COVID-19 Pandemic?**

Yes. President Donald Trump recently passed the Coronavirus Aid, Relief, and Economic Security Act ["CARES Act"]. The CARES Act provides eligible employees an additional \$600 each week on top of what they are eligible for at the state level. The Act also provides individuals who remain unemployed after exhausting their state unemployment benefits an additional 13 weeks of the \$600/week payments at the federal level. This means that eligible individuals who remain unemployed for a longer period of time can receive up to 39 weeks of benefits instead of 26 which is the current maximum in Kansas.

To qualify as an eligible individual under the CARES Act, a person must be unemployed for one of the many possible COVID-19-related reasons laid out in the Act. These reasons include that the individual or someone in the individual's household has been diagnosed with COVID-19, the individual's place of employment is closed as a result of COVID-19, the individual is unable to reach their place of employment because of a self-imposed or health care provider-imposed quarantine related to COVID-19, the individual is the primary caregiver for a child or person in the household that is unable to attend school as a result of COVID-19, and others.

The increased benefits under the CARES Act are currently set to expire on July 31, 2020.

**Do cities have any obligations when they fire or lay off an employee?**

Yes. Cities, like any employer under the law, must inform any terminated or laid off employee of the availability of unemployment insurance benefits at the time of termination.

**What obligations do cities have to report layoffs to KDOL?**

There is no state or federal law that requires cities to report their layoffs.

Employers do have the option, however, to assist their employees in filing a claim for unemployment benefits during a layoff by submitting a layoff spreadsheet. The layoff spreadsheet process essentially allows employers to submit an application for unemployment benefits for employees that are temporarily, permanently, or seasonally laid off. This can be done online at <https://www.kansasemployer.gov/uitax/Tax/LayoffSelect.aspx>.

Employees are still responsible for filing their weekly claims to KDOL when a layoff spreadsheet is submitted, but the process does provide several potential benefits to employers. For example, by

submitting a layoff spreadsheet, employers have a more streamlined listing-view of employees who have filed for benefits as well as the benefit of communicating directly with the Employer Relations Administrator as opposed to waiting for the opportunity to speak when they receive notice.

### **What obligations do cities have to report employees they re-hire after a layoff?**

Cities are required to report re-hires or re-called employees to the KDOL within 20 days of the employee being hired. Re-hired or re-called employees are employees who return to work after being laid off, furloughed, separated, granted a leave without pay, or terminated from employment for 60 or more days. The KDOL has created a guide on how to report re-hires at the following link:

<https://www.dol.ks.gov/employers/layoff-reporting/reporting-basics>.

### **What role do cities play after an employee files a claim for unemployment?**

When an individual files a claim for unemployment benefits, the Kansas Department of Labor must first make a determination as to whether that individual is eligible to receive unemployment benefits.

All employers that employed an individual during the one-year base period are notified that a claim has been filed. This will come in the form of an Employer Notice Form or a Reimbursing Employer Notice Form. Either way, the notice will include the employee's name, social security number, and potential benefit that will be charged to the employer's account. The form must be signed and returned to the unemployment insurance office address printed on the form within 10 days of the mailing date.

Employers have the opportunity to provide KDOL any information related to the employee's separation from the employer, so long as the employee was separated for reasons other than lack of work. This information is used by KDOL to determine the employee's benefit eligibility.

If an employer wishes to protest an unemployment claim, they must do so by completing the back side of the form they receive and providing specific, factual reasons for the employee's separation from the employee. An employer can do this by producing various documentation such as company policies or other facts. This must also be done and returned within 10 days.

### **Helpful links**

- KDOL COVID-19 Response Resources: <https://www.dol.ks.gov/covid19response>
- KDOL website to apply for unemployment benefits: <https://www.getkansasbenefits.gov/BenefitsStartMenu.aspx>
- KDOL Video Tutorials for Unemployment Claims: <https://www.dol.ks.gov/tutorials>
- KDOL Layoff Spreadsheet for Employers Information: <https://www.kansasemployer.gov/uitax/Tax/LayoffSelect.aspx>
- KDOL Guide to Kansas Employment Security Law: <https://www.dol.ks.gov/employers/guide-to-ks-employment-security-law/claims-and-benefits>
- KDOL UL and Covid-19 FAQ: [https://www.dol.ks.gov/docs/default-source/default-document-library/ui-covid19-faqs.pdf?sfvrsn=3b4c881f\\_12](https://www.dol.ks.gov/docs/default-source/default-document-library/ui-covid19-faqs.pdf?sfvrsn=3b4c881f_12)