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Coronavirus Aid, Relief, and Economic Security Act: U.S. Department of Labor Issues Guidance on Unemployment Provisions

The Guidance Letters Provide Details on the Application of the COVID-19 Unemployment Benefits Programs

SUMMARY

Updated March 1, 2021. On February 25, 2021, the U.S. Department of Labor (“DOL”) issued a change to Unemployment Insurance Program Letter (“UIPL”) [No. 16-20](#) that, among other things, expands the criteria under which workers may be eligible to receive Pandemic Unemployment Assistance. The new eligibility criteria cover (i) workers receiving unemployment benefits who had their continued regular unemployment benefits claims denied after they refused to work or accept an offer of work at a worksite not in compliance with COVID-19 health and safety standards; (ii) workers who were laid off, or who have had their work hours reduced as a direct result of the pandemic; or (iii) school employees working without a contract or reasonable assurance of continued employment who face reduced paychecks and no assurance of continued pay when schools are closed due to COVID-19. These updates have been incorporated into this memorandum.

The DOL issued UIPL Nos. [14-20](#), [15-20](#), [16-20](#), and [17-20](#) on April 2, 4, 5, and 10, respectively, providing guidance to state unemployment agencies on implementing the unemployment provisions in the Coronavirus Aid, Relief, and Economic Security Act of 2020 (“CARES Act”). Specifically, the UIPL letters summarize and interpret the various new unemployment benefits available under the CARES Act, including: (a) the additional \$600 per week available through July 31, 2020 to all individuals collecting unemployment compensation under state or federal law, (b) the expansion of regular unemployment compensation

benefits for up to 39 weeks through December 31, 2020 for qualifying individuals including those meeting new COVID-19 qualifying reasons, and (c) the extension of unemployment benefits for an additional 13 weeks through December 31, 2020 for those who have already exhausted their benefits. UIPL 14-20 also provides a detailed explanation of how the various new benefits programs relate to each other and which benefits individuals may receive under the various programs. The guidance notably clarifies that the \$600 per week Federal Pandemic Unemployment Compensation benefit is currently available only until July 31, 2020. It also states that individuals who quit employment without good cause in order to obtain these new unemployment benefits are committing fraud, and that the DOL will use its enforcement power to prosecute such fraud. Our memorandum to clients describing the provisions in the Consolidated Appropriations Act, 2021 that extended and modified these COVID-19-related unemployment benefits programs is available [here](#).

Our Firm has issued Client Memoranda addressing the unemployment and other aspects of the CARES Act, which can be found [here](#).

BACKGROUND

One section of the CARES Act, the Relief for Workers Affected by Coronavirus Act, significantly expands the unemployment assistance available to individuals who are unemployed because of COVID-19-related reasons, as well as to individuals who are actively searching for work but have exhausted regular unemployment compensation under state or other federal law.

This memorandum summarizes the key employer takeaways from the DOL's guidance.

FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION

The Federal Pandemic Unemployment Compensation (or "FPUC") program, created by Section 2104 of the CARES Act, provides individuals with an extra \$600 weekly benefit amount through July 31, 2020 in addition to certain other forms of unemployment compensation.¹ Note that the Consolidated Appropriations Act, 2021 extended and modified the FPUC program, as described in our memorandum to clients, available [here](#).

- **Duration of Benefits.** FPUC is available for any weeks of unemployment between the date a state agrees to enter into a FPUC program with the DOL, and July 31, 2020. As of March 28, 2020, all states had executed the necessary federal-state agreement.
- **Eligibility.** Individuals eligible for FPUC are those who are collecting any of several forms of unemployment benefits under state or other federal law, including regular unemployment compensation under state or federal law, Pandemic Emergency Unemployment Compensation (set forth in Section 2107 of the CARES Act and discussed below), Pandemic Unemployment Assistance (set forth in Section 2102 of the CARES Act and discussed below), extended benefits under federal law, short-time compensation, trade readjustment allowances, disaster unemployment assistance, and payments under the self-employment assistance program.

- **Prohibition on Charging Employers.** FPUC is fully funded by the federal government, and states may not charge employers for benefits paid under this program.

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION

The Pandemic Emergency Unemployment Compensation (or “PEUC”) program, created by Section 2107 of the CARES Act, expands the duration of unemployment compensation benefits for individuals who have exhausted their regular unemployment compensation entitlement and are actively seeking work, regardless of whether their unemployment or partial unemployment is caused by a COVID-19-related reason. Note that the Consolidated Appropriations Act, 2021 extended and modified the PEUC program, as described in our memorandum to clients, available [here](#).

- **Weekly Benefit Amount.** The PEUC program provides for an extension of unemployment benefits in an amount equal to the weekly amount of regular unemployment compensation (including partial unemployment compensation) otherwise available under state or federal law for individuals who have exhausted their eligibility for regular unemployment compensation.
- **Duration of Benefits.** PEUC is available for up to 13 weeks of additional benefits, for weeks of unemployment between the date a state agrees to enter into a PEUC program with the DOL, and December 31, 2020.
- **Eligibility.** Individuals eligible for PEUC include those who have exhausted regular unemployment compensation under state and federal law;² do not have rights to regular unemployment compensation under any other state or federal law; and are not receiving unemployment compensation under Canada law. To be eligible, individuals must be able and available to work and must be actively seeking work. The DOL notes that “states shall offer flexibility in meeting the [work search] requirement if individuals are unable to search for work because of COVID-19, including because of illness, quarantine, or movement restriction.”
- **Prohibition on Charging Employers.** PEUC is fully funded by the federal government, and states may not charge employers for benefits paid under this program.

PANDEMIC UNEMPLOYMENT ASSISTANCE

The Pandemic Unemployment Assistance (or “PUA”) program, created by Section 2102 of the CARES Act, is a significant extension of unemployment compensation benefits to individuals who have not typically been eligible for regular unemployment compensation, if their unemployment, partial unemployment, or inability to work is caused by certain COVID-19-related reasons. The COVID-19-related reasons listed in the CARES Act are set forth in our memorandum on employer takeaways from the CARES Act, which is available [here](#). Note that the Consolidated Appropriations Act, 2021 extended and modified the PUA program, as described in our memorandum to clients, available [here](#).

- **Weekly Benefit Amount.** The PUA program provides unemployment compensation benefits equal to (1) the weekly amount of regular unemployment compensation otherwise available under state law if the individual was eligible, or (2) half of the average regular unemployment compensation for the individual’s state of residence that week, whichever is greater.

- **Duration of Benefits.** PUA benefits last up to 39 weeks, and are available for weeks of unemployment between January 27, 2020 and December 31, 2020, less any weeks of regular unemployment compensation or extended benefits already received. Weeks for which an individual collected PEUC are not deducted from an individual's PUA entitlement.
- **Effect of Extension of Extended Benefits.** If the duration of extended benefits is extended, for example, because a state enters into a "high unemployment period" as provided for in the Federal-State Extended Unemployment Compensation Act of 1970, the 39-week period for receiving PUA would be extended by the same amount, up to an additional seven weeks of benefits, resulting in a total of 46 weeks of PUA benefits, although, as noted above, the PUA benefit must be reduced by the regular unemployment compensation or extended benefits already received. It is unclear whether DOL will interpret the CARES Act to permit payment of PUA for some weeks after the standard December 31, 2020 end date if the duration of extended benefits is extended. The DOL has not yet issued guidance on this point.
- **Eligibility.** Individuals eligible for PUA include those who have exhausted all rights to regular unemployment compensation or extended benefits, including PEUC. This includes individuals who are "self-employed, individuals seeking part-time employment, individuals lacking sufficient work history, or those otherwise not qualified" for regular unemployment compensation, extended benefits, disaster unemployment assistance (discussed below) or PEUC, such as certain gig economy workers, clergy, and those working for religious organizations. An individual seeking to obtain PUA must certify that that "he or she is otherwise able to work and available for work, as provided under state law, except that the individual is unemployed, partially unemployed, unable to work or unavailable for work" due to one of the COVID-19-related reasons.³
- **Temporary COVID-19-Related Reasons.** The guidance notes that many of the COVID-19-related reasons set out in the CARES Act "are likely to be of short-term duration," and individuals qualify for PUA only so long as their COVID-19-related reason for unemployment persists. For example, an individual who has been advised to self-quarantine by a health care provider due to exposure to an infected person may be able to return to work within two weeks of exposure if he or she is not exhibiting symptoms of COVID-19 and has not been diagnosed with COVID-19. As another example, an individual who is unemployed because he or she needs to care for a child whose school was closed because of COVID-19 will not be eligible for PUA after the date the child's school year was originally scheduled to end, because the DOL has indicated that COVID-19 would not be considered the reason for the school closure in that circumstance. States are therefore directed to "continue to apply [the] able, available, and actively seeking work standards as outlined in state law."
- **Additional COVID-19-Related Reasons.** On February 25, 2021, the DOL expanded PUA eligibility to include three new COVID-19-related reasons under which an individual may self-certify, in addition to the COVID-19-related reasons listed in the [CARES Act](#). The new COVID-19-related reasons apply to individuals who (i) have been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19; (ii) provide services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency, such as by schedule changes or partial closures; or (iii) are an employee and who had their hours reduced, or who was laid off as a direct result of the COVID-19 public health emergency. Additionally, DOL previously stated that self-employed individuals (including independent contractors and gig workers) who experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency, even absent a suspension of services, may self-certify. These additional eligibility provisions apply retroactively to the beginning of the PUA program, though individuals who did not file an initial PUA claim on or before December 27, 2020 are limited to weeks of unemployment beginning on or after December 6, 2020.

- **Telework.** PUA is generally not available to an individual who has the ability to telework with pay.
- **Paid Sick Leave.** PUA is generally not available to an individual who is receiving paid sick leave or other benefits, unless those individuals are receiving paid sick leave or other paid leave for less than their customary work week.
- **Individuals Lacking Sufficient Work History.** An individual lacking sufficient work history means “an individual (1) with a recent attachment to the labor force, (2) who does not have sufficient wages in covered employment during the last 18 months to establish a claim under regular [unemployment compensation], and (3) who became unemployed or partially unemployed because of one of the COVID-19-related reasons.”
- **Self-Employed Individuals.** Individuals who are self-employed are those “individuals whose primary reliance for income is on the performance of services in the individual’s own business, or on the individual’s own farm. These individuals include independent contractors, gig economy workers, and workers for certain religious entities.”
- **Relationship to Disaster Unemployment Assistance.** Individuals receiving disaster unemployment assistance are not eligible to receive PUA for that week.

COORDINATION OF BENEFITS

The DOL’s guidance interprets the coordination of the various unemployment compensation programs available under existing state and federal law and the CARES Act for individuals who may be eligible for multiple programs.

- **Individuals Eligible for Regular Unemployment Compensation.** Individuals eligible for regular unemployment compensation must first apply for and receive regular unemployment compensation.
 - Only once regular unemployment compensation is exhausted may an individual be eligible for PEUC.
 - If PEUC is exhausted and the state has “triggered on” to extended benefits, the individual may then be eligible to receive extended benefits. Extended benefits may not be paid to an individual who is eligible for PEUC.
 - If the state has not “triggered on” to extended benefits, or if extended benefits have been exhausted, then the individual may be eligible to receive PUA (assuming that individual is unable to work due to one of the qualifying COVID-19-related reasons).
 - Note that if a state “triggers on” to extended benefits while an individual is collecting PUA, and the individual has not yet exhausted extended benefits, that individual must stop collecting PUA and file for extended benefits.
- **Individuals Not Eligible for Regular Unemployment Compensation.** Individuals who do not qualify for regular unemployment compensation or extended benefits may be entitled to collect PUA (assuming that individual cannot work due to one of the specified COVID-19-related reasons).
- **Federal Pandemic Unemployment Compensation.** Individuals will receive additional payments of \$600 per week if they are collecting regular unemployment compensation, PEUC, PUA, extended benefits, short-time compensation, trade readjustment allowances, disaster unemployment assistance, or self-employment assistance, for weeks of unemployment ending on or before July 31, 2020. The FPUC payments will be paid concurrently with other forms of assistance.

* * *

ENDNOTES

- ¹ DOL noted that “[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.” However, some states provide for extensions of the duration of unemployment benefits during periods of high unemployment for certain individuals. DOL refers to those extended duration benefits as “Additional Benefits” to avoid confusion with the federal-state extended benefit program, which provides benefits to individuals who have exhausted regular unemployment benefits during periods of high unemployment. Individuals receiving Additional Benefits are not entitled to receive FPUC.
- ² An individual will be deemed to have exhausted unemployment benefits when (1) no regular unemployment compensation payments may be made under state law because the individual has received all available regular unemployment compensation, or (2) the individual’s right to regular unemployment compensation payments has expired due to expiration of the benefit year. An individual has not exhausted unemployment benefits when he or she can establish a valid new benefit year for regular unemployment compensation. In that case, the individual may not continue to collect PEUC.
- ³ In addition to the COVID-19-related reasons set out in the CARES Act, independent contractors with reportable income may also qualify for PUA if they are “unemployed, partially employed, or unable or unavailable to work because 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.” This would include, for example, rideshare drivers.

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