



## U.S. Department of Labor's new guidance on CARES Act's Pandemic Unemployment Assistance program and \$600 weekly Federal Pandemic Unemployment Compensation

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On March 27, 2020, the president signed into law the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") as part of the \$2 trillion stimulus package intended to stabilize the economy during the devastating coronavirus pandemic. On April 4<sup>th</sup> and April 5<sup>th</sup>, the U.S. Department of Labor (DOL) issued new guidance on the CARES Act, including guidance on the additional \$600 weekly payment for individuals receiving state unemployment insurance (UI) and certain individuals who would otherwise be ineligible for benefits under their applicable state-based UI system. This Alert describes the CARES Act's UI provisions and the DOL's new guidance.

### **The \$600 weekly Federal Pandemic Unemployment Compensation program**

Under the CARES Act, individuals who receive state-based unemployment payments (in accordance with state law or the CARES Act) are eligible for an additional \$600 per week under the CARES Act's Federal Pandemic Unemployment Compensation Program (FPUC). The DOL's new guidance sets forth certain key details as to which state-based UI recipients will be eligible for these additional \$600 payments and for how long.

#### ***No FPUC payments for quitters without good cause***

The DOL's new guidance emphasized that "individuals are only entitled to benefits if they are no longer working through no fault of their own and ... individuals must be able and available to work." To that end, the DOL's guidance warns that "quitting work without good cause to obtain additional benefits under the regular UI program or the CARES Act qualifies as fraud." Importantly, if an individual obtains benefits under the CARES Act through fraud, the individual will be ineligible for any additional benefits payments, must pay back the benefits received, and is subject to criminal prosecution under federal law. The DOL's guidance makes very clear that any flexibilities granted to the states with respect to UI benefits and FPUC payments are limited to dealing with the impact of COVID-19.

### ***FPUC eligibility already started***

The \$600 FPUC payments will be payable by each state for weeks of unemployment beginning after the date on which the state enters into the applicable agreement with the DOL to receive benefits under the CARES Act. According to a DOL news release, as of March 28, 2020, all states have executed such agreements.<sup>1</sup> Therefore, the first week for which FPUC payments may be paid is the week ending April 4, 2020, or April 5, 2020, depending upon the day on which the unemployment week ends in the applicable state. All FPUC payments will cease on July 31, 2020, unless extended by Congress.

### ***Individuals receiving \$1 of unemployment benefits are eligible for the \$600***

Under the CARES Act, any person who is otherwise entitled under state or federal law to receive regular unemployment compensation is entitled to the additional \$600 weekly FPUC payment for all weeks of total or partial unemployment, as defined by the applicable state's law. Based on the calculation of total or partial unemployment benefits under state law, "[i]f the individual is eligible to receive at least one dollar (\$1) of underlying benefits for the claimed week, the claimant will receive the full \$600 FPUC."

### ***States may not charge employers for FPUC benefits paid***

The DOL's guidance mandates that states cannot charge employers for any FPUC benefits paid to employees in the state and that the payments cannot otherwise impact an employer's experience rating.

### ***Taxable income***

The \$600 FPUC payments are taxable income.

## **The Pandemic Unemployment Assistance program for individuals ineligible for traditional state-based unemployment insurance**

As has been widely reported, the CARES Act also provides benefits to individuals who have traditionally been ineligible for state-based UI. Through the CARES Act's Pandemic Unemployment Assistance (PUA) program, certain individuals who are not otherwise eligible for state-based UI payments (including individuals who have exhausted their UI entitlement, independent contractors, self-employed individuals, and those with limited work history) may still be eligible for both: (1) PUA payments in an amount equivalent to what they would receive under their state-based UI program, if they were eligible, and (2) the additional \$600 under the FPUC program.

To qualify for the PUA program, an individual must be unemployed, partially unemployed, or unable or unavailable to work due to one of several COVID-19-related reasons. The DOL's guidance sets forth certain key details as to who will be eligible (and ineligible) to participate in the PUA, the amount individuals will receive through PUA, and for how long these benefits will last.

### ***PUA payments and timeline***

The weekly benefit amount that an individual will receive under the PUA is equal to the amount that the individual would have been paid as UI in the state where the individual was employed.

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<sup>1</sup> See DOL news release—"[U.S. Department Of Labor Publishes Guidance on Federal Pandemic Unemployment Compensation](#)."

These PUA payments are payable for all qualifying weeks from January 27, 2020, to December 31, 2020.

### ***Additional \$600 weekly payments for PUA recipients***

For weeks of unemployment beginning on or after March 27, 2020, and ending on or before July 31, 2020, individuals eligible to receive PUA are also eligible to receive an additional \$600 per week under the FPUC.

### ***Who qualifies for PUA?***

The PUA covers individuals who are not qualified for regular unemployment compensation, extended benefits under state or federal law, or pandemic emergency unemployment compensation, including individuals who exhausted all rights to such benefits, self-employed individuals, individuals seeking part-time employment, and individuals lacking sufficient work history. Further, to be eligible under the PUA, the individual must be unemployed, partially unemployed, or unable or unavailable to work due to one of several COVID-19-related reasons.

The DOL's guidance provides some examples as to each of the COVID-19-related reasons that may qualify an individual for PUA under the CARES Act:

- ***Individuals who have been diagnosed with COVID-19 or are experiencing symptoms of COVID-19 and seeking a medical diagnosis.*** The DOL's guidance suggests that a mere diagnosis or symptoms of COVID-19, in and of itself, is not enough to qualify for PUA; rather, an individual must also be unable to continue work activities, such as through teleworking. The DOL's guidance provides two examples of the potential applicability of this COVID-19-related reason. First, an individual might qualify if he or she has to quit his or her job because the individual has tested positive for or has been diagnosed with COVID-19 by a qualified medical professional, and continuing work activities, such as through teleworking, is not possible by virtue of such diagnosis or condition. Second, an individual might satisfy this criterion if he or she came in direct contact with someone who has tested positive for or has been diagnosed by a medical professional as having COVID-19, and, on the advice of a qualified medical health professional, is required to resign from his or her position in order to quarantine.
- ***A member of the individual's household has been diagnosed with COVID-19.*** The DOL's guidance explains that this COVID-19-related reason would apply if an individual is unable to work because a member of his or her household has been diagnosed as having or tested positive for COVID-19 by a qualified medical professional. The DOL's guidance does not explain what, exactly, must occur for an individual to be "unable to work" as a result of the diagnosis of a household member; however, based upon the examples provided by the DOL in other contexts, this likely includes that the individual must be unable to telework as a result of the household member's diagnosis.
- ***The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19.*** In its guidance, the DOL defines "providing care" somewhat narrowly. It specifically states: "An individual who is assisting a family member who is able to adequately care for him or herself is not 'providing care' under this category." Rather, an individual is "providing care" for a family member or a member of the individual's household "if the provision of care requires such ongoing and

constant attention that the individual's ability to perform other work functions is severely limited.”

- ***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.*** As with several of the other provisions, the DOL's guidance with respect to this category contemplates teleworking. However, the guidance provides that an individual may still qualify if his or her job allows for teleworking, but the child or other person with a closed school or other facility for whom the individual is responsible for care requires such ongoing and constant attention that it is not possible for the individual to perform work at home.
- ***The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency.*** This category focuses primarily upon the many executive orders that we have seen imposed over the past several weeks. More particularly, the DOL's guidance explains that this provision applies to an individual who is unable to reach his or her place of employment because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of COVID-19.
- ***The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.*** The DOL's guidance sheds some light on what, exactly, is required for a self-quarantine to be “due to concerns related to COVID-19.” First, the DOL's guidance explains that this provision may apply to, for example, individuals who have had direct contact with another person who has tested positive for COVID-19 or been diagnosed with COVID-19 by a qualified medical professional, and were advised by a health care provider to self-quarantine to prevent further possible spread of the virus. In addition, the DOL's guidance states that this provision may also apply to an individual whose immune system is compromised by virtue of a serious health condition and is therefore advised by a health care provider to self-quarantine in order to avoid the greater-than-average health risks that the individual might face if he or she were to become infected by the coronavirus. It appears, however, that the individual cannot simply self-report having a compromised immune system—the individual must have received advice to self-quarantine from a medical professional.
- ***The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency.*** The DOL's guidance explains that this category may apply to an individual whose employer has closed the place of employment or an individual who does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-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 DOL's guidance does not add much detail concerning this provision. It explains only that it applies to an individual whose head of household who previously contributed the majority of financial support to the household died as a direct result of COVID-19, and the individual is now the

person in the household expected to provide such financial support.

- ***The individual has to quit his or her job as a direct result of COVID-19.*** The DOL’s guidance provides only one example for when this provision might be applicable: “An individual was diagnosed with COVID-19 by a qualified medical professional, and although the individual no longer has COVID-19, the illness caused health complications that render the individual objectively unable to perform his or her essential job functions, with or without a reasonable accommodation.” Individuals should be mindful that the DOL’s guidance also specifically provides that it constitutes fraud for an individual to quit work without good cause to obtain benefits under the CARES Act.
- ***The individual’s place of employment is closed as a direct result of the COVID-19 public health emergency.*** For a place of employment to be “closed as a direct result of the COVID-19 public health emergency,” the business must be shut down due to an emergency declaration or due to necessary social distancing protocols.
- ***The individual meets any additional criteria established by the Secretary for unemployment assistance under this section.*** The Secretary of Labor has utilized this category to carve out an additional category for independent contractors in particular. Specifically, an individual who works as an independent contractor with reportable income may also qualify for PUA benefits if the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities. For example, a driver for a ridesharing service who receives an IRS Form 1099 from the ridesharing service may not be eligible for PUA benefits under the other criteria outlined above, because such an individual does not have a “place of employment,” and thus cannot claim that he or she is unable to work because his or her place of employment has closed. However, under the additional eligibility criterion established by the Secretary, the driver may still qualify for PUA benefits if he or she has been forced to suspend operations as a direct result of the COVID-19 public health emergency, such as if an emergency state or municipal order restricting movement makes continued operations unsustainable.

### ***Who doesn’t qualify for PUA?***

The PUA is generally not payable to individuals who have the ability to telework with pay or who are receiving paid sick leave or other paid leave benefits. However, under certain circumstances, individuals may still be eligible for PUA if they are receiving paid sick leave or other paid leave benefits for less than their customary work week or if they are teleworking for less and are being paid less than they worked prior to the COVID-19 pandemic.

### **Applying for PUA and FPUC**

Applications for FPUC benefits will be handled by the applicable state agency for the state in which the individual was employed. FPUC-eligible individuals who are already receiving state-based UI do not need to separately apply for FPUC. However, FPUC-eligible individuals who are not already receiving state-based UI will need to apply for state UI benefits and should do so as soon as possible.

Applications for PUA benefits will also be handled by the applicable state agency for the state in which the individual was employed. In several states, state agencies are already accepting applications for PUA benefits. But, in some states, the applications are not yet ready. Individuals

should check their state agency's website to determine if, and when, the agency will be accepting applications.

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