April 29, 2020

Via email
Governor Andy Beshear

cc via email
Lt. Governor & Secretary Jacqueline Coleman
Josh Benton, Deputy Secretary, Education & Workforce Development Cabinet

Dear Governor Beshear:

Thank you for taking time last Thursday to visit with nonprofit leaders from across Kentucky on our weekly virtual town hall meeting. We continue to appreciate the administration's leadership, communication and thoughtful response to the novel coronavirus within our state.

Nonprofits touch the lives of every Kentuckian every day and play a vital role in the state's economy and provision of services. And as you noted on the call, Kentucky's nonprofits have and continue to step up without hesitation to serve their communities, to protect public health and to support their own employees during this COVID-19 crisis. And as the state's fourth largest private sector industry, nonprofits still need immediate contracting, budget, staffing and programming flexibility and timely resources from the state, local governments and philanthropy to be able to continue this work through the months ahead.

I'm writing to specifically address a crisis facing Kentucky's charitable nonprofits who have elected to self-insure and reimburse the state unemployment insurance trust fund for the amount of benefits any terminated or laid off employees claim. The U.S. Department of Labor (DOL) guidance issued on Monday night on how states can implement a new federal law (Section 2103 of the CARES Act) – intended to help minimize nonprofits' liability for unemployment insurance claims related to COVID-19, includes two troubling provisions:

1. **Self-insured nonprofits must pay for their claims and then seek partial refunds.** The DOL guidance says states must require self-insured nonprofits to reimburse their UI trust funds for the full amount of their COVID-19 related UI claims and then seek reimbursement from their state UI trust funds of 50% of those payments. DOL appears to have developed this backwards approach because Section 2103 of the CARES Act requires funds to be used to *"reimburse"* self-insured nonprofits.

   This essentially requires nonprofits to make an interest-free loan to Kentucky's unemployment trust funds. Under normal circumstances, nonprofits might use their operating reserves to provide the capital for this payment. However, this process will be particularly problematic during and after the COVID-19 crisis, since many nonprofits have already exhausted any operating reserves they may have had to mitigate immediate financial losses (otherwise, they probably would not have had to lay off or furlough staff in the first place!).

This process also adds unnecessary red tape – and inevitably further delays – both for self-insured nonprofits and for Kentucky's overburdened unemployment agencies.

2. **States can hold self-insured nonprofits harmless for the remaining 50%.** Based on the examples provided at the end of the DOL guidance, it appears that Kentucky can cover some or all of the remaining 50% of self-insured nonprofits' costs for COVID-19 related claims from its UI trust funds. It is imperative that Kentucky do just that – it is support essential to many nonprofits and if not received, will have a devastating ripple effect on the entire sector's ability to meet needs. We point out that the DOL guidance warns that states that cover *more than 50%* of self-insured nonprofits' claims from their UI trust funds will not receive full federal support under Section 2103 of the CARES Act.

To be clear, without a solution, the impact of this DOL guidance will be devastating for many nonprofits. As a direct result of this guidance, organizations like Goodwill, United Ways across Kentucky, YMCA's, Family & Children's Place, Red Bird Mission and thousands more nonprofit employers employing one in ten Kentuckians will need to delay the rehiring of laid-off or furloughed workers, make further cuts to essential programs and services, and, in some cases, close their doors altogether. **A recent statewide survey revealed that 50% of nonprofits have less than 3 months of operating reserves AT THE START of this crisis. Even if some organizations were lucky enough to receive one of the coveted federal relief loans, these organizations DO NOT have the reserves to pay these costs up front and wait for reimbursement.**

The backwards process in the DOL guidance will force many financially challenged nonprofits to take one (or more) of three actions:

1. Delaying the rehiring of some or all of their staff until they have received the partial reimbursement of their reimbursement for UI claims. This will harm Kentucky's economy by slowing recovery from the COVID-19 crisis.
2. Making further cuts to programs and services. This will harm communities, since they will have reduced access to health care, childcare, food assistance, affordable housing, domestic violence and homeless shelters, and other critical services.
3. Going out of business altogether. This would harm the economy **and** harm communities.

KNN is communicating with our federal delegation and are asking that:

1. Congress amend Section 2103 of the CARES Act to replace the word "reimburse" with "reduce the costs of" so it is clearer that states need not have self-insured nonprofits seek a partial reimbursement of a reimbursement.
2. Congress amend Section 2103 of the CARES Act to hold harmless self-insured nonprofits for 100% (rather than just 50%) of their COVID-19 related UI claims.

On behalf of the self-insured nonprofits in Kentucky, the other nonprofits who would face increased burdens as a result of the injury to the self-insured nonprofits, the employees of all nonprofits, and Kentuckians served by these critical organizations, I am writing to request that you take the following actions via Executive Order:

1. Even if Congress does not hold ultimately nonprofits 100% harmless, Kentucky can still provide this critical assistance. **Please issue an Executive Order to clarify that the Commonwealth will cover the remaining 50% of self-insured nonprofits' COVID-19 related UI claims from our UI trust funds**.
2. Most immediately, we ask that Kentucky heed the guidance suggested in Section 2103 of the CARES Act and offer maximum flexibility in payment options for self-insured nonprofits. Specifically, **we ask that you issue an Executive Order delaying payment liability without penalty or interest for self-insured nonprofits through at least 2022.**

Finally, we again urge the administration to **please establish a single point of contact for us to work with**. As the state association of the fourth largest private sector employer in the Commonwealth, Kentucky Nonprofit Network and our members offer frontline insights, real-time solutions and critical knowledge that can help address situations like the ones outlined above, and as you guide Kentucky toward being Healthy at Work. We stand ready to assist and are eager to ensure the needs of the sector and the Kentuckians we serve are addressed. The concerns and knowledge of the nonprofit sector are vital to these conversations.

Again, our sincere thanks to you and your administration for your leadership. If I can provide clarity or answer any questions, please don't hesitate to contact me directly at 859-963-3203 x3 or via email danielle@kynonprofits.org.

Respectfully,

Danielle Clore

Danielle Clore
Executive Director & CEO

Kentucky Nonprofit Network (KNN), a statewide association of more than 750 organizations connected with over 5000 organizations, is the voice for Kentucky's nonprofit community. Through our advocacy work and professional development investments in nonprofit leaders, we protect and enhance the ability of Kentucky's nonprofits to serve our Commonwealth, the nation and the world.

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