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Labor & Employment Alert

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New York provides bonuses to certain essential healthcare workers

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We highlight what employers need to know in order to apply for and receive bonus payments for their essential front-line healthcare and mental hygiene workers through New York State's Healthcare Worker Bonus ("HWB") program.



What's the Impact?

- / Certain employees and independent contractors may be eligible for up to \$3,000 in retention bonuses
- / Qualified employers are required to apply for the bonus funds

The COVID-19 Pandemic has placed unparalleled burdens on essential front-line healthcare and mental hygiene workers across the country. To retain essential workers as well as attract new employees into the professions during a time of significant strain, New York has allocated \$1.2 billion as part of its Fiscal Year 2023 budget for the payment of bonuses to certain front-line healthcare and mental hygiene workers.

Within certain deadlines (as outlined below), employers who meet the law’s eligibility criteria are required to apply for the funds and distribute them to their qualifying employees or face penalties for failing to do so.

Qualified employers

Eligible employers under the law (“qualified employers”) include certain providers and facilities licensed under the state Public Health Law or Mental Hygiene Law, pharmacies registered under the Education Law, and school-based clinics, as well as certain programs funded by the Office of Mental Health, Office for the Aging, Office of Addiction Services and Supports, and the Office for People with Developmental Disabilities.¹ Qualified employers must have at least one employee and must bill for services under the Medicaid state plan or a home or community-based services waiver, or bill for services pursuant to a provider agreement to bill for Medicaid services provided or arranged through a managed care organization or a managed long-term care plan.

Importantly, in accordance with the statutory provisions for the program, unless a provider or facility is subject to a certificate of need process as a condition of state licensure or approval, the provider will not be considered a qualified employer unless at least 20% of their patients or persons served are eligible for Medicaid services.

Eligible workers

Every individual who meets the following criteria appears to be eligible and thus entitled to a bonus. As further explained below, individuals must work for a qualified employer in an eligible position, have earnings below a maximum salary amount, and work for the qualified employer during certain designated time periods.

Eligible workers include full-time, part-time, and temporary employees, as well as independent contractors. Individuals who are employed by or contracted through a staffing agency or other intermediary entity are not eligible for the bonus. To be eligible for the bonus, workers must not receive more than \$125,000 in annualized base salary (i.e., \$62,500 during any vesting period), excluding bonuses or overtime pay. Each worker must verify their salary through an Employee Attestation Form, which must be completed and returned to the employer.

Eligible workers also must work in an Eligible Worker Title. The DOH has identified a specific list of titles,² which break down into three categories:

¹ In addition, a qualified employer also includes certain educational institutions, including an institution of higher education, a public or non-public school, a charter school, an approved preschool program for students with disabilities, a school district, or boards of cooperative educational services, where such program or entity employs at least one employee. For these education sector employers, the HWB Program Portal will open on October 1, 2022.

² See the [DOH's Eligible Worker Title list](#).

Front-line Direct Care Health and Mental Hygiene Worker

These individuals provide or directly support the provision of health or care services to patients in certain settings and work under an Eligible Worker Title. These individuals typically have direct contact with patients and, for example, include paramedics, pharmacists, and nurse practitioners.

All Other Health Care Support Workers

These individuals support the provision of healthcare services to patients in front-line settings and work under a title similar to an Eligible Worker Title. While these individuals typically do not have direct contact with patients, their work supports the provision of care to patients. For example, these positions include custodians, admitting clerks, and unit receptionists.

Titles Determined by the Commissioner

These individuals include medical residents and medical fellows.

It is important to note, however, that titles don't determine eligibility. Eligible Worker Titles mirror titles from the Bureau of Labor Statistics' job listings, which include a brief description of typical job responsibilities for a particular title. An employer might use a title that exactly mirrors an Eligible Worker Title (e.g., pharmacist); however, questions may arise for certain titles that appear to reflect an Eligible Worker Title but in substance do not qualify, or, alternatively, for certain unique titles that do not appear to reflect an Eligible Worker Title but essentially function in the same manner. For example, an employee may be categorized as a "Pharmacy Intern"; however, an intern who focuses on the accounting operations of a Pharmacy would likely be ineligible for the HWB (unlike a Pharmacy Intern who provides medical care to patients). Accordingly, employers are advised to work with counsel to review job titles and descriptions to confirm eligibility for employees.

As this is a retention bonus, workers must have been continuously employed by a qualified employer in an Eligible Worker Title for the duration of at least one "vesting period" in order to be eligible for the bonus. Workers can receive a bonus for up to two vesting periods, subject to a maximum bonus total of \$3,000. Employers must apply for funds for each vesting period within the "window" provided by law. The DOH has offered the following illustrative chart:

VESTING PERIOD	VESTING PERIOD START DATE	VESTING PERIOD END DATE	EMPLOYER SUBMISSION START DATE	EMPLOYER SUBMISSION CLOSE DATE
One	October 1, 2021	March 31, 2022	August 3, 2022	September 2, 2022
Two	April 1, 2022	September 30, 2022	October 1, 2022	October 31, 2022
Three	October 1, 2022	March 31, 2023	April 1, 2023	May 1, 2023
Four	April 1, 2023	September 30, 2023	October 1, 2023	October 31, 2023
Five	October 1, 2023	March 31, 2024	April 1, 2024	May 1, 2024

Otherwise-eligible workers who have been suspended or excluded from the Medicaid program during the vesting period are not eligible for a bonus for that period.

Bonus amount³

The bonus amounts vary depending on how many hours a week an individual provided services during the vesting period:

- / If an eligible individual works at least 20 hours but less than 30 hours per week, the individual is eligible for a bonus of \$500.
- / If an eligible worker works at least 30 hours but less than 35 hours per week, the individual is eligible for a bonus of \$1,000.
- / If an eligible worker works at least 35 hours per week, the individual is eligible for a bonus of \$1,500.

For example, an eligible worker who worked 35 or more hours per week for two vesting periods can receive a maximum of \$3,000 in HWB funds. An eligible worker who worked at least 20 hours but less than 30 hours per week in one vesting period, and worked at least 30 hours but less than 35 hours per week in a second vesting period would receive a maximum of \$1,500.

The Frequently Asked Questions (“FAQ”) issued by the DOH suggest that employers may determine the eligibility of workers whose hours fluctuate each week by calculating the weekly average over the course of a vesting period. The FAQ also suggests using the same method to calculate the hours of a worker who is out on disability during the vesting period but who still is considered an active employee. The DOH suggests that leave time, including but not limited to sick, vacation, or time used under the Family and Medical Leave Act, should be “credited towards and included in the calculation of the average number of hours worked per week over the course of the vesting period.” In other words, it appears the DOH will give the individual “credit” for the hours they would have worked had they not been out on disability or some other leave.

As noted above, the statute does not distinguish between unrepresented employees and those covered by a collective bargaining agreement. Accordingly, unionized employees who otherwise meet the eligibility criteria also are eligible for the HWB. Employers should be prepared to communicate with unions regarding the HWB.

Claims submission process

Employers must submit claims for payments for each vesting period before the deadline identified by the DOH. The employer must submit its own Attestation Form, as well as an Attestation Form completed by each eligible employee. Both forms are available on the DOH’s

³ Whether the bonuses are subject to payroll taxes appears to be an open question. The DOH instructs employers to inquire with the New York State Department of Taxation and Finance for tax implications. Accordingly, employers should work with counsel to determine whether the bonuses may be subject to payroll taxes in New York, as well as in other states.

website.⁴ Employers need only submit claims for individuals they directly employ or engage, which includes full-time, part-time, and temporary employees, as well as independent contractors. Employers need not submit claims for individuals who are employed by or contracted through a staffing agency or other intermediary entity.

The claims submission process for employers will differ based on whether the employer is a Medicaid or non-Medicaid provider. Medicaid employers must be currently enrolled and payable through eMedNY and have an active Medicaid Management Information System ID (“MMIS ID”) to submit claims through the HWB Program Portal. Non-Medicaid employers should submit claims on the HWB Program Portal using their Statewide Financial System ID (“SFS ID”). Employers have a choice of using a submission template allowing for bulk data submissions or submitting via manual entry. A technical user guide is available on the HWB Program Portal.

Employers must retain contemporaneous records tracking all submitted claims for at least six (6) years. Upon request, employers must furnish records to the DOH, the Office of Medicaid Inspector General (“OMIG”), the U.S. Department of Health and Human Services, and the Deputy Attorney General for Medicare Fraud.

Payment of bonuses

The bonuses are not due or payable to eligible workers until the employer claims and receives payment from the DOH. Advance payments are prohibited.

Employers must pay out the bonuses within 30 days after receiving the funds from the DOH. An individual who terminates employment prior to the employer’s deadline for paying the bonuses (i.e., 30 days after receiving the bonus payment from the DOH) is not eligible for the bonus. However, because employers are prohibited from keeping any portion of the bonus, any amount not paid to an employee must be returned to the DOH.

Penalties

Qualified employers are required to apply for HWB funds. While there is no private right of action, an employer who fails to identify, claim, and/or pay any bonus for more than ten percent of eligible workers may be subject to penalties of up to \$1,000 per violation. OMIG will audit payments released by eMedNY to ensure funds were appropriately claimed and dispersed. OMIG also is authorized to impose sanctions, up to and including exclusion from the Medicaid program. The DOH also directs employees who believe their bonuses have been wrongfully withheld to contact OMIG’s Fraud Hotline or file a claim electronically.

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⁴ Here you can access the [Employee Attestation Form](#) and the [Employer Attestation Form](#).

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