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INSIGHT

Hazard Pay and the COVID-19 Pandemic: Issues and Options

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A number of policymakers have expressed interest in providing essential workers at risk of exposure to COVID-19 with additional compensation, or *hazard pay*. The Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act (H.R. 6800), introduced on May 12, 2020, would create a fund for "pandemic premium pay" for essential workers. This Insight highlights some of the policy considerations should a hazard pay policy be pursued, as well as federal government options for supporting hazard pay.

What is Hazard Pay?

Hazard pay is a type of premium pay for individuals performing work that involves hazardous duty or physical hardship. Hazard pay may be provided to compensate workers for additional risks and to incentivize workers to work in jobs with potentially dangerous conditions. The Fair Labor Standards Act (FLSA), which is the main federal law that establishes wage and hour standards for most private and public sector employers (e.g., minimum wage and overtime pay), does not regulate the provision of hazard pay. While hazard pay is available for some federal workers, it is not mandated for private sector workers.

Financial Support for Essential Workers: Policy Considerations

Federal government support of hazard pay could compensate individuals who have been exposed to additional risk while providing essential services. However, there are a number of questions that arise

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when considering which employees are *essential*, and the amount and duration of any hazard pay provided.

Who is an "essential" worker?

Determining who is an essential worker for purposes of hazard pay depends on multiple factors. A broad approach would be to include all workers except those operating in an environment with low risk of COVID-19 exposure (e.g., teleworkers). More targeted approaches include identifying specific groups of workers and sectors of the economy as essential, including possible consideration of risk to workers in different parts of the country.

- **Industry**. The Cybersecurity & Infrastructure Security Agency (CISA) of the U.S. Department of Homeland Security (DHS) has issued guidance on "essential critical infrastructure workers" during the COVID-19 pandemic. The CISA list identifies a range of workers and work across 17 broad sectors (e.g., healthcare, food and agriculture) but does not include specific occupation codes that might make classification easier. The CISA list has been estimated to cover more than one-third of the workforce. Although the CISA list does not identify industry codes, the North American Industry Classification System (NAICS), a federal standard system that classifies the entire economy into more than 1,000 industries based on production criteria, could be used to identify workers in essential industries. An industry approach would mean that all workers in an industry would be covered regardless of their specific tasks.
- **Occupation**. The Standard Occupational Classification (SOC) system is a federal standard system that classifies all workers into more than 800 detailed occupations. Defining essential workers by occupation would mean workers doing similar tasks would be covered regardless of the industry in which the work is performed. For example, if cashiers are deemed essential, this would include cashiers in grocery stores, hospitals, and all other industries. It is also possible to estimate the rates of physical proximity for different occupations as a way of further defining potential eligibility for hazard pay among workers.

In understanding the scope of coverage, regardless of the approach taken to identifying essential workers, it is important to note that some workers may have access to remote work, some may be independent contractors and thus not captured in industry estimates, and many may now be unemployed.

What should the hazard rate of pay be?

Because there is no general federal regulation of hazard pay, there is not an existing standard that can be applied. There are several options for setting a hazard pay benchmark.

- For federal workers covered by hazard pay, the pay differential is typically 25%.
- The FLSA rate for overtime is 1.5 times the regular rate of pay for each hour worked in excess of 40 hours in a workweek. This premium could apply to all hours worked by essential workers.
- Recent federal proposals for hazard pay (i.e., supplemental pay in addition to regular hourly pay rates) have recommended a flat rate of $13 per hour, a flat rate of $18.50 per hour, and a sliding rate of up to $12 per hour.

Hazard pay based on a flat dollar amount would provide a higher premium for lower-paid workers, whereas pay based on a percentage of a worker's regular rate would result in larger dollar amounts for higher-paid workers. Additional considerations include phasing out hazard pay for higher-income or higher-wage earners or varying maximum premium pay by income levels.

How long should hazard pay be available?

Some hazard pay proposals related to COVID-19 would make hazard pay available through December 31, 2020. If hazard pay were to be made available for a longer period of time or to respond to subsequent public health hazards, the total amount awarded to any one employee could be limited or otherwise capped. The availability of hazard pay could also be tied to the declaration of an emergency or shelter-in-place orders.

Federal Policy Options for Supporting or Providing Hazard Pay

Federal mandates for hazard pay could ensure that essential workers employed in hazardous work receive mandated hazard pay. Under this type of mandate, employers could be required to provide the additional pay. This would be similar to FLSA regulation of the labor market through requirements that employers pay covered workers a minimum wage and overtime pay. While some essential businesses have experienced strong sales and revenues as a result of the COVID-19 pandemic, others that employ essential workers are struggling. Mandating an increase in pay could further strain already struggling businesses, potentially leading to additional layoffs.

One option to help offset costs associated with mandated pay increases would be for the federal government to fund hazard pay. Private and public sector employers could provide hazard pay to eligible employees, and receive payments to offset this cost from a hazard pay fund. One question that may arise with this approach is whether employers would be required to provide hazard pay, or whether employers would opt in. H.R. 3600 proposes a fund that would allow employers to request grants to cover costs associated with hazard pay for essential workers.

Hazard pay could be supported using tax credits. Employers could claim refundable payroll tax credits to offset hazard pay costs. Employer payroll tax credits could be reduced for workers with higher earnings, although there are some potential design challenges associated with phasing out an employer credit using employee earnings. The amount of hazard pay that could be taken into account for the purposes of determining the tax credit could be capped, and tax credits could either fully or partially offset the cost to employers of providing hazard pay. A payroll tax credit might encourage more employers to offer hazard pay, but it would not ensure that all employees providing similar essential services receive such pay. An alternative approach would be mandating hazard pay for certain workers, while giving employers refundable payroll tax credits to offset added payroll costs.

Absent federal government intervention, some wages paid to essential employees might increase in response to market forces. A few employers have opted to increase pay for certain employees who are working during the pandemic, but coverage is often short-term and uncertain. If employees in the highest-risk sectors are not compensated for the added risk, they may seek alternative forms of employment, or choose to exit the labor market. This could potentially put upward pressure on wages in high-risk sectors, but could also result in worker shortages in such sectors. High rates of unemployment and reluctance to voluntarily leave the labor force, however, could prevent wages from rising. In contrast, workers seeking employment in lower-risk sectors, as well as high rates of unemployment, could put downward pressure on wages in less risky sectors.