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Relief for Workers Affected by Coronavirus Act: Expanded Unemployment Benefits under the CARES Act

This article has been updated as of April 15, 2020.

The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act" or "Act"), which President Trump signed into law on March 27, 2020, provides a significant expansion to unemployment benefits for workers affected by the COVID-19 pandemic.

These are the five key takeaways from the CARES Act's unemployment provisions:

1. Individuals will be eligible for state unemployment benefits plus a new $600 flat rate weekly federal benefit.

2. Individuals who are not usually eligible for state or federal unemployment benefits, but who are nonetheless unemployed, partially unemployed, unable to work or unavailable for work because of a qualifying COVID-19 reason will be eligible for state and federal unemployment benefits.

3. Individuals will generally be eligible for 39 weeks of unemployment rather than 26 weeks.

4. Individuals may not have to wait one week to receive unemployment benefits.

5. The expanded unemployment eligibility criteria and benefits under the CARES Act will be available in each state once the state signs an agreement with the federal government putting these benefits in place. As of March 30, 2020, every state has entered into their DOL agreements, though administrative hurdles are causing implementation delays.

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A complete analysis of each of these takeaways, as well as important considerations for employers, follows below.

1. **The CARES Act Provides Additional Monetary Relief for the Unemployed.**

The CARES Act provides an additional federal benefit of $600 per week (“Federal Pandemic Unemployment Compensation” or “FPUC”) to all covered individuals through July 31, 2020. Covered individuals are those individuals who: (1) are already eligible for state unemployment benefits; or (2) meet the criteria for the expanded group of covered individuals under the temporary Pandemic Unemployment Assistance program (PUA).

This Article will refer to individuals normally eligible for state unemployment benefits and new covered individuals under PUA collectively as “covered individuals.” All covered individuals are entitled to the $600 weekly federal benefit through July 31, 2020.

The FPUC benefit is a flat amount of $600 per week and is in addition to the amount of state unemployment benefits to which a covered individual is otherwise entitled.

The federal government is fully reimbursing the states for Federal Pandemic Unemployment Compensation. Employers’ unemployment tax rate will not be increased because of the new federal $600 benefit.

2. **The CARES Act Expands the Definition of “Covered Individuals” who are Entitled to Unemployment Benefits.**

PUA expands unemployment relief to covered individuals who are able to self-certify that he or she is unemployed, partially unemployed, or unable to work because:

- The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- A member of the individual’s household has been diagnosed with COVID-19;
- The individual is providing care for a family member of a member of the individual’s household who has been diagnosed with COVID-19;
- A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COIVD-19 public health emergency;
- The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- The individual has to quit his or her job as a direct result of COVID-19;

- The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or

- The individual meets any additional criteria established by the Secretary of Labor for unemployment assistance under this section.

PUA also extends coverage to workers who are self-employed, are seeking part-time employment, do not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under state or federal law. PUA also covers independent contractors.

PUA excludes individuals who have the ability to telework with pay and individuals who are receiving paid sick leave or other paid leave benefits.

3. **The CARES Act Expands State Unemployment Benefits Coverage to a Potential Total of 39 Weeks.**

The expanded federal unemployment insurance benefits available under PUA (discussed in Section 2 above) are available for a maximum of 39 weeks, including any weeks for which the covered individual received regular unemployment benefits provided under federal or state law.

The CARES Act also creates the Pandemic Employment Unemployment Compensation Program (PEUC). PEUC provides 13 additional weeks of state unemployment compensation, through December 31, 2020, for individuals who have exhausted their state or federal unemployment benefits, provided the individuals meet the following criteria: (1) have no further rights to regular unemployment compensation under any applicable state or federal law; (2) are not receiving unemployment compensation under Canadian law, and (3) are able, available, and actively seeking work. Individuals eligible for the 13 additional weeks of unemployment are also eligible to receive the FPUC benefit through July 31, 2020. PEUC benefits, both state and federal, are fully funded by the federal government. States may not charge employers for PEUC benefits paid.

The maximum benefit entitlement period in most states is 26 weeks. Thus, the CARES Act effectively extends unemployment benefits, both new and old, to 39 weeks.

4. **The CARES Act Removes the Typical One Week Waiting Period to Receive UI Benefits.**

The CARES Act requires states to agree to remove any waiting periods established by state unemployment laws for an individual qualifying for unemployment benefits under PUA. In other words, if your state ordinarily requires a one week waiting period before one can collect state unemployment benefits, the fully funded $600 Federal Pandemic Unemployment Compensation benefit and state law unemployment benefits become available to those who are unemployed for any of the reasons identified in Section 2 above without the need for the covered individual to wait a week.

Individuals who are usually entitled to state unemployment law benefits may still face a waiting week for benefits. For states that agree to waive their normal waiting period, the federal government will pay the full cost of the first week of regular state unemployment benefits, including administrative expenses. This last point is meant to incentivize the states to eliminate their one week waiting periods.

5. **The CARES Act's Expanded Unemployment Benefits Become Effective When States Enter into a Corresponding "Agreement" with the Federal Government.**

The CARES Act's various unemployment provisions only become effective once a state enters into a corresponding "agreement" with the federal government. States began entering into agreements with the federal government on Monday, March 30, 2020. The DOL has announced that as of March 28, 2020, all 50 states have entered into their respective agreements.

By entering into these agreements, states are agreeing to administer each program according to the conditions set forth in the CARES Act. Although every state has signed its respective agreement, we are seeing states delaying the implementation of these CARES Act programs while setting up an administration process.

Important Considerations for Employers

Q1. Why do the CARES Act's Unemployment Provisions Matter to Employers?

These new provisions matter for three reasons. First, the CARES Act dramatically increases the number of individuals who are eligible for unemployment benefits. Second, the CARES Act provides additional benefits to both those who are normally eligible for state unemployment benefits and extends benefits to those workers who are not normally usually eligible for benefits. Third, many employees who are eligible for increased unemployment benefits will be able to earn more money on unemployment than in full time employment because of the new FPUC benefit.

Q2. Who is Covered under the Pandemic Unemployment Assistance Program?

The Act provides payments and benefits to individuals who are not normally eligible for unemployment benefits, as well as expanded benefits for all workers eligible for unemployment. These new covered individuals include the self-employed, independent contractors, gig workers, part-time employment seekers, those who lack sufficient work history, and those who have exhausted their unemployment benefits under existing schemes. For a complete list, please see Item (2) above.

Notably, PUA is not meant to cover every individual who is unemployed, partially unemployed or unable or unavailable to work because of COVID-19. PUA is only meant to expand unemployment eligibility to individuals who do not typically qualify for unemployment. Employees who find themselves unemployed (whatever the circumstances, COVID-19 related or otherwise) should apply for usual state unemployment benefits first. If these employees exhaust their state benefits (normally 26 weeks), then they should apply for an additional 13 weeks of state and federal benefits under the PEUC program.

Q3. What are the Coverage Dates for the Pandemic Unemployment Assistance Program?

PUA provides unemployment assistance to qualifying individuals for weeks of unemployment, partial unemployment, or inability to work caused by COVID-19 retroactive to January 27, 2020 and ending December 31, 2020. PUA will provide covered individuals with unemployment assistance for as long as the covered individual's unemployment, partial unemployment, or inability to work caused by COVID-19 continues, for a maximum of 39 weeks. The $600 benefit will be available for those who seek unemployment benefits from the date the state signs the agreement with the federal government through July 31, 2020.

As noted, every state has signed their agreement. However, states have encountered many administrative delays in setting up the new CARES Act programs. Therefore, states are making the $600 benefit retroactively available to the date on which they signed the agreement.

Q4. How much in Unemployment Assistance do Covered Individuals Receive under the CARES Act?

The amount of benefits provided to a covered individual is equal to the amount of unemployment benefit the covered individual is entitled to under state law PLUS the $600 weekly FPUC benefit. Again, the $600 FPUC benefit is only available through July 31, 2020.

Q5. For How Long may a Covered Individual Receive Assistance under the CARES Act?

As discussed in Section 3 above, most covered individuals will be eligible to receive 39 weeks of unemployment assistance.

Q6. Are Employers Required to Pay for Federal Pandemic Unemployment Compensation?

No. The federal government will fully reimburse states for the amount of Federal Pandemic Unemployment Compensation paid out, plus related administrative costs incurred by the state. Employers do not pay anything towards these new federal unemployment benefits.

Q7. Is there a Waiting Period to Receive the Federal Assistance under the CARES Act?

The CARES Act removes any waiting periods established by state unemployment laws for assistance authorized under PUA, including the receipt of Federal Pandemic Unemployment Compensation and state benefits. This means that individuals covered under PUA (see Section 2 above for a list of individuals covered by PUA) do not need to wait one-week to collect their benefits even if their state has not waived its one-week waiting period.

For those who are otherwise eligible under state unemployment laws, the CARES Act incentivizes states to eliminate their one week waiting periods by paying them the full cost of the first week of benefits. To date, a few states, including Wisconsin, have not yet to waived their waiting week, though efforts are progressing in each these states to eliminate the waiting week.

Q8. Do State Work Search Requirements Still Apply?

Maybe. State unemployment compensation rules related to searching for work still generally apply. The Family First Coronavirus Relief Act (FFCRA), which President Trump signed into law on March 18, 2020 (click here for our analysis of FFCRA), provided $1 billion in administrative funds to state unemployment systems. The FFCRA conditioned release of this money by requiring states to amend unemployment rules to allow greater access by impacted workers and encourages states to hasten the pace of payment. These requirements include, among others, waiving work search requirements for employees impacted by COVID-19.

At this time, many states have waived work search requirements. For example, Illinois, Wisconsin, Delaware, Ohio and Pennsylvania, among others, have waived work search requirements for those impacted by COVID-19.

Q9. What must an individual submit as a “self-certification” to verify eligibility for unemployment benefits under PUA?

Workers eligible under PUA must self-certify they are unemployed, partially unemployed, unable to work, or unavailable for work due to one of the enumerated COVID-19 related reasons identified in Section 2 above. PUA does not, however, define the necessary conditions of a valid self-certification, or otherwise provide any oversight mechanisms to ensure consistency and compliance.

The self-certification provision is an imperfect means of increasing the efficacy of the unemployment system. On one hand, as claims invariably rise due to coronavirus-related layoffs, state unemployment offices will gradually be unable to process increased volume of claims effectively. The self-certification process reduces the time between unemployment claims and benefit disbursement and is designed to help alleviate stress on unemployment offices. On the other hand, self-certification may give rise to increased abuse. For employees who would earn more on unemployment than working full-time, self-certifying a qualifying circumstance might be tempting.

The DOL has issued limited guidance on how states should implement self-certification mechanisms. At this time, there is no indication the DOL will be releasing a uniform self-certification form for use in every state. The DOL has simply instructed states to include on their self-certification forms: (1) an acknowledgment that the claimant understands that making the certification under penalty of perjury; and (2) information that advises the claimant that intentional misrepresentation in self-certifying that he or she falls in one or more of the COVID-19 related categories is fraud. The DOL is also instructing states to provide clear messaging online that claimants may be subject to criminal prosecution if they are found to have committed fraud.

Q10. Will Receiving Federal Pandemic Unemployment Compensation Affect Eligibility for Other Assistance Programs?

Maybe. Federal Pandemic Unemployment Compensation will not count as income for purposes of determining eligibility for any purpose under the programs established under titles XIX and title XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1398aa et seq.).For example, Federal Pandemic Unemployment Compensation will be disregarded for determining eligibility for Medicaid and the State Children's Health Insurance Program ("CHIP").

However, those individuals who are receiving paid leave under FFCRA, either Emergency Paid Sick Leave (EPSL) or FMLA-Public Health Emergency Leave, or are receiving paid leave under an employer plan or state or local law, cannot simultaneously receive unemployment assistance under the CARES Act.

Q11. What are short-time compensation/work-share "agreements," and do I need to pay for them?

The CARES Act provides some incentives for employers to retain their employees through work-share agreements. Work share agreements are agreements that employers will enter into with the State to provide for specific unemployment benefits when making reductions across the board for certain groups of employees who otherwise may be ineligible for unemployment benefits. These programs enable employers to reduce employee hours instead of laying off workers, and the employees with reduced hours receive a pro-rated unemployment benefit.

For states with existing programs, such as Illinois and Wisconsin, the federal government will reimburse 100% of the costs states incur in providing this benefit through December 31, 2020. Notably, The CARES

Act precludes reimbursements for benefits paid to individuals who are employed by the participating employer on a seasonal, temporary, or intermittent basis.

The CARES Act also addresses "new" short-time compensation or workshare "agreements" established by states without such existing programs prior to December 31, 2020. For states entering into these agreements, the federal government will cover 50% of the costs that a state incurs in providing the short-time compensation through December 31, 2020. The other 50% of costs associated with the short-term compensation plan would be paid by employers. Although the employer is responsible for 50% in states without existing programs, these payments are deposited in the state's unemployment fund but will not be used for purposes of calculating an employer's contribution rate in the future.

If, however, a state without an existing work-share program enacts a work-share law that complies with Section 13 3306(v) of the Internal Revenue Code, the state would then be eligible for 100% reimbursement of the costs it incurred in providing the benefits through December 31, 2020.

The CARES Act also establishes a "Payroll Protection Program" and employer retention credits, which we cover in this Client Alert as well as this one.

Q12. How will the expanded definition of "covered individual" under PUA impact my workforce?

PUA greatly expands eligibility for unemployment benefits to many new covered individuals. The DOL has issued guidance listing a non-exhaustive list of qualifying reasons why someone may qualify for benefits under PUA. That list can be found here.

Employers are wondering whether an individual may simply quit his or her job and collect unemployment benefits. Under PUA, "quit as a direct result of COVID-19" is an enumerated reason which may qualify an individual for unemployment benefits. The DOL has clarified this particular circumstance. According to the DOL, an individual who quits his or her job because they are afraid of contracting COVID-19 will not qualify for benefits under PUA. Instead, this factor contemplates individuals whose circumstances support a specific, credible health concern related to COVID-19 requiring that person to quit his or her job. An individual who voluntarily quits his or her job will probably not be eligible to receive state or federal unemployment benefits.

Q13. Does the federal government's new additional Pandemic Unemployment Compensation incentivize individuals not to work?

This exact question caused significant debate within the Senate, which ultimately passed the CARES Act 96-0. The CARES Act does not limit a covered individual's total unemployment benefits to their pre-unemployment earnings level. Therefore, with the federal government providing an additional $600 per week in unemployment benefits through July 31, 2020, a covered individual theoretically could earn a higher wage by being unemployed. This could increase total unemployment claims and strain the system.

Consider this example. An employee earning $34,000 per year in Wisconsin and otherwise eligible for unemployment could receive a $370 state unemployment payment per week plus $600 per week via the federal Program for a total payment of $970 per week. Thus, anyone making less than $50,000 a year in Wisconsin is likely to receive more money from unemployment than actually working. (Note: these figures are approximations for demonstrative purposes only).

It is unknown whether the possibility of purposeful idleness will become a reality. As noted above, there are fraud mechanisms built into the self-certification process under PUA (and state unemployment laws) which are meant to deter individuals from falsely obtaining benefits. The DOL emphasizes that simply quitting one's job to obtain unemployment benefits and self-certifying under false pretenses is fraudulent.

Q14. Can I cost my employee money by paying them while furloughed?

Yes. Take the example of a furloughed employee living in Wisconsin who earns $60,000 annually with his or her company. Please note again that these figures are approximations for demonstrative purposes only. The employer might elect to pay this furloughed employee 50% salary to try to help the employee financially during the furlough period. (This is both a retention mechanism and out of compassion for the current state of affairs). In Wisconsin, if a covered individual receives $500 or more in any week, that individual is not eligible for unemployment benefits. At 50% salary replacement, the employer with great intentions would pay that person $576 per week. Thus, the furloughed employee would not be eligible for unemployment benefits.

In contrast, if the employer paid the employee nothing, the individual would qualify for $970 per week in unemployment benefits ($370 in state benefits and $600 in federal benefits). This is the paradox of good intentions: by paying 50% salary, the employer would cause the furloughed employee to "lose" approximately $394 per week.

Related People

Samuel Mitchell
Associate
smmitchell@michaelbest.com
T 414.277.3442

Brian Paul
Partner
bppaul@michaelbest.com
T 312.527.6843