

ALERTS

New York Schools Subject to New State Healthcare Worker Bonus Program

September 19, 2022

As part of the 2022-2023 enacted New York State Budget, \$1.2 billion in funding has been allocated for the payment of bonuses to certain frontline healthcare workers through the newly created New York State's Healthcare Worker Bonus Program ("HWB Program"). Under the HWB Program, "school districts, charter schools, nonpublic schools, approved preschool programs for students with disabilities...and private institutions of higher education" are among the educational institutions that must provide bonuses to eligible employees who meet the requirements set forth below.

Eligible Employees

Many schools employ front-line healthcare workers who may be eligible for the bonus, including, but not limited to, nurses, speech-language pathologists and occupational and physical therapists. To be eligible, employees:

- Must have a job title that is included on the list of "Eligible Worker Titles" provided by the New York State Department of Health ("DOH").^[1]
- Must be continuously employed by an eligible employer for at least one vesting period, which is defined as a series of specific six-month periods between the dates of Oct. 1, 2021, through March 31, 2024 (i.e., Oct. 1, 2021 to March 31, 2022; April 1, 2022 to Sept. 30, 2022; Oct. 1, 2022 to March 31, 2023; April 1, 2023 to Sept. 30, 2023; and Oct. 1, 2023 to March 31, 2024).

- Can be full-time, part-time or temporary employees, as well as independent contractors.
- Cannot exceed an annualized base salary of \$125,000 (excluding any bonuses or overtime pay).

Bonus Amounts

Bonuses will be paid to eligible employees based on the number of hours worked during the relevant vesting period. Eligible employees who work:

- Less than 20 hours during the relevant vesting period are not eligible to receive a bonus.
- At least 20 hours but no more than 30 hours per week are eligible for a bonus of \$500.
- At least 30 hours but no more than 35 hours per week are eligible for a bonus of \$1,000.
- At least 35 hours per week are eligible for a bonus of \$1,500.

An eligible employee is eligible for a bonus for only two vesting periods per eligible employer, up to a \$3,000 maximum across all eligible employers.

Bonus Claiming Process

Eligible employers must claim the bonus on behalf of their eligible employees, as employees are not able to claim bonuses independently. To claim such bonuses, eligible educational institutions will need to use their Statewide Financial System ID ("SFS ID") to access an online web portal. This portal will open for all eligible educational employers on Oct. 1, 2022.

As part of the claim submission process, eligible employers must electronically sign an attestation that acknowledges they have determined that each employee the employer included in the claiming process is eligible to receive the bonus. Additionally, all eligible employees must sign an attestation that confirms their wages from all sources in connection with their eligibility for the bonus, which must be maintained by their employer.

Further, eligible employers must submit claims for bonus payments within 30 days after the completion of each vesting period as defined by the

schedule published by the DOH. Such employers are then required to pay bonuses within 30 days of receipt of payment on a claim for each eligible employee. Although eligible employees may be eligible for vesting periods worked in the past (e.g., Oct. 1, 2021 to March 31, 2022), the bonuses are not payable until the employer claims and receives payment. Advance payments are not permitted. For the first vesting period, Oct. 1, 2021 to March 31, 2022, the DOH had requested employers submit claims by Sept. 2, 2022 (30 days from the posting of the vesting schedule), but will now permit claims from that period to be submitted during the second vesting period, beginning Oct. 1, 2022 and ending Oct. 31, 2022. However, as the bonus portal does not open for eligible educational employers until Oct. 1, 2022, it is unclear what deadline will be set for schools submitting first vesting period claims.

Eligible employers must maintain contemporaneous records tracking all submitted claims (including related information and documents required to substantiate such submitted claims) for six years.

The Medicaid inspector general, in coordination with the DOH, is responsible for conducting audits and investigations of eligible employers. An eligible employer may be subject to sanctions and penalties where they: (i) claim a bonus not due to an employee or a bonus amount in excess of the correct bonus amount, (ii) claim and receive a bonus, but fail to pay any part of it to the respective employee, or (iii) fail to claim a bonus due to an employee. An eligible employer that fails to identify, claim and/or pay any bonus for more than 10 percent of bonus eligible employees may be subject to additional penalties of up to \$1,000 per violation of the HWB Program.

Authored by Mark E. Brossman, Scott A. Gold, Donna K. Lazarus, Michelle M. Orge and Laura R. Horowitz.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] Notwithstanding an eligible employee's title, eligibility should ultimately be determined by whether an employee's position reflects the enumerated job description of a listed title, as provided by the Bureau of Labor Statistics or Appendix R of the Consolidated Fiscal Reporting and Claiming Manual.

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Related People



**Mark
Brossman**

Partner
New York



**Scott
Gold**

Special Counsel
New York



**Donna
Lazarus**

Partner
New York



**Michelle
Orge**

Associate
New York



**Laura
Horowitz**

Associate
New York

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