

AFL-CIO Summary of Unemployment Provisions of CARES Act

Below is an overview of the unemployment programs created by the CARES Act, including Pandemic Unemployment Assistance (PUA), Federal Pandemic Unemployment Compensation (FPUC), and Pandemic Emergency Unemployment Compensation (PEUC). This summary includes information provided by the Department of Labor's Employment and Training Administration in the Unemployment Insurance Public Letters (UIPL) 10-20, 14-20, 15-20, 16-20, and 17-20, as well as through a Frequently Asked Questions section on its website (<https://www.dol.gov/coronavirus/unemployment-insurance#faqs>) and an April 17, 2020 letter to Sen. Schumer.

1. Pandemic Unemployment Assistance: Section 2102 of the CARES Act provides for what it calls Pandemic Unemployment Assistance (PUA). PUA is available to individuals who are not eligible for unemployment compensation, including those who have exhausted their unemployment and not eligible for an extension under the Pandemic Emergency Unemployment Compensation discussed below, and certifies that they are otherwise able to work but are unemployed, partially unemployed, or unable or unavailable to work for one of the following reasons:

- been diagnosed with Covid-19 or are experiencing symptoms and seeking a medical diagnosis
- a member of their household has been diagnosed with Covid-19
- they are providing care to a family member or member of their household who has been diagnosed with Covid-19
- they have a child or other person in their household to whom they are their primary caregiver who is unable to attend school or another facility due to the Covid-19 emergency, and the individual relies on that coverage in order to work
- can't get to work because of quarantine imposed due to the Covid-19 emergency
- can't get to work because they have been advised to self-quarantine because of Covid-19
- was scheduled to begin work, but no longer has a job or is unable to reach work due to the Covid-19 emergency
- has become the breadwinner or major support for household because the head of the household died of Covid-19
- had to quit their job due to Covid-19
- workplace is closed due to the Covid-19 emergency, or
- meets any additional criteria set by Secretary of Labor for PUA¹; or

¹ In UIPL 16-20, the Secretary exercised this discretion to include independent contractors who 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." (Id. at I-6). The guidance explains this will ensure certain types of gig workers, for example, who have no place of employment will get benefits, if they are "forced to suspend operations as a direct result of the Covid-19 public health emergency." In its letter to Sen. Schumer, the DOL clarified that this includes those who have suffered a significant diminution of work due to the Covid-19 emergency. Unfortunately, the DOL's posted FAQs state that the gig worker would be

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- is self-employed, seeking part-time employment, does not have sufficient work history, or is otherwise ineligible for unemployment benefits, and meets one of the Covid-19 related criteria listed above.

Individuals are not entitled to PUA if they can telework, or are on paid sick leave or other paid leave. However, individuals who telework for less than they customarily worked prior to the pandemic, or receive paid leave for less than their customary work week, may still be eligible for PUA if the reduction is directly related to one of the Covid-19 reasons listed above. Telework and paid leave compensation are treated in accordance with the income restrictions applied under the Disaster Unemployment Assistance (DUA) program, outlined at 20 CFR 625.13.

Individuals who qualify for PUA are entitled to receive PUA for those weeks between January 27, 2020 and December 31, 2020 that they remain eligible. Benefits may not exceed 39 weeks, unless the program is extended.

Individuals eligible for PUA will receive the weekly benefit they are entitled to under the state UC program, plus the Federal Pandemic Unemployment Compensation (\$600/week, as described below) for weeks from March 27 through July 31, and any future increase in benefits. For those who are self-employed or otherwise are ineligible for unemployment compensation, the weekly benefit portion of their compensation will be calculated pursuant to the formula used for the DUA program, which is at 20 CFR 625.6. Under this formula, self-employment compensation received in exchange for service is treated the same as covered compensation, and the benefit must provide a minimum of 50% of average weekly benefits paid by the State.

The PUA is paid without regard to any State waiting period. Benefits may be for short durations. For instance, an individual who is unavailable to work because she has been advised to self-quarantine may only need to receive PUA for two weeks. Similarly, the DOL's guidance states that those receiving PUA due to the closure of their child's school may only be eligible for PUA through the previously-scheduled end of the school year. (UIPL 16-20, I-7).² Individuals eligible for PUA because they have exhausted their eligibility for regular UC may qualify for those regular UC benefits upon a new benefit year, and therefore would no longer be eligible for PUA. These individuals may be eligible, and have to apply for, regular UC benefits.

The program is provided pursuant to voluntary agreement between the State and the Secretary of Labor. Except where otherwise provided by the CARES Act or otherwise conflicting, the PUA

eligible if a loss of customer demand requires the individual to "suspend operations." This obfuscates whether the individual would be eligible for partial benefits if he or she continues working but receives significantly reduced compensation due to a drop in customer demand.

² In its April 17, 2020 letter to Sen. Schumer, as well as in the FAQs posted at <https://www.dol.gov/coronavirus/unemployment-insurance#faqs>, DOL clarified that these individuals may continue to receive PUA benefits if the facility they rely on for summer care is also closed due to the Covid-19 emergency.

will be administered according to the DUA program regulations found at 20 CFR 625.

2. Federal Pandemic Unemployment Compensation. Section 2104 of the CARES Act provides for Federal Pandemic Unemployment Compensation (FPUC), which is paid upon execution of an agreement between the State and the Secretary of Labor. This provision provides that a State's regular compensation under its UC program shall be modified to include the regular weekly benefit an individual is entitled to, plus the FPUC of \$600/week.

The FPUC will be paid for weeks following the date the agreement between the State and Secretary of Labor is entered into through July 31, 2020.

In UIPL 15-20, the DOL states that anyone entitled to receive UC benefits under the following state or federal laws are eligible for the FPUC: regular state or federal UC programs (including Unemployment Compensation for Federal Employees and Unemployment Compensation for Ex-Servicemembers); PUA; Pandemic Emergency Unemployment Compensation (discussed below); Extended Benefits under a state law that satisfies the requirements of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA); a Short-Time Compensation program; Trade Readjustment Allowances (TRA); DUA; and payments under the Self-Employment Assistance program. However, some states provide what the DOL calls “additional benefits (AB)” in times of high unemployment. These programs are fully funded by the state. Individuals receiving these benefits are not eligible for the FPUC.³

An individual's benefit is determined by calculating their weekly benefit under the state or federal UC program first, and then adding the \$600 payment. An individual must be entitled to at least \$1 of benefit under the state or federal UC program to receive the FPUC. (UIPL 15-20, I-5). FPUC is taxable income.

States are not allowed to reduce the amount they pay in UC while participating as part of the program. The federal government pays 100% of the Federal Pandemic Unemployment Compensation, and that Compensation is not counted for Medicaid and CHIP purposes.

3. Federal Funding for Waiver of Waiting Week. Section 2105 of the CARES Act provides that States may enter into agreements with the Secretary of Labor to waive the waiting week to receive UC benefits, and the federal government will cover the costs of that week.

4. Pandemic Emergency Unemployment Compensation. Section 2107 of the CARES Act allows States to enter into agreements with the Secretary of Labor to extend benefits to those who have exhausted their benefits under State law for up to 13 weeks of total unemployment. Compensation for these individuals will be the regular State weekly benefit plus the Federal Pandemic Unemployment Compensation (this paid through July 31). The federal

³ A list of states that provide these benefits can be found at the Table on 4-4 of this document: <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2019/special.pdf>

government will cover the costs of these additional weeks, and the program runs through December 31, 2020.

An individual is no longer eligible for PEUC if they become eligible for regular UC benefits again in a new benefit year. If this occurs, the PEUC must cease, and the individual must apply for regular UC, even if the regular UC benefit will be lower than they were receiving under the PEUC.

5. Coordination of Programs. In UIPL 14-20, DOL provides guidance for the coordination of the various unemployment programs already provided by state or federal law, and those created by the CARES Act.

If an individual is eligible for regular UC, the programs are coordinated as follows:

- Individuals must first apply for regular UC, if eligible.
- If an individual exhausts regular UC, that individual may then be eligible for PEUC. As mentioned, PEUC is limited to up to 13 weeks.
- If the individual exhausts PEUC, and the state had triggered Extended Benefits under the EUCA, the individual may be eligible for Extended Benefits. The duration of these benefits last from 13-20 weeks.
- If the state has not triggered Extended Benefits or the individual exhausts Extended Benefits, the individual may be eligible to receive PUA. The duration of PUA is up to 39 weeks, minus any weeks that the individual received from regular UC and Extended Benefits. PEUC weeks will not be deducted from the individual's PUA entitlement.
 - If an individual's state triggers Extended Benefits while an individual is receiving PUA, that individual's PUA must cease, and he or she must apply for the Extended Benefits. If the individual exhausts those Extended Benefits and still remains eligible for PUA, the individual may apply for PUA again.
- An individual eligible for Trade Readjustment Allowances will receive those benefits after the programs listed above.

Any individual not eligible for regular UC or Extended Benefits under state or federal law, or PEUC, may be eligible for PUA if he or she meets the criteria of Section 2102 of the CARES Act.

6. State Flexibility. In UIPL 10-20 (issued prior to passage of the CARES Act), DOL offered guidance to states about flexibility in interpreting federal regulations to cover various Covid-19 related scenarios. This guidance is worth reviewing to understand the various approaches states can take to expand coverage as much as possible.