



What Employers Need To Know About The Unemployment Provisions Of The CARES Act

Insights

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The U.S. Department of Labor recently issued a series of guidances to assist employers and employees in understanding the unemployment provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. The CARES Act provides expanded unemployment benefits for those individuals affected by the COVID-19 pandemic.

The three main programs are the Pandemic Unemployment Assistance (PUA), the Federal Pandemic Unemployment Compensation (PUC), and the Pandemic Emergency Unemployment Compensation (PEUC). These programs are designed to work in coordination with each other and to provide benefits to the maximum number of affected employees possible under the Act. Each program, with some exceptions, provides for a weekly benefit that is a combination of an individual's regular weekly unemployment benefit under their state law, plus an additional \$600 each week through July 31, 2020. These supplemental benefits are fully funded by the federal government.

The CARES Act programs will be administered through the state agency set up to handle unemployment compensation benefits. Each state is responsible for establishing a system to address the CARES Act within the guidelines provided by the Department of Labor (DOL). In addition, the Act provides for 100% funding of the first week of compensable regular unemployment for states *with no waiting week*. While most states typically have a waiting week, those states that have not already done so will likely eliminate this provision during the pandemic to take advantage of the Act. Each of these three programs is briefly summarized below.

Pandemic Unemployment Compensation (Or Regular Unemployment) (PUC)

The Pandemic Unemployment Compensation Program (PUC) provides benefits to those employees who are eligible for unemployment or partial compensation benefits. Eligibility is determined pursuant to the guidelines set up by the state. Under the Act, employees entitled to participate in the state unemployment compensation system will receive the benefits as determined under the state program plus the supplemental payment of \$600 for every week the worker is unemployed or partially unemployed.

To qualify for partial unemployment benefits under the PUC, workers must meet the eligibility requirements pursuant to the respective state's unemployment compensation program. The DOL has determined that in order to qualify for the \$600 federal supplement under the PUC, the

employee filing for partial unemployment must qualify for at least \$1 of partial unemployment benefits.

Employees who are eligible to participate in the state unemployment compensation system will also be entitled to Extended Unemployment Compensation benefits under the PUC for up to 39 weeks in most states. The \$600 supplemental payment under the PUC will end on July 31, 2020.

Pandemic Unemployment Assistance (PUA)

The Pandemic Unemployment Assistance Program (PUA) provides benefits for those individuals who are left out of the regular state unemployment compensation system or who have exhausted their state benefits under the PUC (above). The Guidance clarifies that PUA is provided to those individuals who are unemployed, partially unemployed, or unable to work due to COVID-19, including:

- independent contractors, or self-employed (gig workers);
- individuals who are part-time; and
- those employees who otherwise would not qualify for regular state unemployment or PUC benefits (such as those employees who do not have sufficient wages to qualify for unemployment).

To qualify for PUA, individuals must demonstrate that they are otherwise able to work and available for work. Individuals must also establish that their unemployment, partial unemployment, or inability to work is caused by certain specified COVID-19 related reasons. Individuals seeking PUA will be permitted to provide self-certification to support the claim.

Eligible individuals will receive an amount of unemployment or partial compensation benefits under the state unemployment system (including a minimum benefit) plus the supplemental payment of \$600 for every week the worker is unemployed, partially unemployed, or unable to work.

Similar to PUC, employees who are found to be entitled to participate in the state unemployment compensation system will also be eligible for extended benefits for up to 39 weeks in most states. The \$600 supplemental payment under the PUA will end on July 31, 2020.

Pandemic Emergency Unemployment Compensation (PEUC)

The Pandemic Emergency Unemployment Compensation Program (PEUC) provides up to 13 weeks of benefits to workers and individuals who have exhausted regular UC under state or federal law, have no rights to regular UC under any other state or federal law, and meet other specific requirements. The benefits extension is available through December 31, 2020.

Additional Provisions Related To Unemployment Programs

The CARES Act and the subsequent DOL guidance provide for some additional provisions employers need to be aware of.

Short-Time Compensation Or Shared Work Programs

The Act also provides for temporary financing, agreements, and grants for Short-Term Compensation (STC), commonly known as “shared work” or “work share” programs. STC programs allow employers to retain employees on a reduced schedule, while unemployment benefits make up some of the difference in income. Employees are not expected to look for subsequent employment, as the goal is for them to return to full employment with their current employer after the slow-down in business subsidies.

Emphasis On The Fraud Provisions

Although the Act provides workers some flexibilities, the Department of Labor makes clear that “*quitting work without good cause to obtain additional benefits may be considered fraud.*” The guidance states that if an individual obtains benefits through fraudulent measures, the employee or individual will be: (1) ineligible to receive any future unemployment compensation benefit payments, (2) responsible to pay back the benefits obtained because of the fraud, and (3) subject to criminal sanction and prosecution.

Employers need to be cautious about promising unemployment benefits in any amount to employees, whether fully or partially unemployed. Each state must decide benefits eligibility under applicable state laws, which will impact the \$600 supplemental payment.

Under the PUA, and under most state unemployment compensation laws, an employee will not be eligible for unemployment where the employee teleworks with full pay. The employee may be eligible for partial unemployment benefits where the employee performs telework on a reduced hour basis.

Importantly, employees who are receiving sick leave or other fully paid leave benefits will not be eligible for weekly benefits under the PUC and PUA. Additionally, it’s imperative for employees who are working reduced hours to report their earnings each week to avoid an overpayment of benefits. Employees who refuse available work or fail to return to work upon being recalled could also lose eligibility for benefits. Most states have a process for employers to notify the agency responsible for administering unemployment benefits when an individual should be disqualified from benefits.

Conclusion

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips’ alert system](#) to gather the most up-to-date information. For further information, contact your Fisher Phillips attorney, or [any member of our COVID-19 Taskforce](#). You can also review our nationwide [Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus](#) and our [FP Resource Center For Employers](#), maintained by our Taskforce.

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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