

COVID-19: Unemployment Assistance for Gig Workers and Independent Contractors

March 31, 2020

A crucial feature of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) signed into law last week is Pandemic Unemployment Assistance, which makes much-needed unemployment benefits available to independent contractors, gig workers, freelance workers, the self-employed, and other workers who do not ordinarily qualify for unemployment insurance. Companies that utilize independent contractors and gig workers may consider sharing the information below with those workers.

Eligibility

Section 2102 of the CARES Act establishes supplementary unemployment insurance through a Pandemic Unemployment Assistance (PUA) program. PUA makes unemployment insurance available exclusively to individuals who find themselves unable to work due to COVID-19 and ineligible to receive ordinary unemployment benefits under state or federal programs. This program expands existing forms of unemployment insurance available through the Disaster Unemployment Assistance program provided for in the Stafford Act administered by the Federal Emergency Management Agency (FEMA). It also supplements the additional Pandemic Emergency Unemployment Compensation (PEUC) for traditional employees under section 2107 of the CARES Act, which provides an additional 13 weeks of unemployment benefits to the 26 weeks typical of most states.

A significant feature of the PUA program will be that it covers workers who do not qualify for regular unemployment compensation, including independent contractors, gig workers, the self-employed, and individuals with insufficient work history to qualify for regular coverage. However, recipients can also include individuals who have exhausted

their regular unemployment benefits and extended federal benefits, meaning that traditional employees may apply for PUA after all of their other unemployment benefit options have expired.

To qualify, an individual seeking PUA must certify 1) that they do not qualify for regular unemployment under state or federal law, and 2) that they are otherwise able or available to work, but that they nonetheless are unemployed, partially unemployed, or unable to work for one of the following reasons:

- They have been diagnosed with COVID-19 or are experiencing symptoms and seeking diagnosis;
- A member of their household has been diagnosed with COVID-19;
- They are providing care for a family member or household member who has been diagnosed with COVID-19;
- They are providing care for a child or other household member whose school or care facility has closed due to COVID-19;
- They are unable to reach their place of employment due to a quarantine imposed as a result of COVID-19;
- They are unable to reach their place of employment because a healthcare provider has advised them to self-quarantine due to COVID-19 concerns;
- They have been unable to start a job that they were scheduled to commence due to the COVID-19 emergency;
- They have become the primary breadwinner or support for a household after the death of the previous head of the household due to COVID-19;
- They had to quit their job as a direct result of COVID-19;
- Their place of employment is closed as a result of the COVID-19 emergency;
- They meet any additional criteria established by the Secretary of Labor.

Notably, an individual meeting the criteria above still does not qualify for PUA if they are able to work from home, or if they are receiving paid leave.

Amount and Duration of Benefits

Workers seeking PUA will be eligible to receive up to 39 weeks of unemployment insurance payments through their state unemployment agency. The Act provides that the weekly PUA payments shall be calculated according to the rules of the state in which the individual worked—by adopting the regulations implementing Disaster Unemployment Assistance, however, the Act provides that the weekly PUA payment may not amount to less than half of the average regular weekly unemployment payment in that state.

Additionally, under the Federal Pandemic Unemployment Compensation provisions of the CARES Act, PUA recipients (along with ordinary unemployment recipients) will receive an extra \$600 per week of unemployment until July 31, 2020.

As of now, the Act allows that PUA payments may cover periods of unemployment starting as early as January 27, 2020 and ending as late as December 31, 2020.

Application Process

The PUA program will be administered through state unemployment agencies, so workers seeking PUA should apply through their relevant state office.

The CARES Act includes incentives for states to waive any applicable waiting periods for receipt of benefits if they have not already done so. Practically speaking, however, PUA seekers will likely experience some delay in receipt of benefits. In California, for example, while the state's Employment Development Department has waived the usual one-week waiting period, the significant volume of new claims may mean that applicants may have to wait several weeks before receiving assistance.

While an employer may be able to mitigate such a delay in other contexts by filing unemployment claims on behalf of their employees, employers should carefully consider whether such action would be appropriate to take for independent contractors. The nature of the contractor relationship provides a company less certainty about the worker's other sources of income and potential eligibility for unemployment insurance, so companies may opt to provide

contractors with information and resources that the worker may then use in deciding whether to seek PUA.
