

HR Insights

The CARES Act and Unemployment

The Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law on March 27, 2020, and since then the Department of Labor (DOL) has issued guidance on the provisions of the CARES Act that temporarily expanded the unemployment insurance program. This expansion is retroactive to job losses starting on or after January 27, 2020 and continues until December 31, 2020.

This issue of *HR Insights* provides an overview of the CARES Act and guidance regarding unemployment, followed by FAQs published by the Massachusetts Department of Unemployment Assistance, the Massachusetts Attorney General's Office, and the Small Business Association.

Coordination of State and Federal Unemployment

Under the CARES Act, unemployment insurance benefits are provided through both the state and federal government. Each state is responsible for establishing its own eligibility requirements and the level of benefits that will be paid and for how long, provided they do not conflict with the federal guidelines. Any state that is providing the expanded unemployment benefits available under the CARES Act, such as Massachusetts, had to enter into an agreement with the federal government to do so.

How the CARES Act Expands Unemployment Insurance Benefits

The CARES Act temporarily expands the existing unemployment insurance program in four important ways by:

1. Extending unemployment benefits to individuals meeting certain requirements who would not otherwise be eligible for unemployment. (§2102, Pandemic Unemployment Assistance (PUA))
2. Providing individuals who qualify for unemployment benefits, whether under the regular state program or the PUA program, an additional \$600 per week regardless of the individual's previous earnings or state program benefit level. (§2104, Pandemic Unemployment Compensation (PUC)) In addition, PUC waives the one-week waiting period for receiving benefits. The PUC amounts end July 31st.
3. Extending each state's maximum benefits period by 13 weeks. In Massachusetts, the maximum period increased

from 26 to 39 weeks. (§2107, Pandemic Emergency Unemployment Compensation (PEUC))

4. Promoting the use of short-time compensation arrangements through shared work arrangements, the goal of which is to avoid layoffs.

Covered Individuals

The CARES Act covers individuals who meet a state's eligibility requirements for existing unemployment benefits and certain individuals who do not meet a state's eligibility requirements. These individuals include:

- Self-employed individuals, independent contractors, and gig workers
- Individuals furloughed, temporarily laid off, or otherwise unemployed as a direct result of COVID-19
- Individuals who exhausted existing state and federal unemployment benefits

Requirements for Receiving Expanded Benefits

To receive the expanded benefits provided under the CARES Act, individuals must self-certify that they are able and available to work within the meaning of applicable State law, except for the fact that they are unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 qualifying reason. Each state is responsible for determining whether an individual meets all relevant criteria.

The COVID-19 qualifying reasons are:

- The individual has been diagnosed with COVID-19 or is experiencing symptoms and seeking a medical diagnosis
- A member of the individual's household has been diagnosed with COVID-19
- The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19
- A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility closed as a direct result of the COVID-19 public health emergency and the school or facility care is required for the individual to work
- The individual is unable to get to the place of employment because:
 - Of a quarantine imposed as a direct result of the COVID 19 public health emergency

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- The individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19
- The individual was scheduled to start work but does not have a job or cannot get to the job as a direct result of the COVID-19 public health emergency
- The individual has become the breadwinner or major support for the household because the head of the household died as a direct result of COVID-19
- The individual has to quit working as a direct result of COVID-19
- The individual's place of employment is closed as a direct result of the COVID-19 public health emergency
- The individual meets any additional criteria established by the Secretary for unemployment assistance

In addition, individuals who are self-employed, who are seeking part-time employment, who do not have sufficient work history, or who otherwise would not qualify for regular unemployment or extended benefits under state or federal law or PEUC are eligible for benefits under the CARES Act if they are unable to work because of one of the above qualifying reasons.

Covered individuals do not include those who have the ability to telework with pay or receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets one of the qualifying reasons.

Unemployment Benefits Amount

Under the CARES Act, individuals in Massachusetts meeting the requirements for unemployment benefits receive a weekly benefit for up to 39 weeks comprised of the:

- Amount determined by the state AND
- PUC flat amount of \$600 per week up to July 31st

The additional \$600 has posed certain challenges for some employers recalling employees back to work because some employees may receive more money in unemployment benefits than what they can earn if they return to work.

Example:

Assume an employee makes \$12.75 per hour (or \$510 per week assuming the employee works 40 hours per week) and meets the Massachusetts eligibility requirements for unemployment benefits. The employee would receive an estimate of \$255 per week through the state plus the \$600 PUC amount for a total of \$855 per week. In this example, the

total estimated unemployment benefit exceeds the employee's regular gross pay by \$345 per week.

As the example shows, returning to work can have a significant adverse impact on an employee's income. Refusing to return to work can also jeopardize an employee's unemployment benefits. The situation is even more complicated for some employers who received a Paycheck Protection Program (PPP) loan and counting on meeting headcount and compensation numbers to achieve loan forgiveness.

FAQs

The following selected FAQs are from the Massachusetts Department of Unemployment Assistance (DUA) website. These FAQs specifically address the CARES Act provisions regarding unemployment benefits. For more details, visit: [https://www.mass.gov/info-details/update-massachusetts-department-of-unemployment-assistance-announces-guidance-on-cares#federal-pandemic-unemployment-compensation-\(fpuc\)-](https://www.mass.gov/info-details/update-massachusetts-department-of-unemployment-assistance-announces-guidance-on-cares#federal-pandemic-unemployment-compensation-(fpuc)-)

What weeks will Federal Pandemic Unemployment Compensation (FPUC) cover?

Federal Pandemic Emergency Compensation (FPUC) will apply to benefit weeks beginning March 29, 2020 and ending on or before July 31, 2020.

What penalties can an individual incur for receiving improper payments of Federal Pandemic Unemployment Compensation (FPUC)?

An individual receiving Federal Pandemic Unemployment Compensation (FPUC) as a result of intentionally providing information that the individual knows or should have known was false will be ineligible for future FPUC and subject to prosecution. The individual will also need to repay the amount received with interest and penalties.

An individual receiving an overpayment by unintentionally supplying incorrect information will also need to repay the overpayment.

How much is the weekly benefit amount for Pandemic Emergency Unemployment Compensation (PEUC)?

The weekly benefit amount will be the same as the weekly benefit amount payable to the individual during the

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individual's benefit year, including dependency allowances, plus the \$600 FPUC weekly benefit. Again, the \$600 FPUC weekly benefit is available only for the period March 29-July 31, 2020.

What is the maximum number of weeks an individual can receive Pandemic Emergency Unemployment Compensation (PEUC)?

An individual will be able to receive Pandemic Emergency Unemployment Compensation (PEUC) for up to 13 weeks of additional unemployment benefits. The extension ends December 31, 2020, unless extended further by the federal government.

What penalties can an individual incur for receiving improper payments of Pandemic Emergency Unemployment Compensation (PEUC)?

An individual receiving Pandemic Emergency Unemployment Compensation (PEUC) as a result of intentionally providing information that the individual knows or should have known was false, will be ineligible for future PEUC and subject to prosecution. The individual will also need to repay the amount received with interest and penalties.

An individual receiving an overpayment by unintentionally supplying incorrect information will also need to repay the overpayment. But no interest and penalties will be charged, and the individual may be able to obtain a waiver if repayment "would be contrary to equity and good conscience."

How will Pandemic Unemployment Assistance (PUA), Federal Pandemic Unemployment Compensation (FPUC), and Pandemic Emergency Unemployment Compensation (PEUC) be funded?

All benefits and administrative expenses of these programs will be 100% federally funded, so they will be paid for without additional contributions from employers who pay into the unemployment insurance fund.

Does the CARES Act provide any unemployment relief for governmental entities and non-profit organizations that ordinarily pay the full amount of benefits awarded to former employees?

50% federal funding will be provided for benefits paid by reimbursable nonprofit and governmental entities for weeks of unemployment ending between 3/13/20 and 12/31/20. In

addition, USDOL will work with states to allow flexible interpretations of provisions of state law relating to timely payment and assessment of penalties and interest.

Can I apply for unemployment insurance benefits if I'm out of work due to COVID19?

The following selected FAQs are from The Attorney General's Fair Labor Division (FLD) published on May 5, 2020. For more details, visit:
<https://www.mass.gov/doc/covid-19-fl-d-faqs>

Employees have a right to apply for unemployment insurance benefits if they are discharged (laid off or fired) or if they are partially unemployed. They cannot be forced to use all of their earned sick time before applying for unemployment. Most employees who are out of work due to COVID-19 should be eligible for unemployment insurance benefits. There is no waiting period for persons filing a claim for unemployment insurance benefits, where they have been separated from employment due to COVID-19.

If an employer temporarily lays off its employees, do employees have a right to be paid in full on the day of layoff?

Yes, when an employee is temporarily laid off, they have a right to be paid all of their earned wages, including all accrued vacation pay, on that same day. If an employee voluntarily agrees to save accrued vacation for later use, the AGO will not take enforcement action for untimely payment of vacation pay, although our office does not have control over private litigation. If the employer and employee wish to continue the employment relationship by means of a furlough in order to, for example, maintain health insurance, disability insurance, retirement and other benefits, AGO will not consider it to be a discharge from employment for purposes of the Wage Act. Therefore, earned and accrued vacation pay need not be paid out upon the date of furlough. If, however, the employee wishes to separate from employment, all earned wages must be fully paid on the next regular pay day. If an employee's hours or earnings have been reduced by more than 1/3, they may be eligible to collect unemployment benefits. If the employer becomes unable to continue contributions towards employee benefits plans, then AGO will consider when that event occurs to be the effective date of discharge. The employee always maintains the right to terminate the relationship at any time

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and trigger the employee's right to full payment on the next regular pay day.

Will a borrower's PPP loan forgiveness amount (pursuant to section 1106 of the CARES Act and SBA's implementing rules and guidance) be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?

The following FAQ is from guidance published on May 13, 2020 by The Small Business Administration (SBA) in consultation with the Department of the Treasury. For more details visit:

<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

No. As an exercise of the Administrator's and the Secretary's authority under Section 1106(d)(6) of the CARES Act to prescribe regulations granting de minimis exemptions from the Act's limits on loan forgiveness, SBA and Treasury intend to issue an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act's loan forgiveness reduction calculation. The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation

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