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CARES ACT: UNEMPLOYMENT INSURANCE

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OVERVIEW OF TOPICS

Unemployment Provisions in the CARES Act

- New Unemployment Programs in the CARES Act
 - Increased unemployment compensation benefits
 - Expanded access to unemployment compensation
- Interaction with Existing State UI Programs
- Interaction with Paid Leave Programs and Health Insurance

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CARES ACT UNEMPLOYMENT PROGRAMS

Federal Pandemic Unemployment Compensation (FPUC)

- Extra \$600 per week through July 31, 2020 for individuals eligible for state unemployment benefits.
- Eligibility under state law generally:
 - Sufficient work history
 - Able to work, available to work, and actively seeking work
 - But many states have either temporarily suspended or modified their “actively seeking work” requirements during the pandemic
- At least \$1 of state benefits in week—individual gets full \$600.
- States may not charge employers for the \$600 payments.
- \$600 per week is disregarded for purposes of calculating an individual’s income eligibility for Medicaid and CHIP.

Pandemic Emergency Unemployment Benefits (PEUC)

- For individuals *who have exhausted* their regular state and federal unemployment benefits.
 - Length of time to exhaust benefits will vary by state.
- Must meet the state unemployment requirements of being able to work, available to work, and actively seeking work.
 - But states may be flexible in determining that an individual is “actively seeking work” if the individual is unable to search for work because of COVID-19 (including illness, quarantine, or movement restriction).
- Eligible individuals would receive an additional 13 weeks of regular state unemployment weekly benefit, through December 31.
- If individual exhausts regular unemployment before July 31, they would receive an extra \$600 per week (FPUC) up until July 31.
- States may not charge employers for PEUC benefits.

Pandemic Unemployment Assistance (PUA)

- Available to individuals who would otherwise *not be eligible* for state or federal unemployment benefits, including individuals lacking sufficient work history, independent contractors, and those who are self-employed.
- Also covers individuals *who have exhausted* all rights to state or federal unemployment benefits and PEUC benefits.
- PUA benefits are available for up to 39 weeks (which may be extended) beginning January 27, 2020, and ending December 31, 2020.
 - 39-week limitation on PUA counts weeks of regular unemployment (including extended benefits) but not weeks of PEUC.

PUA Eligibility

- Individual must self-certify that they are able to work and available to work under applicable state law but that they are unemployed, partially employed, or unable to work because of at least one of the COVID-19–related reasons:
- (1) They are diagnosed with COVID-19 or have symptoms of COVID-19 for which they seek a medical diagnosis
- (2) A member of their household has been diagnosed with COVID-19
 - DOL example: household member has been diagnosed with COVID-19 or tested positive and individual is unable to work as a result
- (3) They are providing care for a family member or household member who has been diagnosed with COVID-19
 - DOL example: individual providing care if care requires “such ongoing and constant attention” that the individual’s ability to work is “severely limited,” and family member cannot care for themselves

PUA Eligibility

- (4) A child or other person in the household for which they have 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 having that school or facility care available for the household member is required for the individual to work
 - DOL example: individual has “primary caregiving responsibility” if they are required to remain at home to provide care. Includes individual whose job allows for telework but for whom the provision of care requires “such ongoing and constant attention” that it is not possible for individual to work from home
- (5) They are unable to reach their place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency
 - DOL example: individual cannot reach job because doing so would violate state or municipal order restricting travel

PUA Eligibility

- (6) They cannot reach their place of employment because a healthcare provider has told them to self-quarantine due to concerns related to COVID-19
 - DOL example: individual advised by healthcare provider to self-quarantine because they may have COVID-19 (e.g., because individual was in direct contact with someone with COVID-19)
 - DOL example: individual is immunocompromised by virtue of a serious health condition and advised by healthcare provider to self-quarantine
- (7) They were scheduled to start employment and do not have a job or are unable to reach the job as a direct result of the COVID-19 public health emergency
 - DOL example: individual cannot reach job because doing so would violate state or municipal order restricting travel or employer has closed place of employment
 - DOL example: individual does not have a job because an employer withdrew the job offer as a direct result of the COVID-19 public health emergency

PUA Eligibility

- (8) They have become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19
- (9) They had to quit their job as a direct result of COVID-19
 - DOL example: individual was diagnosed with COVID-19 and no longer has COVID-19, but resulting health complications render the individual unable to perform essential job functions, with or without a reasonable accommodation
- (10) Their place of employment is closed as a direct result of the COVID-19 public health emergency
 - DOL example: if a business is shut down due to an emergency declaration or due to necessary social distancing protocols, the unemployment of those individuals would be a direct result of COVID-19

PUA Eligibility

- (11) The individual meets any additional criteria established by the Secretary of Labor.
 - DOL guidance provides one additional situation:
 - An independent contractor may 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 their ability to continue performing their customary work activities, and has thereby forced the individual to suspend those work activities
 - Under this additional criteria: rideshare driver who receives Form 1099 may qualify if forced to suspend operations because an emergency order restricting movement makes the driver's continued operations unsustainable

PUA Eligibility

- Individuals who have the ability to telework with pay or who are receiving paid sick leave or other paid leave benefits are generally not eligible for PUA.
 - But individuals who are receiving sick leave or other paid leave benefits that provide them less pay than their customary workweek pay may still be eligible for PUA.
 - Individuals who are teleworking but are working fewer hours than they customarily worked before the COVID-19 pandemic may also be eligible.
 - In these cases, the income from paid leave and telework will be subtracted from the PUA benefits.

PUA Benefits

- For individuals with sufficient work history, the weekly benefit amounts are their respective state unemployment benefits (if they were eligible).
 - Plus \$600 per week for weeks of unemployment beginning March 27 through July 31
- For the self-employed and others who would not qualify for state unemployment benefits (e.g., independent contractors and individuals lacking sufficient work history), the weekly benefit amounts will be calculated in a manner that will vary by state, relying on a previous law passed by Congress to establish Disaster Unemployment Assistance.
 - Plus an additional \$600 per week for weeks of unemployment beginning March 27 through July 31
- 100% federally funded.

Short-Time Compensation Programs

- Temporary federal funding for short-time compensation programs (work share programs).
- More than half of the states have established these programs in state law.
- To use these programs, employers must have an agreement with a state unemployment office to reduce employee hours instead of laying off the employees.
 - Employees with reduced hours (typically 20% to 60%) are then eligible for partial state unemployment benefits, plus \$600 a week through July 31
- States that have not established such programs in state law may still enter into agreements with employers. However, employers must then fund 50% of the partial unemployment benefits (but not the \$600/week payments).

DOL Guidance: Unemployment Insurance Program Letters

- [UIPL 10-20](#) (March 12, 2020): states have flexibility in providing state unemployment benefits to individuals affected by COVID-19.
- [UIPL 11-20](#) (March 19, 2020): minimum DUA weekly benefit amounts by state.
- [UIPL 13-20](#) (March 22, 2020): also addresses state flexibility.
- [UIPL 14-20](#) (April 2, 2020): summary of CARES Act unemployment provisions.
- [UIPL 15-20](#) (April 4, 2020): addresses FPUC.
- [UIPL 16-20](#) (April 5, 2020): addresses PUA.
- [UIPL 17-20](#) (April 10, 2020): addresses PUEC.
- [DOL FAQs](#) (April 15, 2020): Unemployment Insurance Relief During COVID-19 Outbreak.

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INTERACTION WITH STATE UI PROGRAMS

States Vary Widely in Their Programs

- **Benefit Amounts of Unemployment Compensation (UC)**

- California: maximum weekly benefit amount (WBA) – \$450/week
- New York: maximum WBA – \$504/week
- North Carolina: maximum WBA – \$350/week
- Florida: maximum WBA – \$275/week

- **Number of Weeks of UC Usually Available**

- California: 26 weeks
- New York: 26 weeks
- North Carolina: 12 weeks (depending on state unemployment rate, can increase to 20 weeks)
- Florida: 12 weeks (depending on state unemployment rate, can increase to 23 weeks)

Many States Have Made Changes in Response to COVID-19

- **Waive first waiting week**
- **Suspend or relax “actively seeking work” requirement**
- **New qualifying reasons (some states)**
 - Employer curtails or shuts down operations because of COVID-19
 - Worker is ordered into self-quarantine by a doctor
 - Worker has COVID-19
 - Worker needs to care for someone with COVID-19
 - Worker needs to care for a child at home because of school closures
- **Expansion of coverage for those furloughed**
- **Expansion of coverage for reduced pay/“partially unemployed”**

CARES Act Levels the Field Among States to Some Extent

- **Assume California:**

- Person X's employment ends April 17. Person X will get 26 weeks of state UI, and (depending on various factors) may get a WBA of up to \$450/week and will also get \$600/week (FPUC) through July 31.
- Starting week of October 18, person X will be eligible for PEUC (regular state WBA) through December 31 (10 weeks).
- Person X will not need to use all 13 weeks of PEUC and will not be eligible for PUA.

CARES Act Levels the Field Among States to Some Extent

- **Assume North Carolina:**

- Person X's employment ends April 17. Person X will get 12 weeks of state UI, and (depending on various factors) may get a WBA of up to \$350/week and will also get \$600/week (FPUC) through week starting July 5.
- Beginning week starting July 12, person X will be eligible for PEUC (regular state WBA) through week starting October 4 (13 weeks) and will also get \$600/week (FPUC) through July 31.
- In week starting October 11, person X is then eligible for PUA through the end of the year.
- 39-week limitation on PUA—that includes the 12 weeks of state UI but excludes the 13 weeks of PEUC.

A 50-State Survey

- **Some of the answers Morgan Lewis provides:**
 - Has the state adopted specific COVID-19 provisions or procedures for UI eligibility or benefits?
 - Does the state offer specific guidance regarding UI eligibility for voluntary leaving work for COVID-19 related reasons, such as underlying health concerns or school closures?
 - Are employees who do not lose their jobs eligible for UI benefits if hours are reduced? If so, what is their threshold loss?
 - Will the weekly benefit amount be reduced if an employer pays the employee's contribution to benefits that it would normally withhold from pay?

Different Employers Have Different Needs

- **Employer of nonessential business that is shut down**
 - Perhaps has furloughed workers and has been paying them (or allowing them to use paid leave) and can't do so anymore
 - Wants to know the best way to optimize their workers' UI payments
 - Wants to know what impact providing various benefits will have on UI
 - Looking ahead: what to do if they can bring back some, but not all, workers
- **Employer of essential business that is open and seeking to keep workers**
 - Trying to determine whether UI benefits will be more attractive than working (given the level of wages for different workers)

Quit Situations

- State law generally: individual who quits without “good cause” is not eligible for unemployment benefits.
- DOL: quitting work without good cause to obtain additional benefits is fraud.
- Good cause standards relaxed under state law if individual quits for reasons related to COVID-19.
- For PUA: one eligibility reason is an individual who “had to quit his or her job as a direct result of COVID-19.”
 - DOL guidance sought to narrow this with the one example it provided. But it is unclear what states will do.

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INTERACTION WITH PAID LEAVE MANDATES AND HEALTH INSURANCE

Interaction with Paid Leave Mandates

- **Families First Act (FFCRA):** Mandates 10 days of paid sick leave for several COVID-19 reasons and 12 weeks (10 weeks paid) of emergency FMLA leave (for one COVID-19 reason) on employers with fewer than 500 employees, with costs recouped via tax credit

Morgan Lewis's Employer's Guide to Emergency Sick Leave and Emergency FMLA Leave (Tells you everything you need to know)

- **State and local mandates** on employers of all sizes for various types of paid leave, including specific rules on use of paid leave while on furlough

Morgan Lewis's Survey of State and Local Laws Regarding Paid Leave

Health Insurance Options

- **Furloughed employees:** Employer may choose to pay the employer's share of premium and deduct (with the employee's consent) the employee's share, or can pay full amount (with a pay-back plan, with limitations).
- **Employees who are terminated or who quit:**
 - **COBRA.** An employee enrolled in an employer's healthcare plan can stay in the plan for up to 18 months but must pay the *full* cost of the premium.
 - **Medicaid.** Eligibility and minimum income *varies by state*. While unemployment compensation will count as income, the \$600/week FPUC payments will not.
 - **ACA Exchanges.** Subsidies available for individuals whose 2020 income will be 100%-400% of the federal poverty level (between \$15k and \$50k for an individual and between \$26k and \$103k for family of 4). Unemployment benefits are included in the income calculation. With subsidies, the average person pays \$87/month in premium but some pay much more.

Employee Retention Tax Credit

- Provides a qualifying employer with a refundable payroll tax credit of 50% of each employee's qualified wages paid from March 13, 2020 through December 31, 2020, up to a maximum credit of \$5,000 per employee.
- An employer is generally an eligible employer if its operations were fully or partially suspended during the COVID-19 crisis by a governmental shut-down order, or if its gross receipts declined by more than 50 percent when compared to the same quarter in 2019.
- Rather than depositing employment taxes with the IRS, eligible employers retain an amount of employment taxes up to \$5,000 for each employee's qualified wages.

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QUESTIONS?

Summaries and Information

- Visit these links for more information:
 - [Unemployment Benefits in the Cares Act](#)
 - [Employers Mandated to Provide Emergency Paid Sick Leave and Emergency FMLA Leave Amid COVID-19](#)
 - [Supplemental Unemployment Benefit Plans Offer Tax Advantages to Employers Seeking to Support Laid-off Workers](#)
 - [Payroll Tax Protection and Loan Forgiveness Under the CARES Act](#)

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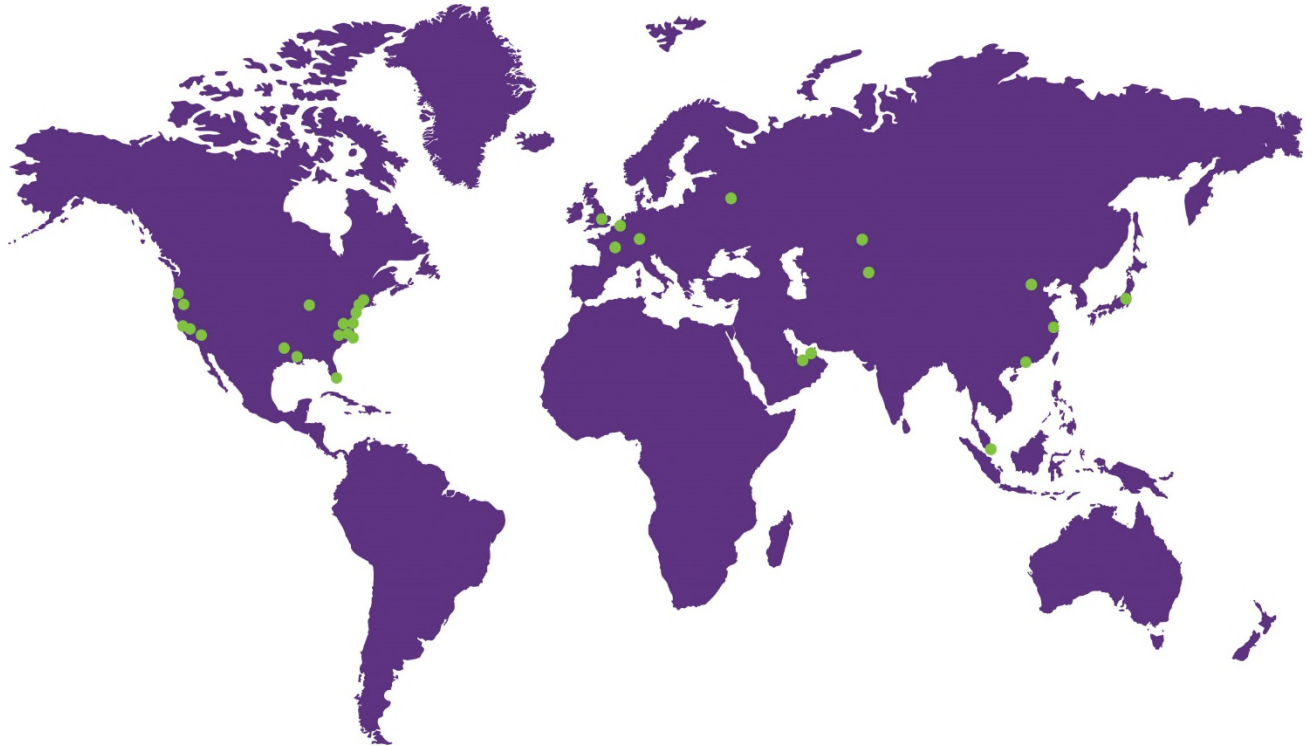
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