



LAMB & BARNOSKY, LLP

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MEMORANDUM

TO: OUR EMPLOYER CLIENTS

FROM: LAMB & BARNOSKY, LLP

DATE: AUGUST 5, 2022

RE: IMPLEMENTATION OF THE HEALTH CARE AND MENTAL HYGIENE WORKER BONUS PROGRAM

KEEPING YOU INFORMED...

This week, Governor Hochul announced the launch of the Health Care and Mental Hygiene Worker Bonus (“HWB”) Program Portal for non-education sector employers and published guidance and other documentation related to the Program.

The HWB Program Portal for education sector employers will open on October 1, 2022. We will provide our clients in this field with an update once the State publishes the applicable information.

Our [May 4, 2022 client memorandum](#) provides an outline of the HWB Program, including a detailed summary of covered employers and eligible employees. In brief, covered employers are required to provide eligible employees with bonuses in an amount that is based upon the number of hours worked during the applicable six-month vesting periods. The bonuses can be up to \$1,500 per employee for each vesting period, for a maximum total bonus of \$3,000 (from all employers) over two vesting periods. The bonus pay is funded by the State. The employer must pay the bonus to eligible employees no later than 30 days after the employer receives the funding from the State.

HWB Program Portal

The HWB Program Portal, which includes frequently asked questions (“FAQ”) and training videos on how to use the portal, is available at: <https://www.nysworkerbonus.com/#/>.

According to the Department of Health’s website, submission details will differ based on whether the employer is a Medicaid or non-Medicaid employer. Medicaid employers must be currently enrolled and payable through eMedNY and have an active MMIS ID to use the HWB Program Portal. Providers who are not currently enrolled with eMedNY should visit the eMedNY website (www.emedny.org) to learn more about how to enroll. Employers submitting for non-Medicaid employees should submit claims for bonuses on the HWB Program Portal utilizing their SFS Vendor ID.

Eligible Employees

An employee is eligible for the bonus if the employee:

- (1) is a front line health care or mental hygiene practitioner, technician, assistant or aide who provides “hands on health or care services to individuals” (the employee may be full-time, part-time, temporary or an independent contractor);
- (2) works in an eligible job title for the entire duration of the relevant vesting period (these job titles are included in our [May 4, 2022 memorandum](#) and at the following website: https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/#titles); and
- (3) earns a base yearly salary of \$125,000 or less (not including bonuses or overtime pay) from all employers (not just from qualified employers required to provide the bonus pay) during the entirety of the vesting period, as evidenced by an Employee Attestation that the employee must complete and return to the employer.

An employee is not eligible if the employee was suspended or excluded from the Medicaid program during the relevant vesting period.

The State’s FAQ clarifies that covered employers do not need to provide the bonus for staff assigned to work for the employer by a staffing agency. Employers may only submit claims for bonuses for individuals that they employ directly and not for any individuals employed or contracted by a staffing agency or other intermediary entity.

Vesting Periods

The State has announced five vesting periods, which are six-month periods between October 1, 2021 through March 31, 2024. For vesting period One, which ended on March 31, 2022, covered non-education sector employers must claim bonuses for all eligible employees by September 2, 2022. For vesting periods Two through Five, these employers must claim bonuses for all eligible employees within 30 days after the end of the vesting period. The chart below provides the dates for each vesting period along with the time period during which employers may claim bonuses.

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

An employee “vests” if the employee has worked for the covered employer for the entire duration of a vesting period in an eligible job title. When an employee vests, the covered employer must provide the employee with an Employee Attestation Form (available at: https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/docs/employee_attestation.pdf) that confirms the employee’s base yearly salary is \$125,000 or less from all employers. The employer must also request that the employee return the Form to the employer before the Employer Submission Close Date set forth in the above chart.

Employers are required to claim the bonus on behalf of their employees. Employees cannot claim bonuses on their own. As we previously advised, employers will pay bonus amounts to qualified employees based on the number of hours worked during the vesting period, as defined in the chart below. A qualified employee is eligible for a bonus for up to two vesting periods per employer and is eligible to earn a total bonus of up to \$3,000 across all employers.

<u>Weekly Average of Hours Worked in the Vesting Period</u>	<u>Bonus Payment</u>
20-29	\$500
30-34	\$1,000
35 or more	\$1,500

Hours worked include an employee’s use of accruals or other leave, including sick, vacation, or time used pursuant to the Family and Medical Leave Act.

Employers must pay the bonuses no later than 30 days after receiving the bonus amount from the State. According to the State’s FAQ, the State will issue bonus payments to employers as part of their weekly Medicaid payment from eMedNY. Bonuses for non-Medicaid services will be paid to the employer through the State Financial System.

Data Submission

The HWB Program requires employers to either manually enter data for each individual employee or to use a bonus file template Microsoft Excel spreadsheet to submit information regarding bonuses for eligible employees. The bonus file template can be obtained at <https://www.nysworkerbonus.com/#/> or within the HWB Program Portal under the drop-down menu for “File Submission.”

The above website link includes training videos describing how to manually enter data for individual employees and how to complete and upload the bonus file template to the Program Portal. According to the training video, the bonus file template is the only document that may be uploaded to the portal because an employer-created spreadsheet will not upload correctly.

Employers must also electronically sign an Employer Attestation Form (available at: https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/docs/employer_attestation.pdf).

Penalties

A covered employer may be subject to monetary penalties for each employee if the employer claims a bonus not due to an employee or claims a bonus amount in excess of the correct bonus amount due to an employee; claims, receives and fails to pay any part of the bonus due to a designated employee; or fails to claim a bonus due to an employee. In addition, a covered employer who fails to identify, claim, and pay any bonus for more than 10% of its eligible employees may be subject to additional monetary penalties. These penalties are generally in an amount up to \$1,000 per violation.

According to the State's website, the Office of the Medicaid Inspector General will audit payments released by eMedNY to ensure that funds were appropriately claimed and dispersed.

If you have any questions regarding the HWB Program, please contact Lauren Schnitzer, Michelle Mahabirsingh or one of our other attorneys at 631-694-2300.

THIS MEMORANDUM IS MEANT TO ASSIST IN GENERAL UNDERSTANDING OF THE CURRENT LAW. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK THE ADVICE OF COUNSEL.

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