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Expanded Unemployment Insurance Access and Benefits: 4 Key Takeaways From the CARES Act

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On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law, providing an estimated $2 trillion stimulus package to address the COVID-19 pandemic. Although the CARES Act has a number of employment-related provisions (as discussed here), a central piece of the legislation expands existing unemployment insurance programs, making far more individuals eligible and providing greater benefits than existing programs. As employers consider workplace actions during this time of uncertainty, understanding the impact of the new unemployment insurance landscape and the options available will inform employers as they make critical decisions suited to their circumstances and workforce.

Background

The unemployment compensation system is a cooperative state and federal program, administered jointly by the U. S. Department of Labor (the “DOL”) and each individual state. In granting expanded unemployment benefits, the CARES Act takes into account this shared structure and authorizes states to modify existing unemployment programs to provide additional benefits addressing the extraordinary circumstances of the current pandemic.

On April 2, the DOL sent initial guidance to states regarding the new program terms, but states are still waiting for final terms of agreement and detailed administrative guidance from the federal government, which are necessary before states can begin granting the new benefits.

On April 5, the DOL provided additional guidance to states regarding the implementation of the Pandemic Unemployment Assistance program.

1. More Workers Are Eligible for Unemployment Benefits (Section 2102 — Pandemic Unemployment Assistance (PUA))

Section 2102 of the CARES Act extends benefits to workers who would not otherwise be eligible for unemployment compensation or extended benefits through regular state or federal programs in the event that they become unemployed, partially unemployed or unable to work for one of the reasons discussed below.

Individuals who will become eligible as a result of the CARES Act include: self-employed workers, independent contractors, workers who do not have long enough work histories to qualify for state benefits, and workers seeking part-time employment. Workers must have experienced a job loss or reduced hours through no fault of their own, not be able to telework, and be able and available to work (as defined under existing state law) but for the fact that a specific COVID-19-related reason has caused them to be unable to work, including any of the following:

- The worker or a member of the worker's household has been diagnosed with COVID-19.
- The worker is providing care for a family or household member who has been diagnosed with COVID-19.
- The worker is caring for a child (or other person for whom the worker has primary caregiving responsibilities) whose school or care facility is closed as a result of COVID-19.
- The worker has been advised by a health care provider to self-quarantine due to COVID-19 concerns.
- The worker's scheduled commencement of employment has been delayed or canceled due to COVID-19.
- The worker has become the primary breadwinner due to the death of the head of the household as a result of COVID-19.
- The individual's place of employment is closed as a result of COVID-19.

This expansion of benefits eligibility is retroactive to losses commencing on or after January 27, 2020, and continues until December 31, 2020, with a maximum duration of PUA benefits of 39 weeks.

On April 5, the DOL sent additional guidance to states providing operating, financial and reporting instructions for the PUA program, and clarifying that qualifying COVID-19-related reasons that may cause a worker to be unable to work may include:

- The worker being *unable* to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency.
- The worker being *unable* to reach the place of employment because the worker was advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- The worker has to quit his or her job as a direct result of COVID-19.

The April 5 guidance further provides states with examples and explanations for each of the categories of COVID-19-related circumstances that may qualify an individual for PUA benefits, specifically provides that workers for religious entities not covered by regular unemployment compensation may be eligible for PUA benefits, and emphasizes the states' primary role in deterring and detecting fraud with respect to unemployment claims.

2. Weekly Unemployment Benefits Are Increased by $600 (Section 2104 — Pandemic Unemployment Compensation (PUC))

Workers who qualify for unemployment benefits (either under an existing state program or under the

PUA expanded eligibility) will receive an increase in their weekly benefit by a flat amount of $600 weekly. The extra $600 benefit is available to eligible workers no matter the worker's prior earnings or benefit level under the state program.

For lower-wage employees, the addition of this $600 benefit may cause their total unemployment insurance benefit to be greater than their normal weekly wage from the employer. Some employers have expressed concern about employees being unwilling to return to work; however, an individual receiving benefits must remain available to return to work (within the meaning of applicable state law) and, if recalled, can be disqualified from receiving future benefits — unless the individual has a COVID-19-related reason for not returning to work. Further, the PUC provision of the CARES Act contains an anti-fraud provision, which provides for denial of future eligibility and criminal prosecution in the event an individual obtains PUC benefits through a knowing false statement or failure to disclose a material fact.

A common question employers have been asking in evaluating options for payroll cost savings is whether the $600 benefit is prorated for individuals who qualify for unemployment insurance benefits based on reduced earnings. According to the DOL, the CARES Act does not include any provision for prorating the $600, so anyone qualifying for PUA unemployment benefits would receive the full amount.

Once available, the PUC benefit will be available as a supplement to regular unemployment insurance benefits for the duration of the worker's eligibility, up to July 31, 2020.

3. Benefits Are Extended by 13 Weeks (Section 2107 — Pandemic Emergency Unemployment Compensation (PEUC))

The CARES Act provides up to 13 weeks of unemployment benefits for individuals who have exhausted all rights to regular unemployment compensation and are able to work, available for work and actively seeking work. States must offer flexibility for individuals to demonstrate they are meeting the "actively seeking work" requirement, for example, allowing benefits if individuals are unable to search for work because of COVID-19 (i.e., illness, quarantine, movement restrictions). The 13-week extension of benefits is available through December 31, 2020.

4. Use of Short-Time Compensation (or Shared Work) Programs Is Encouraged (Section 2108-2110)

The CARES Act promotes the use of short-time compensation (STC) arrangements, often referred to as work share or shared work arrangements. The goal of STC programs is to avert layoffs, encouraging employers to retain employees on reduced hours as a means of avoiding layoffs. Workers whose hours are reduced become eligible for partial unemployment insurance benefits. Many states have pre-existing STC programs, including Arizona, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont (prior to the passage of the CARES Act, legislation to repeal the existing Vermont shared work program had been passed by the state house, amended and passed by the state senate and is currently in committee), Washington and Wisconsin. The CARES Act supports these programs and allows other states to temporarily implement a short-time compensation program, to provide employers with an alternative to layoffs during the pandemic with the hope that it will facilitate their ability to increase operations quickly when it is safe to do so.

To encourage states to promote existing STC programs, under the CARES Act the federal government will reimburse a state for the total STC benefit costs, up to a maximum of 26 weeks for each participant. For states without an existing STC program, the federal government will reimburse one-half of the STC benefit costs, up to a maximum of 26 weeks for each participant.

Partial unemployment benefits paid to employees participating in an STC program will also be supplemented with the additional $600 PUC benefit (through July 31).

Federal reimbursements for regular benefits paid under State STC programs are available during the period March 27, 2020, through December 31, 2020.

A Final Note: Federal Funding and Impact on Employer Accounts and Tax Rating

The expanded benefits offered through the PUA, PUC and PEUC programs are fully funded by the federal government through reimbursements to the states. As a condition of such funding, the states must agree not to decrease the regular benefits paid under the state's program nor the maximum number of weeks of unemployment compensation available, from state benefit rules in effect on January 1, 2020.

Normally, unemployment insurance benefits paid to a former employee are charged against the employer's account and, for taxpaying employers, are taken into account when the employer's tax rate is established. For reimbursing employers, benefit charges to their account must be fully reimbursed to the state. However, state laws may identify situations where benefits paid are not charged to the employer's account — such as when the benefits are fully funded by the federal government (which is the case for most enhanced benefits under the CARES Act) or are paid in connection with a local disaster or similar designation.

It is important for employers to review the exclusions under applicable state laws to determine what costs may be borne by them — either directly as a reimbursing employer or indirectly through an increased experience tax rating. Many states are communicating to employers that they will seek to minimize charges to employer accounts arising from COVID-19 factors.

Next Steps for State Programs

States, overwhelmed with applications and inquiries about the new benefits, eagerly wait for final agreements with the DOL to implement the CARES Act and have begun to take steps to respond through executive orders and administrative guidance with corresponding changes in their state programs.

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