

PREMIUM PAY

The American Rescue
Plan Act & Arkansas

JOHN WILKERSON -
GENERAL COUNSEL
BLAKE GARY -
LEGAL COUNSEL
CARAN CURRY -
GRANT ATTORNEY



Essential Workers

Since the start of the COVID-19 public health emergency in January 2020, **essential workers have put their physical wellbeing at risk** to meet the daily needs of their communities and to provide care for others.

Eligible Use of Fiscal Recovery Funds

- May be used by municipalities to provide premium pay to **eligible workers** performing essential work during the COVID-19 public health emergency.
- Or to provide **grants to third-party employers** with eligible workers performing essential work.



What is Premium Pay?

Premium pay is **additional compensation** for “eligible workers performing essential work during the COVID-19 public health emergency or to provide grants to third-party employers [non-municipality employees] with eligible workers performing essential work.”

- Eligible workers may be provided **“extra” or “premium” pay in addition to their regular salaries on hourly amounts not a substitute.**

Priority Should be Given to Low-Wage Earners

“Low pay of many essential workers makes them **less able to cope with the financial consequences of the pandemic** or their work-related health risks...”

- Hours lost due to sickness
- Disruption to childcare
- Likelihood of COVID-19 spread in their household or communities

Who is an Eligible Worker?

- Eligible workers are those “who have been and continue to be **relied on to maintain continuity of operations of essential critical infrastructure sectors**, including those who are critical to protecting the health and wellbeing of their communities.”
- **HOWEVER** – the **chief executive of a municipality has discretion to add additional sectors** to the list provided that the sectors are **deemed critical to protect the health** and well-being of its residents.

Listed as Eligible Workers - Per Treasury

- Staff at nursing homes, hospitals, and home care settings;
- Workers at farms, food production facilities, grocery stores, and restaurants;
- Janitors and sanitation workers;
- Truck drivers, transit staff, and warehouse workers;
- Public health and safety staff;
- Childcare workers, educators, and other school staff; and
- Social service and human services staff.

What is Essential Work?

- Essential Work is Defined as: **Regular in-person interactions or regular physical handling of items that were also handled by others.**
- Furthermore, regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or
- Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.
- Must be in person work, **a worker may not receive Premium Pay for telework from residence.**

When Deciding to Award Premium Pay Consider...

In providing premium pay to essential workers or grants to eligible employers, a recipient **must consider whether the pay or grant would “respond to” to the worker or workers performing essential work.**

How much is Premium Pay?

It is permissible for a municipality to pay **up to \$13 per hour** in addition to wages or compensation a worker otherwise receives provided the aggregate amount does **not exceed \$25,000** for the life of the grant per eligible worker.

- Must be in addition to a worker's regular rate of wages, not to reduce or substitute.

Do you have to give justification for giving a worker Premium Pay?

- Justification is necessary only if “**premium pay would increase a worker’s total pay above 150 percent of their residing state’s [Or County] average annual wage for all occupations states.**”
- **Enhanced reporting [Justification] requirements:**
 - Help to ensure grants are directed to essential workers in critical infrastructure sectors and responsive to the impacts of the pandemic observed among essential workers, namely the misalignment between health risks and compensation.
 - Enhanced reporting also provides transparency to the public.

Retrospective Premium Pay

- Premium Pay may be awarded retrospectively for work performed at any time since the start of the COVID-19 public health emergency (since January 2020).
- **Treasury encourages recipients to prioritize providing retrospective premium pay where possible.**

Retrospective Continued

Is an employee eligible if they've already received additional compensation?

- Yes, Essential workers who have already earned Premium Pay for essential work performed during the COVID-19 public health emergency remain eligible for additional payments.

Can an essential worker receive retrospective and prospective premium pay?

- An essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work provided the total amount received does not exceed \$25,000 for the life of the grant.

May a Municipality Provide Grant Funding so that others can Provide Premium Pay?

A municipality can subaward grant funds to third parties employing or contracting with eligible workers performing essential work.

The **following categories** of non-municipality employees are eligible for Premium Pay:

- **Third party employers that employ non-municipality essential workers**
 - Examples: Hospitals, Ambulance Services, Waste management, etc.
- **Contractors that employ essential workers in eligible sectors**
 - Example: Companies that provide temp staff nursing support

Cities are cautioned that they should only do this if they have extensive experience with federal grant subawards and have the capacity to successfully monitor the subawards or work with the regional planning and development districts.

Continued...

- To ensure any grants respond to the needs of essential workers and are made in a fair and transparent manner, the rule imposes some additional reporting requirements for grants to third-party employers, including the public disclosure of grants provided.
- For example, if a municipality contracts with a third party to perform sanitation work, the third-party contractor could be eligible to receive a grant to provide premium pay for these eligible workers.

MISCELLANEOUS

- DOCUMENT
- SEPARATE LINE ITEM/ACCOUNT CODE
- CORRESPONDING PAY PERIOD
- FLSA?
- SAM.GOV?



Questions & Comments



Thank You For All You Do.
