CLIENT ALERTS & INSIGHTS

Benesch COVID-19 Resource Center: CARES Act Provides Expansion of Unemployment Benefits

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On March 27, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act provides states with the ability to greatly expand their unemployment benefits programs through federal funding. Since that time, the Department of Labor has released three Unemployment Insurance Program Letters (UIPL) providing additional guidance regarding the unemployment provisions of the CARES Act. While we address several provisions of the CARES Act here, the operation of these provisions within any given state will be contingent upon the entry into a signed agreement by the state and the Department of Labor. Highlights of the CARES Act unemployment provisions include:

- **$600/week federal benefit in addition to state benefits:** Individuals who are collecting regular unemployment benefits from the state receive an additional $600 per week that is fully funded by the federal government through July 31, 2020.
- **Elimination of one-week waiting period:** States that eliminate the one-week waiting period to receive unemployment benefits will have the first week of benefits 100% funded by the federal government.
- **Additional 13 weeks of unemployment benefits:** Individuals may receive up to 13 additional weeks of unemployment benefits once they have exhausted regular unemployment benefits under state law (which are typically capped at 26 weeks). Additionally, states must offer flexibility in the requirement that unemployed individuals be "actively seeking work" if they are unable to search for work because of COVID-19.
- **Benefits for the self-employed:** Self-employed individuals (including gig economy workers) who would otherwise not qualify for regular unemployment compensation benefits may receive up to 39 weeks of federally-funded unemployment benefits.
- **Temporary financing of short-time compensation programs:** The federal government will 100% cover the costs for pre-existing short-time compensations programs (also called workshare programs) for up to 26 weeks of benefits per individual.
- **Relief for reimbursing non-profit organizations:** Non-profit organizations that have opted out of the unemployment tax system may have up to 50% of their unemployment costs covered by the federal government.

Below, we discuss these benefits in more detail:

Emergency Increase in Unemployment Compensation Benefits - FPUC

The CARES Act authorizes states to provide an additional $600 per week in unemployment benefits to individuals who are otherwise eligible for regular unemployment compensation through the Federal Pandemic Unemployment Compensation (FPUC) program. This additional payment of $600 per week continues until July 31, 2020, and is not contingent on unemployment resulting from COVID-19 related reasons. States may provide the additional $600 per week benefit to individuals who are collecting regular unemployment compensation (including unemployment compensation for federal employees and unemployment compensation for ex-service members), as well as the following unemployment compensation programs: Pandemic Emergency Unemployment Compensation; Pandemic Unemployment Assistance; Extended Benefits; Short-Time Compensation; Trade Readjustment Allowances; Disaster Unemployment Assistance; and payments under the Self-Employment Assistance program.

This emergency increase program contains a non-reduction rule. States cannot change the computation method governing regular unemployment compensation in a way that results in the reduction of average weekly benefits amounts or the number of weeks of benefits payable.

Payments under the FPUC program may begin as soon as the week after the execution of a signed agreement between the DOL and states. The cost of these additional $600 payments to eligible individuals each week is *100 percent federally funded*. States may not charge employers for any Federal Pandemic Unemployment Compensation benefits paid so as to impact the employer’s experience rating.

Elimination of One-Week Waiting Period

The CARES Act allows states to eliminate the one-week waiting period that typically applies to unemployment benefits. The federal government will reimburse states for 100 percent of the costs associated with unemployment benefits provided during that first week. This funding is available for weeks of unemployment beginning after the date on which on which the state enters into an agreement with the Department of Labor until December 31, 2020 or earlier.

Pandemic Emergency Unemployment Compensation

The CARES Act also provides for Pandemic Emergency Unemployment Compensation (PEUC) which allows states to extend the period for receiving unemployment benefits by an additional 13 weeks for individuals who have exhausted their state and federal unemployment rights but are able, available, and actively seeking work. But the “actively seeking work” requirement is flexible if individuals are unable to search for work because of COVID-19, including because of illness, quarantine, or movement restriction.

The overwhelming majority of states ordinarily provide up to 26 weeks of unemployment benefits. This provision may allow an eligible individual to receive up to a total of 39 weeks of unemployment benefits. The weekly benefit for PEUC is regular compensation that is ordinarily payable to the individual under state law, *plus an additional $600 per week* under the FPUC program. The federal government will reimburse states for the additional 13 weeks of PEUC, as well as the additional $600 per week under the FPUC program until July 31, 2020.

Like the FPUC program, the PEUC also contains a non-reduction rule.

Pandemic Unemployment Assistance

The CARES Act provides for up to 39 weeks of Pandemic Unemployment Assistance (PUA) for dates occurring between January 27, 2020 and December 31, 2020. PUA is intended for individuals who are not ordinarily eligible for unemployment benefits under state law, including self-employed individuals, independent contractors (including certain gig economy workers), and those who have exhausted all rights to unemployment benefits under state law. Depending on state law, covered individuals may include clergy and those working for religious organizations who are not covered by regular unemployment compensation.

In order to demonstrate eligibility, an individual must provide self-certification that the individual is otherwise able and available to work, except for the fact that the individual is unemployed, partially unemployed, or unable or unavailable to work due to COVID-19-related circumstances. PUA provides a weekly benefit equivalent to the unemployment compensation the individual would receive under the applicable state law's calculation, as well as an additional $600 per week under the FPUC program until July 31, 2020.

Temporary Financing of Short-Time Compensation Programs

The CARES Act provides federal funding for temporary financing of short-time compensation programs, also known as workshare programs. Under workshare programs, employers may conduct a reduction in hours across-the-board in lieu of layoffs so that employees can remain employed and receive pro-rated unemployment benefits from the state in the form of short-time compensation.

The federal government will reimburse states for 100 percent of the short-time compensation paid under a state's existing workshare program, through December 31, 2020. States with an existing workshare program may be reimbursed for 100 percent of the short-time compensation costs, up to a maximum of 26 weeks of short-time compensation per individual. There are also funding incentives for states without a workshare program to create one. Under an agreement with the DOL, a state may be reimbursed for one-half of the short-time compensation costs, with the employer paying the other half, up to a maximum of 26 weeks of short-time compensation per individual.

Emergency Unemployment Relief for Nonprofit Organizations

Finally, the CARES Act also provides for federal funding for states to reimburse self-funding nonprofit organizations - that is, organizations that have previously elected to not pay unemployment taxes and instead reimburse the states, dollar-for-dollar, for unemployment benefits paid to former employees. In participating states, eligible nonprofits will be reimbursed for 50 percent of the costs of unemployment benefits incurred until the end of 2020. These reimbursements apply to all payments made during the applicable time period, even if the unemployed individual is not unemployed as a result of COVID-19.

*The legislation enacted in response to the coronavirus pandemic continues to evolve day-by-day as agencies publish new regulations and guidance. It is important to note that there will likely be additional guidance as states begin to enter agreements implementing the expanded unemployment benefits provided by the CARES Act.

For further information regarding the unemployment compensation provisions of the CARES Act, please contact a member of the Benesch Labor & Employment Practice Group.

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Benesch stands ready to assist with any questions as we closely follow COVID-19 developments and support client’s response efforts.

Please note that this information is current as of the date of this client bulletin, based on the available data. However, because COVID-19’s status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by CDC and local officials.