

BLOG POST / EMPLOYMENT ADVISOR

Benefits and Executive Compensation

CARES Act Greatly Expands Unemployment Insurance Benefits

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04.06.20

Update April 6: This advisory has been updated to include the latest information on unemployment insurance benefits under the CARES Act.

The \$2 trillion CARES Act that President Trump signed into law on March 27, 2020, establishes three noteworthy programs related to unemployment insurance benefits: **(1)** the Emergency Increase in Unemployment Compensation Benefits program; **(2)** the Pandemic Emergency Unemployment Compensation program; and **(3)** the Pandemic Unemployment Assistance program.

These three federal programs will provide complete federal funding to U.S. states and territories that voluntarily choose to implement the programs through their existing unemployment insurance systems. DWT anticipates that

most—if not all—U.S. states and territories will agree to implement these three programs.

As actually implemented, these programs may have some state-to-state variation in terms of how workers apply for these benefits as well as how the benefits are administered. However, as discussed below, the state programs must provide the following substantive benefits to workers when implemented.

Emergency Increase in Unemployment Compensation Benefits

Through July 31, 2020, the federal government will fund a \$600-per-week increase in the amount of unemployment insurance benefits paid to claimants with accepted unemployment insurance claims. This increased amount is over and above the weekly benefits a qualifying claimant would already receive under state law rules for the computation of unemployment insurance benefits. The \$600-per-week increase also applies to benefits paid under both the Pandemic Emergency Unemployment Compensation and Pandemic Unemployment Assistance programs.

Emergency Unemployment Compensation – Additional Weeks

Through December 31, 2020, the federal government will fund 13 additional weeks of unemployment insurance benefits for workers who have otherwise exhausted their unemployment insurance benefits under existing state law programs. To qualify for these extended benefits, the claimant must meet traditional eligibility criteria of being able to work and actively searching for work.

However, the states will be required to relax the criterion of actively searching for work with regard to these 13 additional weeks of benefits if the claimant (1) has COVID-19; (2) is quarantined; or (3) is subject to mandatory movement restrictions.

Emergency Unemployment Assistance for Workers Traditionally Ineligible

Through December 31, 2020, the federal government will fund emergency unemployment assistance to a broad swath of workers who would otherwise be ineligible for unemployment insurance benefits under traditional state law criteria. Eligible recipients include the self-employed, persons seeking part-time employment, persons without sufficient work history to obtain benefits under state law, persons who otherwise do not qualify for benefits under either state law or the Pandemic Emergency Unemployment Compensation program, and persons who have exhausted their entitlements to such benefits.

However, to receive these benefits the claimant must self-certify that he/she is able to work but cannot work due to being impacted by COVID-19 in one of eleven different ways . The amount of the benefit payments will be determined under state law computation methods. In cases where those computation methods are inapplicable (e.g., for the self-employed and workers in U.S. territories), the computation will be made pursuant to federal regulations governing disaster unemployment assistance.

Questions & Answers

Q: Has my state adopted any of these three federal programs?

A: The first place to check is with your state unemployment insurance agency's website. However, many states' agencies are struggling to keep up with the huge increase in unemployment insurance benefit claims while quickly implementing these new federal programs.

As a result, there may be some delay between states adopting these programs and effectively communicating that fact to their populace. If you are unsure whether your state has adopted these programs, contact DWT and we will assist you with that determination.

The U.S. Department of Labor has published [contact information for the states' unemployment insurance agencies](#).

Q: What if my state does not agree to adopt these federal programs?

A: The states are free to adopt or reject these federal programs and the related funding. If your state does not adopt these programs, workers in your state will be limited to the unemployment insurance benefits available under existing state laws.

Q: Can my employees receive the additional \$600-per-week benefits if they are still working but my company has to reduce their hours by 50 percent due to COVID-19?

A: Yes, if you are in a state that provides unemployment insurance benefits for partial unemployment and/or short-time compensation benefits (e.g., Washington, Oregon, California, Arizona, Georgia, Hawaii, Louisiana, Maine) the \$600-per-week emergency increase should apply to your workers' weekly benefits.

On April 4, 2020, the U.S. Department of Labor issued guidance to states that choose to adopt the Emergency Increase in Unemployment Compensation Benefits program. That guidance document confirms the following:

- The additional \$600-per-week benefit generally applies to any claimant eligible under state law to receive at least \$1 per week in unemployment insurance benefits;
- This includes recipients of partial unemployment benefits under state law programs that provide for partial benefits; and
- It also includes recipients of short-time compensation benefits in states that have adopted such programs.

The only workers the U.S. Department of Labor specifically indicates the states should exclude from the additional \$600-per-week program are workers receiving benefits under state law programs that provide for extended unemployment benefits for claimants who have exhausted their unemployment insurance entitlements during periods of high unemployment while participating in approved vocational training programs. However, as a practical matter the only workers who would be excluded under this carve-out would have lost their employment months before the COVID-19 crisis arose.

Q: Which workers are not eligible for the additional 13 weeks of unemployment insurance benefits under the Pandemic Emergency Unemployment Compensation program?

A: That program applies only to workers who already qualified for benefits under existing state laws but who have exhausted their benefits. It also specifically excludes claimants who exhausted their benefits under a benefit year that ended before July 1, 2019.

Q: Do the additional 13 weeks of unemployment insurance benefits include the additional \$600-per-week amount?

A: Yes, the additional 13 weeks includes the weekly amount the worker would ordinarily receive under state law plus the additional \$600 per week for weekly benefit payments through July 31, 2020.

After July 31, 2020, the amount will be only the amount the worker would ordinarily receive under state law unless Congress extends the program providing for the increased payment amount past July 31, 2020.

Q: What happens if my state changes the way that it computes unemployment compensation benefits to reduce the amount of unemployment compensation ordinarily available under state law? Will that deprive my state's workers of the additional \$600 per week?

A: No, the federal statute prohibits states that accept these federal funds from altering their computation methods to deprive workers of the additional \$600-per-week benefit.

Q: What are the 11 different grounds an unemployed worker can establish in order to receive benefits under the Emergency Unemployment Assistance program for workers traditionally ineligible for workers compensation benefits?

A: To qualify for benefits, the worker must be unemployed, partially unemployed, or unable or unavailable to work and self-certify that such unemployment, inability, or unavailability is because of:

1. Having COVID-19 or experiencing COVID-19 symptoms and seeking a diagnosis; or
2. A member of the worker's household being diagnosed with COVID-19; or
3. Caring for a family member or household member who has been diagnosed with COVID-19; or
4. A child or other household member for whom the worker is a primary caregiver being unable to attend school because of a COVID-19 closure; or
5. The worker is unable to reach the workplace due to a quarantine imposed because of COVID-19; or
6. A medical recommendation to self-quarantine due to COVID-19 concerns; or
7. Being scheduled to commence employment with a new employer but losing that job or being unable to reach it due to COVID-19; or
8. Becoming the "breadwinner or major support" for a household after the head of the household dies due to COVID-19; or
9. Quitting a job "as a direct result of COVID 19"; or
10. The place of employment closing due to COVID-19; or
11. Meeting any additional criteria the U.S. Department of Labor establishes for unemployment assistance.

Q: Are there any penalties if a worker falsely certifies that one of these 11 grounds apply to in an application for benefits?

A: Yes, there are both criminal and civil penalties for fraudulent or material misrepresentations in an application for benefits under these three federal programs. These penalties include future ineligibility for such benefits, repayment of benefits received, and criminal prosecution.

Q: Are there any workers who are specifically excluded from the Emergency Unemployment Assistance program?

A: Yes, although this program provides a broad safety net for workers who otherwise would not be eligible for unemployment insurance benefits, it does not include (1) persons who have the ability to telework with pay; and (2) persons who are receiving paid sick leave or other paid leave benefits.

Q: If an employee “volunteers” for a layoff when there is work available for the employee to do, is the employee nevertheless eligible for these expanded unemployment insurance benefits?

A: Unless the laws of a worker’s state of employment ordinarily grant unemployment insurance benefits for such voluntary separations, the only expanded benefit such a worker may qualify for is Emergency Unemployment Assistance. Even then, the worker must be able to truthfully self-certify that his/her separation satisfied one of the eleven bases demonstrating a nexus between that separation and COVID-19.

If you have state-specific and fact-specific questions of this nature, you should contact DWT so that we can assist you with this determination.

Q: Does a worker need to have been employed on a certain date in order to qualify for any of these benefits? For example, does it matter that my company has already laid off or furloughed people?

A: There is no specific requirement regarding a worker’s dates of employment for the \$600-per-week increase in benefit payments. If the worker is lawfully receiving weekly unemployment insurance payments after the date the worker’s state adopts this federal program, the increase should apply irrespective of the worker’s dates of employment.

There is also no specific timing requirement regarding the worker’s dates of employment for the additional 13 weeks of unemployment insurance except that the worker cannot have exhausted his or her benefits under a benefit year that ended before July 1, 2019. This additional benefit program otherwise inherently contemplates that the worker could have lost his/her job prior to the January 27, 2020, declaration of the COVID-19 public health emergency.

There is a specific timing requirement regarding the Emergency Unemployment Assistance program, which covers only weeks of unemployment beginning on January 27, 2020, and ending on or before December 31, 2020. Practically speaking, to truthfully self-certify that the claimant either lost employment due to COVID-19 or encountered qualifying obstacles to obtaining employment due to COVID-19 (depending on the applicable basis), that event probably occurred after the COVID-19 public health emergency was declared on January 27, 2020.

Q: Is there anything that an employer can do to ensure that its employees qualify for these additional benefits?

A: No, but an employer can provide its workers with information regarding these expanded unemployment insurance benefits programs. This specifically includes informing workers whether/when their state adopts these programs as well as how to access state-specific materials on applying for the benefits once they are published.

The facts, laws, and regulations regarding COVID-19 are developing rapidly. Since the date of publication, there may be new or additional information not referenced in this advisory. Please consult with your legal counsel for guidance.

DWT will continue to provide up-to-date insights and virtual events regarding COVID-19 concerns. Our most recent insights, as well as information about recorded and upcoming virtual events, are available at www.dwt.com/COVID-19.

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