

**Statement of Linda M. Czipo  
President & CEO, Center for Non-Profits  
to the Senate Labor Committee  
The Honorable Fred Madden, Chairperson  
May 6, 2021**

**Re: S-3714**

To Chairman Madden and members of the Senate Labor Committee,

The Center for Non-Profits, New Jersey's statewide network for the charitable non-profit community and a charitable non-profit ourselves, strongly supports S-3714. This bill would provide critical relief for non-profit employers that have had to reduce staff due to the COVID-19 pandemic, and would update and clarify previous legislation that was passed for this purpose.

New Jersey's non-profits are an essential part of the social and economic well-being in New Jersey, employing nearly 10% of the state's private work force and providing a diverse and comprehensive array of programs and services that make our state an attractive place to live, work, raise children and locate a business.

It's hard to overstate the vital role that New Jersey's non-profits have played during the pandemic, providing life-saving care, social services, education, mental health counseling, job assistance and training, comfort, healing and inspiration, and countless other critical functions.

But just as in other sectors, the impact of the emergency on New Jersey's charitable non-profit community has been swift and severe, with devastating human and financial losses, and many organizations having to lay off or furlough staff.

These unforeseen staff reductions could result in dramatic increases in unemployment expenses, leaving even less funds available for charitable missions when they are needed the most.

Several months ago, the Legislature passed and the Governor signed legislation (P.L. 150, c.150) to address employers' issues on multiple levels:

- It provides that the layoffs and separations precipitated by this crisis will not adversely affect the experience rating for employers that contribute to the state's unemployment fund (for-profits and experience-rated non-profits).
- It postpones and spreads out the burden of a payroll tax that will likely be needed to keep the state's unemployment trust fund (through which unemployment claims are paid) solvent.
- For 501(c)(3) non-profit and government employers that "self-insure" and make direct payments to the state to pay for unemployment claims, the statute was intended to cover the 50% that was not funded pursuant to the federal CARES Act and supplemental laws, thus enabling these organizations to avoid potentially crippling unemployment bills.

The need for S-3714 has arisen because while the Legislature clearly intended for New Jersey to supplement the federal funding to provide complete relief for reimbursing employers during the pandemic, the State Department of Labor and Workforce Development has interpreted the statute

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Center for Non-Profits is a New Jersey non-profit corporation and a federally recognized 501(c)(3) publicly supported charity.

differently. The result is that right now, for-profit employers and experience-rated non-profit employers are protected under the law while reimbursing non-profits are not. These organizations are still facing steep and devastating unemployment insurance bills that left unaddressed will result in reduced services, delayed rehiring, potential further layoffs, and possible closure.

This legislation is also needed because the American Rescue Plan Act has changed the federal funding to 75% of the unemployment bill from April 1, 2021 through September 6, 2021.

Additional background on the issue is provided in the attached document.

Amendments to this bill are being discussed, and we look forward to working with the sponsors and partners on this legislation.

We thank Chairman Madden and Senator Gopal for sponsoring this important bill and ask that you give it your full support. Thank you for your consideration.

## **New Jersey non-profits in dire need of unemployment relief**

### **Issue Summary**

New Jersey's non-profits play a critical role in strengthening the state's social, economic, and community fabric. Never has this been more apparent than during the COVID-19 pandemic. Throughout the crisis, non-profits have stepped up to provide essential services, education, comfort, inspiration, and life-saving care. The need to keep non-profits strong in order to help our communities through this crisis cannot be overstated.

The COVID-19 emergency has created a financial crisis for New Jersey's non-profit organizations. These organizations have withstood a huge financial hit and are facing the possibility of significant reductions in services at a time when they are needed most.

One of the most pressing needs is for relief from potentially crippling Unemployment Insurance (UI) bills facing non-profit employers who have had to lay off staff. Fortunately, the federal [CARES Act](#) and subsequent federal COVID-19 relief packages provide funds to reimburse non-profit employers for half of the costs through March 31, 2021. And the American Rescue Plan Act provides 75% reimbursement from April 1 through September 6, 2021.

The Legislature and Governor Murphy acted to implement this UI relief for employers by enacting P.L. 2020, c. 150 on January 4, 2021. Despite the intent to hold reimbursing non-profit employers harmless from unexpected COVID-19 related UI claims during the pandemic, the State Department of Labor and Workforce Development has interpreted the statute differently. The result is that for-profits and experience-rated non-profits are being held harmless from COVID-19 related claims, while reimbursing non-profit employers are not.

This issue is threatening the financial stability of many reimbursing non-profits and needs prompt resolution to prevent dire consequences for the people and communities they serve.

### **Impact of COVID-19 on New Jersey Charities**

The effects of the COVID-19 pandemic on New Jersey's charities are broad and far-reaching, ranging from direct health impacts, disruptions in services, lost revenue from cancelled programs/events and reduced donations to escalating demand for services and the broader strains on the economy.

According to the Center for Non-Profits' 2021 *New Jersey Non-Profits: Trends and Outlook* report<sup>1</sup>, published in late February:

- Increased demand for services (48%) far outpaced funding increases (33%) in 2020.
- Forty-five percent reported that total funding was less in 2020 compared to the year before. The median reported loss per organization was \$100,000.

- More non-profits expect demand for services and expenses to rise in 2021 (70%) than funding (39%).
- More than 25% of survey respondents laid off or furloughed staff in 2020; 50% of those organizations have not restored any of these cuts.

Along with additional funding in the form of grants and forgivable loans, one of the most pressing needs is for government relief from potentially crippling unemployment bills facing non-profit employers who have had to lay off staff.

### **Background on New Jersey's UI System**

Unemployment insurance is governed by both federal and state statutes. It is administered at the state level, and each state program is slightly different. Like other employers, most non-profits<sup>2</sup> are required to withhold SUI taxes from their employees' paychecks and remit these to the State to contribute to the state unemployment system. However, for the employer's portion, federal law<sup>3</sup> permits non-profit organizations exempt under Section 501(c)(3) of the Internal Revenue Code to, if desired, opt out of making quarterly contributions to the State, and instead reimburse the state directly for claims.<sup>4</sup>

Under the reimbursement method, the non-profit does not pay unemployment insurance tax – although it still pays other payroll taxes and remits unemployment withholdings from its employees – but it must reimburse the state for any unemployment benefits paid to former employees.

Many 501(c)(3) non-profit organizations remain in the state system as experience-rated employers and make quarterly tax payments. Typically, the reimbursing option is advantageous for certain non-profit organizations with a stable workforce, because they would otherwise end up paying far more into the state UI system than would be paid out in claims. The reimbursing option (or pooling resources with other 501(c)(3)s in a grantor trust<sup>5</sup>) allows an organization to pay based only on its own claims, thus retaining more assets for its charitable purposes.

The COVID-19 emergency has created a financial crisis that was not at all anticipated and has thrown all reasonable actuarial predictions into disarray. Without full relief, these organizations (including many YMCAs, food banks, Boys and Girls Clubs, senior service providers, social service organizations and others) are going to take a huge financial hit and may have to significantly reduce services or even close permanently.

### **State and Federal UI Assistance for Non-Profit Employers**

The federal [CARES Act](#) and subsequent federal COVID-19 relief packages provide an appropriation to states to reimbursing non-profit employers for half of the costs they incur through December 31, 2020

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<sup>2</sup> Churches, organizations operated primarily for religious purposes, or their related elementary and secondary schools, are [exempt from this requirement](#).

<sup>3</sup> Section 3309 of the Federal Unemployment Tax Act. Government entities and Indian tribes are also permitted to opt out and elect self-reimbursement.

<sup>4</sup> The NJ Department of Labor & Workforce Development has published more information about the reimbursement option for 501(c)(3)s here:

<https://www.nj.gov/labor/handbook/chap1/chap1sec6ReimbursementOption.html>

<sup>5</sup> For one explanation about unemployment grantor trusts for 501(c)(3) organizations, see <https://www.501c.com/helping-nonprofits-beat-unemployment-taxes/>

to pay unemployment benefits.<sup>6</sup> The American Rescue Plan Act extends the 50% reimbursement through March 31, 2021, and increases it to 75% of costs incurred by reimbursing employers from April 1 through September 6, 2021. As essential as this federal relief is, this still subjects these organizations to a significant financial exposure at a time when their budgets are already taking a huge hit and their services are needed more than ever.

The Legislature and Governor Murphy sought to mitigate the impact of the pandemic on both experience-rated and reimbursing employers by enacting P.L. 2020, c. 150, which passed the Legislature unanimously and was signed by the Governor on January 4, 2021. There are two components in the statute:

- 1) Ensure that employers' unemployment experience ratings are not adversely affected by the COVID-19 emergency. P.L. 2020, C. 150, addresses this situation, and also postpones and phases in any surcharges that may be imposed for the purposes of keeping the state's unemployment insurance fund solvent.
- 2) Provide financial relief and hold harmless those 501(c)(3) and government employers which, as permitted by federal law, have exercised their option of self-insuring and reimbursing the state for UI claims.

This law protects **experience-rated** employers (for-profits and non-profits alike) by excluding separations, layoffs, etc., during the pandemic from being counted against an employer's experience rating for purposes of establishing unemployment contribution rates. It further protects employers by postponing and phasing in any surcharges that may be imposed for the purposes of keeping the state's unemployment insurance fund solvent.

The statute was also intended to assist **reimbursing** employers by waiving the 50% employer responsibility which is not paid by federal CARES Act funds. Under the Protecting Nonprofits Act (PNPA) and the US DOL guidance (DOL Program Letter 18-20), federal funds providing relief to reimbursing employers may only be used reduce the amount those employers are required to pay by the percent prescribed in the statute, but states are permitted to supplement that amount further, up to full waiver of the charges. To that end, P.L. 2020, c. 150, provides that:

*Any nonprofit organization which elects to make payments in lieu of contributions pursuant to section 3 of P.L.1971, c.346 (C.43:21-7.2) and any governmental entity or instrumentality which elects to make payments in lieu of contributions pursuant to section 4 of P.L.1971, c.346 (C.43:21-7.3), shall be liable for payments in lieu of contributions with respect to only 50% of the payments of unemployment compensation benefits made pursuant to either of those two sections during the public health emergency and state of emergency declared by the Governor on March 9, 2020, and any subsequent extensions of that public health emergency and state of emergency.*

The language exempts any reimbursing non-profit or governmental employer that elects to make payments in lieu of contributions from liability for payments in lieu of contributions with respect to 50 percent of unemployment benefits paid to employees laid off by the employer during that public health emergency and any extensions of it, thus holding reimbursing non-profit employers harmless from these increased UI charges.

However, despite the Legislature's [clear intent](#) for New Jersey to supplement the federal funding to provide complete relief during the pandemic, the State Department of Labor and Workforce Development has interpreted the statute differently. The effective result is that experience-rated

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<sup>6</sup> Section 2103. Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations

employers (all for-profits and experience-rated non-profits) are being fully protected and held harmless, while reimbursing non-profit employers are still facing steep unemployment bills. This inequity must be corrected.

In light of these developments, legislation (S-3714 / A-5691) has been introduced that would clarify and update the existing state law. It provides that employers that reimburse the State for unemployment claims are not liable for any portion of the payments of unemployment benefits which are not paid by the federal government pursuant to the CARES Act, the American Rescue Plan Act, or any other applicable federal law.

We urge the Legislature and Governor to take immediate steps to ensure that New Jersey fully protects reimbursing non-profit employers from unemployment insurance claims incurred during the COVID-19 public health emergency.