

S.346

An act relating to creating the COVID-19 Essential Employees Hazard Grant Program

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. DEFINITIONS

As used in Secs. 1–13 of this act:

(1)(A) “Covered employer” means an entity that employs one or more individuals in Vermont in relation to its operation of one of the following:

(i) a grocery store;

(ii) a pharmacy;

(iii) a retailer identified as essential in Sec. 6, paragraphs f and h of addendum 6 to Executive Order 01-20, provided that the majority of the retail establishment is open to the general public for in-person sales rather than curbside pickup or delivery;

(iv) a wholesale distributor making deliveries to a retailer described in subdivisions (i)–(iii) of this subdivision (1)(A);

(v) a trash collection or waste management service;

(vi) a janitorial service that provides cleaning or janitorial services to another covered employer;

(vii) an assisted living residence as defined in 33 V.S.A. § 7102;

(viii) a nursing home as defined in 33 V.S.A. § 7102;

(ix) a residential care home as defined in 33 V.S.A. § 7102;

(x) a therapeutic community residence as defined in 33 V.S.A. § 7102;

(xi) a health care facility as defined in 18 V.S.A. § 9432 or a physician's office;

(xii) a child care facility as defined in 33 V.S.A. § 3511 that is providing child care services to essential service providers pursuant to Directive 2 of Executive Order 01-20;

(xiii) a vocational rehabilitation service provider;

(xiv) a dentist's office or a dental facility;

(xv) a homeless shelter;

(xvi) a home health agency as defined in 33 V.S.A. § 6302;

(xvii) a federally qualified health center, rural health clinic, or clinic for the uninsured;

(xviii) a program licensed by the Department for Children and Families as a residential treatment program;

(xix) an ambulance service or first responder service as defined in 24 V.S.A. § 2651;

(xx) a funeral establishment or crematory establishment as defined in 26 V.S.A. § 1211; or

(xxi) providers of necessities and services to vulnerable or disadvantaged populations.

(B) “Covered employer” does not include the State, a political subdivision of the State, or the United States.

(2)(A) “Eligible employee” means an individual who:

(i) is employed by a covered employer that has enrolled in the

Program;

(ii) performs a job whose principal function is to:

(I) provide in-person services to members of the public or clients;

(II) clean or sanitize the premises of a covered employer in a location that is open to the general public;

(III) stock products on the premises of a retailer described in subdivisions (1)(A)(i)–(iii) of this section in a location that is open to the general public; or

(IV) perform activities that would reasonably result in a similarly elevated risk of being exposed to or contracting COVID-19;

(iii) is unable to perform his or her job remotely or to telework;

(iv) actively performed the principal function of his or her job during the Program Period;

(v) except in the case of employees of home health agencies and nursing homes, earns an hourly base wage of \$25.00 or less;

(vi) worked at least 34 hours for a covered employer during the relevant monthly period; and

(vii) is not eligible to receive monetary benefits for the performance of work in a job that exposes them to an elevated risk of being exposed to or contracting COVID-19 under any program authorized or implemented by the federal government.

(B) Notwithstanding subdivision (A)(i) of this subdivision (2), “eligible employee” includes an independent direct support provider who satisfies the requirements of subdivisions (A)(ii)–(vii) of subdivision (2) of this section.

(C) “Eligible employee” does not include:

(i) an independent contractor or self-employed individual; or

(ii) an individual who has received unemployment insurance benefits for any week in the relevant monthly period.

(3) “Grant issuer” means the entity that the Secretary contracts with to process and disburse payments of grant monies to covered employers for payment to eligible employees.

(4) “Independent direct support provider” has the same meaning as in 21 V.S.A. § 1631.

(5) “Monthly period” means the period from March 13, 2020 through April 14, 2020, inclusive, and the period from April 15, 2020 through May 15, 2020, inclusive.

(6) “Program” means the Essential Employees Hazard Grant Program.

(7) “Program Period” means the period from March 13, 2020 through May 15, 2020, inclusive.

(8) “Secretary” means the Secretary of Administration.

Sec. 2. ESSENTIAL EMPLOYEES HAZARD GRANT PROGRAM;

ESTABLISHMENT; CONTRACTS FOR PROGRAM

ADMINISTRATION

(a) There is established the Essential Employees Hazard Grant Program to provide grants to eligible employees who, during the Program Period, perform work in essential jobs that expose them to an elevated risk of being exposed to or contracting COVID-19.

(b)(1) The Program shall be administered by the Secretary of Administration.

(2) The Secretary shall contract with a private entity to serve as the Program’s grant issuer as provided pursuant to subsection (c) of this section.

(3) The Secretary may utilize staff and resources from any State agency or department as necessary to implement and administer the Program.

(4) The Secretary may contract with one or more private entities as necessary to implement or administer the Program.

(5) With respect to grants for eligible employees of home health agencies and nursing homes:

(A) the Secretary shall, in consultation with the Secretary of Human Services, the Commissioner of Disabilities, Aging, and Independent Living, and the Commissioner of Vermont Health Access, develop a process for paying grants to those employees as provided pursuant to Sec. 6 of this act; and

(B) the Agency of Human Services, Department of Disabilities, Aging, and Independent Living, and Department of Vermont Health Access shall jointly administer the processing and payment of grants to those employees as provided pursuant to Sec. 6 of this act.

(c) Notwithstanding any provision of law to the contrary, the Secretary may enter into contracts with the grant issuer and any private entities that are necessary to implement or administer the Program without the need to competitively bid such contracts. For the purposes of the Program, the public health risk posed by COVID-19 shall be deemed to be an emergency situation that justifies the execution of sole source contracts pursuant to Bulletin 3.5, the State's Procurement and Contracting Procedures.

(d) The contract with the grant issuer shall, at a minimum, provide that the grant issuer shall:

(1) issue grant payments to eligible employees pursuant to the provisions of this act and pursuant to a time period and procedures established by the Secretary;

(2) comply with all requirements, guidelines, and procedures that the Secretary adopts in relation to the Program; and

(3) comply with all requirements of this act.

(e)(1) The Secretary shall adopt requirements, guidelines, and procedures as necessary to implement and administer the Program.

(2) The Secretary shall not be required to initiate rulemaking pursuant to 3 V.S.A. § 831(c) in relation to any requirement, guideline, or procedure that is adopted or issued in relation to the Program.

Sec. 3. SAFEGUARDING PERSONAL INFORMATION;

CONFIDENTIALITY

(a) All personally identifiable information that is collected by the Program, any entity of State government performing a function of the Program, or any entity that the Secretary contracts with to perform a function of the Program shall be kept confidential and shall be exempt from inspection and copying under the Public Records Act.

(b) The Secretary shall ensure that any entity of State government performing a function of the Program, or any entity that the Secretary contracts with to perform a function of the Program:

(1) implements appropriate procedures and safeguards to protect any personally identifiable information that it obtains in relation to the Program;

(2) shall not disclose an individual's Social Security number to another State entity or contractor performing a function of the Program unless that disclosure is necessary for the administration of the Program; and

(3) complies with all applicable requirements of 9 V.S.A. chapter 62.

(c) As used in this section, "personally identifiable information" means an individual's:

(1) name;

(2) address;

(3) date of birth;

(4) place of birth;

(5) mother's maiden name;

(6) unique biometric data generated from measurements or technical analysis of human body characteristics used to identify or authenticate the individual, such as a fingerprint, retina or iris image, or other unique physical representation or digital representation of biometric data;

(7) name or address of a member of the individual's immediate family or household;

(8) Social Security number or other government-issued identification number; or

(9) other information that, either alone or in combination with the information listed in subdivisions (1)–(8) of this subsection, would allow a reasonable person to identify the individual with reasonable certainty.

Sec. 4. GRANTS; PAYMENT; INCOME TAX WITHHOLDING

(a) Grants shall be paid to eligible employees in the following amounts:

(1) For each monthly period during the Program Period in which a covered employer submits documentation showing that an eligible employee actually worked at least 108 hours, the eligible employee shall receive a grant of \$1,000.00.

(2) For each monthly period during the Program Period in which a covered employer submits documentation showing that an eligible employee actually worked at least 34 hours and less than 108 hours, the eligible employee shall receive a grant of \$600.00.

(b)(1) The number of hours actually worked by an eligible employee for each monthly period shall include any hours of employer-provided accrued paid leave or leave provided pursuant to the Emergency Family and Medical Leave Expansion Act or the Emergency Paid Sick Leave Act that are used by the eligible employee because he or she has contracted COVID-19 or is quarantined because of exposure to COVID-19.

(2) The number of hours actually worked by an eligible employee for each monthly period shall not include:

(A) any hours of employer-provided accrued paid leave or leave provided pursuant to the Emergency Family and Medical Leave Expansion Act or the Emergency Paid Sick Leave Act that are used by the eligible employee to care for another individual; and

(B) any hours of remote or telework performed by the eligible employee.

(c) An eligible employee who qualifies for a grant pursuant to subdivisions (2)(A)(i)–(vii) of Sec. 1 of this act shall be permitted to receive not more than two grants per monthly period for eligible work performed at different covered employers. If an eligible employee performed work that qualifies for a grant at more than two covered employers during a particular month, the employee shall receive grants in relation to the two jobs at which the employee worked the greatest number of hours during that month.

(d)(1) Each grant check for an eligible employee shall be sent to the employee’s covered employer who shall give the check to the employee not more than five calendar days after the covered employer receives it.

(2) For the sole purpose of the administration of the Program and provision of Program grants to independent direct support providers, ARIS Solutions, as the fiscal agent for the employers of the independent direct support providers, shall have the authority to distribute grant checks to

independent direct support providers after receiving the checks from the grant issuer.

(e) Checks shall be issued by the grant issuer according to a schedule adopted by the Secretary.

(f)(1) The Secretary shall, as soon as practicable, determine whether a sufficient amount of the funds appropriated pursuant to Sec. 9 of this act remains to pay the anticipated grant requests for the second monthly period. If the Secretary determines that the remaining funds are likely to be insufficient to pay the claims for the second monthly period, the Secretary shall, in consultation with the grant issuer, reduce the grant amounts set forth in subsection (a) of this section by an amount necessary to ensure that all anticipated grant requests for the second monthly period can be paid.

(2) The grant issuer shall cease paying claims submitted after a date established by the Secretary by guidelines or procedure or upon the exhaustion of the funds appropriated in Sec. 9 of this act, whichever occurs sooner.

(g)(1) Each eligible employee shall, together with his or her initial grant payment, be provided with written notice that the grant may be subject to income tax and that the eligible employee's grant is subject to withholding.

(2) All procedures specified by 26 U.S.C. chapter 24 and 32 V.S.A. chapter 151, subchapter 4 pertaining to the withholding of income tax shall be followed in relation to the payment of grants pursuant to this section.

Sec. 5. APPLICATION; REQUIRED INFORMATION

(a)(1) In order to enroll in the Program and make its employees eligible for grants issued under the Program, a covered employer shall submit to the Secretary or the Secretary's designee a notice of enrollment in a form specified by the Secretary.

(2) The Secretary shall require employers to provide information demonstrating that they are a covered employer.

(3) As a condition of enrolling in the Program, each covered employer shall agree:

(A) to make all books and records related to work performed by eligible employees during the Program Period available upon request to the Secretary, the Secretary's designee, or the Attorney General for inspection;

(B) not to require any eligible employee to pay an administrative fee or other charge in relation to the employer requesting or obtaining a grant payment for the employee; and

(C) not to reduce the hourly compensation, including any related bonuses or premiums, of any eligible employee during the Program Period, provided that this subdivision (C) shall not apply to covered employers who receive reimbursement for services through the Agency of Human Services or a department within the Agency at rates that are:

(i) set through a rate setting process;

(ii) established by rule;

(iii) set pursuant to a provision of a grant from the Agency of Human Services or a department within the Agency;

(iv) set pursuant to a contract with the Agency of Human Services or a department within the Agency; or

(v) any combination of subdivisions (i)–(iv) of this subdivision

(a)(3)(C).

(b)(1) A covered employer that has enrolled in the Program shall submit a request for grant payments in a form specified by the Secretary for each monthly period during the Program Period according to a schedule established by the Secretary.

(2) The Secretary shall specify the information that must be provided for each eligible employee, including documentation of any information necessary for the grant issuer to withhold income taxes pursuant to subsection (g) of Sec. 4 of this act.

(c) For the sole purpose of the administration of the Program and provision of Program grants to independent direct support providers, ARIS Solutions, as the fiscal agent for the employers of the independent direct support providers, shall have the authority to provide the information required pursuant to subsection (b) of this section to the Secretary or an entity designated by the Secretary. ARIS Solutions shall make all documentation for grants requested

on behalf of independent direct support providers during the Program Period available upon request to the Secretary, the Secretary's designee, or the Attorney General for inspection.

(d)(1) Nothing in this section shall be construed to require a covered employer to enroll in the Program.

(2) A covered employer that elects not to enroll in the Program or neglects or fails to submit a request for grant payments for any monthly period in the Program Period shall not be liable to its eligible employees for any amounts that they may have been entitled to receive under the Program if the covered employer had enrolled in the Program or submitted a grant request for that monthly period.

Sec. 6. GRANTS FOR ELIGIBLE HOME HEALTH AND NURSING
HOME EMPLOYEES

(a)(1) Notwithstanding Secs. 4 and 5 of this act, eligible employees performing work for a home health agency or nursing home shall receive grants during the Program Period pursuant to a procedure adopted by the Secretary in consultation with the Secretary of Human Services, the Commissioner of Disabilities, Aging, and Independent Living, and the Commissioner of Vermont Health Access.

(2)(A) Eligible employees who work at least 108 hours during a monthly period shall be entitled to a grant of \$1,000.00. Eligible employees

who work at least 34 hours and less than 108 hours during a monthly period shall be entitled to a grant of \$600.00.

(B) Notwithstanding subdivision (2)(A)(v) of Sec. 1 of this act, grants shall also be made available pursuant to this section to eligible employees earning more than \$25.00 per hour.

(3) Notwithstanding subdivision (2)(A)(i) of Sec. 1 of this act, as used in this section, “eligible employee” includes an individual who is licensed to provide physical, speech, respiratory, or occupational therapy and:

(A) provides such therapy services at or on behalf of a nursing home or home health agency;

(B) engages in direct patient contact during the provision of such services; and

(C) is employed by a separate entity that the home health agency or nursing home has contracted with for the provision of those services.

(b) The Agency of Human Services and Departments of Disabilities, Aging, and Independent Living and of Vermont Health Access shall jointly administer the payment and processing of grants pursuant to this section with the Secretary.

(c)(1) The Secretary shall, in consultation with the Secretary of Human Services, Commissioner of Disabilities, Aging, and Independent Living, and Commissioner of Vermont Health Access, develop a process for identifying

eligible employees, determining grant amounts, and paying grants to eligible employees through participating home health agencies and nursing homes.

(2) The Secretary shall, as soon as practicable and in consultation with the Secretary of Human Services, Commissioner of Disabilities, Aging, and Independent Living, and Commissioner of Vermont Health Access, determine whether a sufficient amount of the funds appropriated pursuant to Sec. 9 of this act remains to pay the anticipated grant requests for the second monthly period. If the Secretary determines that the remaining funds are likely to be insufficient to pay the claims for the second monthly period, the Secretary shall, in consultation with the Secretary of Human Services, Commissioner of Disabilities, Aging, and Independent Living, and Commissioner of Vermont Health Access, reduce the grant amounts set forth in subsection (a) of this section by an amount necessary to ensure that all anticipated grant requests for the second monthly period can be paid.

(d)(1) Each eligible employee who receives a grant payment pursuant to this section shall, together with his or her initial grant payment, be provided with written notice that the grant may be subject to income tax and that the eligible employee's grant is subject to withholding.

(2) All procedures specified by 26 U.S.C. chapter 24 and 32 V.S.A. chapter 151, subchapter 4 pertaining to the withholding of income tax shall be followed in relation to the payment of grants pursuant to this section.

Sec. 7. REPORTS; AUDIT

(a) The Secretary shall require the grant issuer and any private entity that is performing a function of the Program to provide the Secretary with monthly reports providing information on Program performance, including, as applicable, the number of claims received and processed, the number of employers enrolled, and the amount of grant funds paid.

(b) On or before October 1, 2020, the Secretary shall submit a written report to the Joint Fiscal Committee with the following information:

(1) the total number of covered employers that participated in the Program;

(2) the total number of eligible employees who received grants through the Program;

(3) the aggregate number of grants and the aggregate dollar amount of the grants issued for each monthly period during the Program Period;

(4) the aggregate dollar amount of the grants issued for the entire Program Period; and

(5) any other information regarding the Program that the Secretary determines is pertinent.

(c) The grant issuer and any other private entity with whom that Secretary contracts for the performance of a function related to the Program shall:

(1) keep its books and records related to the Program available for audit as required by the Secretary during the period of the contract and for three years thereafter or any longer period that is otherwise required by law;

(2) make all books and records related to the Program available to the Secretary, the Attorney General, and the Auditor of Accounts upon request;
and

(3) make its books and records available for review or audit upon request by any State or federal authority with jurisdiction, or an entity appointed by such a State or federal authority.

Sec. 8. FRAUD; ENFORCEMENT

(a) A person shall not intentionally make a false statement or representation to obtain or increase any grant for an eligible employee under this act.

(b) The Attorney General may enforce the provisions of this section and Secs. 4–6 of this act by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as though a violation of this section were an unfair act in commerce. Any person complained against shall have the same rights and remedies as specified in those sections. The Superior Courts are authorized to impose the same civil penalties and investigation costs and to order other relief to the State of Vermont for violations of this section as they are authorized to impose or order

under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order a person who violates the provisions of this section to pay restitution to the State in an amount equal to the amount of any benefit or other payment that was obtained by means of a false statement or representation.

Sec. 9. APPROPRIATION; INTENT; FEDERAL FUNDS

(a) It is the intent of the General Assembly that the State shall only expend funds appropriated in this section to support the Essential Employees Hazard Grant Program during the COVID-19 emergency in the absence of a specific federal program to support eligible employees or covered employers as defined in this act.

(b) The amount of \$60,000,000.00 is appropriated in Fiscal Year 2020 from the Coronavirus Relief Fund to the Agency of Administration for use in fiscal years 2020 and 2021 for the administration of and payment of grants pursuant to the Essential Employees Hazard Grant Program. The amount needed to support the payment of grants to eligible employees working for a nursing home or home health agency shall be transferred to the Agency of Human Services.

(c)(1) For the amount appropriated in subsection (b) of this section, the Commissioner of Finance and Management shall only release the amount necessary to pay each of the two monthly periods during the Program Period to

the Agency of Administration and the Agency of Human Services upon notification from the State Treasurer that prior to the issuance of each installment there is no specific federal program to support eligible employees or covered employers as defined in this act.

(2) If a federal program supporting eligible employees or covered employers as defined in this act is enacted, the Commissioner of Finance and Management shall only release the amount from the amount appropriated in subsection (b) of this section that is needed to issue grants made under the Program prior to the enactment of the federal program.

(3) To the extent permissible, the State shall apply any federal funding granted directly to the State through a federal program to any grants already provided under the Program.

(d) Any unexpended funds remaining after the Program Period ends shall revert to the Coronavirus Relief Fund for reallocation.

(e) As used in this section:

(1) "Federal program" includes:

(A) federal funds that have been granted or are likely to be granted to the State or have been granted or are likely to be granted directly to eligible employees or covered employers as defined in this act, in recognition of the increased risk of being exposed to or contracting COVID-19; or

(B) any federal tax incentives or credits enacted to support eligible employees or covered employers as defined in this act, in recognition of the increased risk of being exposed to or contracting COVID-19.

(2) “Federal program” does not include any funds from the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116–136,

Sec. 10. AGENCY OF TRANSPORTATION; TRANSIT AGENCIES;

BENEFITS TO ESSENTIAL WORKERS

The General Assembly encourages the Agency of Transportation, in consultation with transit agencies that are eligible to receive grant funds pursuant to 49 U.S.C. § 5307 or 5311, or both, to develop a plan to utilize funding from the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116–136, or any other federal act providing additional funding related to COVID-19, to the extent permitted by law, to provide increased compensation, whether in the form of an increased hourly wage, a bonus, or some other monetary benefit, to drivers and other employees who provide in-person services to members of the general public during the Program Period or a longer period permitted by federal law in recognition of the increased risk of being exposed to or contracting COVID-19.

Sec. 11. MUNICIPALITIES; HAZARD PAY FOR ESSENTIAL WORKERS

In the event that the State provides grant funding to municipalities for COVID-19 related expenses, the General Assembly encourages any

municipalities that receive grants to develop a plan to utilize a portion of the grant funding provided by the State, to the extent permitted by law, to provide increased compensation, hazard pay, a bonus, or some other monetary benefit, to municipal employees, such as firefighters, law enforcement officers, and ambulance workers, whose jobs placed them at an increased risk of being exposed to or contracting COVID-19 during the Program Period.

Sec. 12. COVERED EMPLOYERS; HAZARD PAY FOR ESSENTIAL
WORKERS NOT COVERED BY PROGRAM

The General Assembly encourages covered employers to develop a plan to utilize their own resources or any available grant funding, to the extent possible, to provide increased compensation, hazard pay, a bonus, or some other monetary benefit, to employees whose jobs placed them at an increased risk of being exposed to or contracting COVID-19 during the Program Period but who are not eligible to receive grants through the Program because they earn an hourly base wage in excess of \$25.00 per hour.

Sec. 13. EFFECTIVE DATE

This act shall take effect on passage.