

THE CARES ACT

SUMMARY OF THE UNEMPLOYMENT COMPENSATION PROVISIONS

OHIO CHAMBER OF COMMERCE

Presented by:

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CARES ACT

\$2.2 Trillion Stimulus Package



THE CARES ACT

WHAT IS IT?

- Legislation aimed at providing relief for individuals and businesses that have been negatively impacted by the coronavirus outbreak.
- Passed by the Senate on March 25, 2020
- Passed by the U.S. House of Representatives on March 27, 2020
- Signed by President Trump on March 27, 2020

THE CARES ACT AND UNEMPLOYMENT COMPENSATION

- The CARES Act includes 3 targeted benefit programs set up to provide relief to unemployed employees and individuals throughout the country
- Implementing guidance has been issued by the Dept. of Labor (DOL)
- Future Congressional action is possible
- Likely modifications, changes or tweaks to the programs by Congress, DOL, and the States

Department of Labor Guidance to the States

- The U.S Department of Labor (DOL) issued a series of guidance documents to assist the state unemployment compensation agencies. The guidance addresses:
 - Staffing, Federal funding,
 - Program Requirements
 - DOL interpretation of the CARES Act, and
 - Other recommendations on how the states should develop and implement the Act programs within Federal guidelines

Why state unemployment compensation agencies?

- The Cares Act designates that the benefits come through state unemployment agencies
 - These agencies are already set up to deliver and process benefits to unemployed persons
 - Many states UI agencies have been involved in processing benefits for prior disaster relief programs

3 Programs for Unemployment Assistance Authorized By The CARES Act

- The three unemployment programs provided for under the CARES Act are:
 - 1. Pandemic Unemployment Compensation (Regular State Unemployment)
 - 2. Pandemic Unemployment Assistance (PUA), and
 - 3. Pandemic Emergency Unemployment Compensation (PEUC).

The CARES Act programs will be administered through the state agency set up to handle unemployment compensation benefits. In Ohio that is the Ohio Department of Jobs and Family Services (ODJFS)

Program Goals – Weekly Benefit to Eligible Employees and Individuals

- All of the programs are designed to work in coordination with each other and to provide benefits to the **maximum number of affected employees possible** under the Act.
- Each program, with some exceptions, provides for a weekly benefit that is a combination of:
 - an individual's regular weekly unemployment benefit under their state law,
 - plus an additional \$600 each week to July 31, 2020 (the amount is funded by the Cares Act with Federal money)

Pandemic Unemployment Compensation PUC

- **Pandemic Unemployment Compensation**
 - Expands unemployment assistance through from January 27, 2020 through December 31, 2020
 - Covered individuals must be eligible for state unemployment benefits
 - Eligible to receive a weekly amount determined by state law plus an additional \$600 per week until July 31, 2020
 - Maximum entitlement of unemployment benefits subject to Federal Expanded Benefit program for most states from 26 weeks to 39 weeks

Pandemic Unemployment Compensation PUC (Continued)

- The Pandemic Unemployment Compensation Program (PUC)
 - This is regular or traditional unemployment benefit program for those employees who are eligible for state unemployment or partial unemployment compensation benefits.
 - Claims currently are filed and determined by the state's unemployment agency as under the state agency's regular unemployment compensation program.
 - Eligibility determined guidelines set in EACH state.

Pandemic Unemployment Compensation PUC (Continued)

- To be eligible under most states an employee will need to demonstrate that he or she meets the state requirements, including that the employee:
 - Unemployed thru no fault of his or her own
 - Able to work (e.g. not on sick leave)
 - Available for work, and

If the employee is found eligible to participate in the states unemployment compensation system, employee will receive:

- (1) the full or partial benefit as determined by the state agency,
- (2) **plus** the supplemental payment of \$600 for every week

Total Unemployment Compensation Benefits Under the PUC

- Totally Unemployed – entitled to benefits in each state up to the maximum amount allowed by the state.
- Traditional Unemployment.
 - Weekly benefit provided for each week claimant unemployed
 - UC. Benefit continues from week to week unless the employee is able to secure employment
 - Claimant required to perform job search to continue to receive the benefit (waived in many states during Covid-19 pandemic)

Total Unemployment Compensation Benefits Under the PUC

- COVID-19 Issues Adjustments in Many States
 - No distinction for those temporary and permanent layoffs or furloughs
 - Most states have adopted other COVID-19 related program modifications, including eliminating job search requirements during the pandemic
 - If employee is found eligible for full unemployment benefits by the state, the employee will receive:
 - (1) the unemployment benefit as determined by the state up to the state maximum (calculations vary by state),
 - (2) **plus** the federal supplemental payment of \$600 per week

Total and Partial Unemployment Benefits – Eligibility Requirements Under PUC

- Employees are entitled to **partial** unemployment in many states
- A minority of states do not provide for partial unemployment benefits
- Many states have a Short-Time Compensation program or Shared Work Program (discussed below)
- States have specific requirements for an employee to be eligible for partial unemployment
- Many states have waived the 1 week waiting period, and eliminated the job search requirement for full-time employment

Partial Unemployment Compensation Benefits – Eligibility Requirements Under the PUC

- States provide requirement that partial unemployment is not paid if the employee's wages exceed the state maximum for unemployment benefits.
- Each state maximum weekly benefit varies by state with Mississippi at the low of \$230 per week, and Massachusetts at the high end with a maximum of \$795 per week.
- If employee is found eligible for partial unemployment benefits by the state, the employee will receive:
 - (1) partial benefit as determined by the state agency (calculations vary by state),
 - (2) **plus** the supplemental payment of \$600 for every week

Limitation on Partial Unemployment Benefits and the \$600 Federal Supplement According to DOL Guidance

- **The DOL has guided that in order for an employee who is partially unemployed to qualify for the \$600 federal supplement under the PUC, the employee must qualify for at least \$1 of partial unemployment benefits in the state.**
- **It is not certain at this point whether those employees in states that do not provide for partial unemployment or where partial unemployment has been denied will be eligible for Pandemic Unemployment Assistance or PUC benefits.**

Total Unemployment Compensation under PUC

- **Example #1**
- **Joe works for a company located in Florida. Joe is subject to total lay off by his company due to a downturn in business**
- **Joe meets the basic eligibility requirements for unemployment benefits in Florida**
- **The Florida maximum unemployment compensation benefit is \$275 per week**
- **Joe will likely be entitled to unemployment compensation benefits and he will receive:**
 - **Full unemployment compensation benefits (likely \$275 per week)**
 - **PLUS the \$600 per week federal supplemental payment**
 - **Total benefit of \$875 per week**

Partial Unemployment Benefits under the PUC

- **Example #2:**
 - **Joe works for a company located in Florida. Joe has his hours reduced due to downturn in business**
 - **Florida does provide for partial unemployment benefits, and the maximum unemployment compensation benefit is \$275 per week**
 - **Joe has his hours reduced by his employer due to a downturn in business**
 - **Joe's partial unemployment has resulted in a reduction in pay such that he now receives \$300 per week, which amount is above the state maximum benefit of \$275**
 - **Joe is not entitled to any partial unemployment benefits in Florida, and his application for UC benefits will be denied.**
 - **Joe will receive zero in unemployment benefits**

Partial Unemployment Under the PUC

- **Example #3:**
 - Joe works for a company located in Florida. Joe has his hours reduced due to a downturn in business
 - Florida does provide for partial unemployment benefits, and the maximum unemployment compensation benefit is \$275 per week
 - Joe has his hours reduced by his employer due to a downturn in business
 - Joe's partial unemployment has resulted in a reduction in pay such that he now receives \$200 per week, which amount is below the state maximum benefit of \$275
 - Joe will be entitled to partial unemployment and he will receive:
 - Partial unemployment benefits in amount likely near \$100 per week
 - **PLUS** the \$600 per week federal supplemental payment
 - Total benefit of \$700 per week

PANDEMIC UNEMPLOYMENT COMPENSATION ASSISTANCE



- **Pandemic Unemployment Assistance**
 - Expands unemployment assistance through from January 27, 2020 through December 31, 2020
 - Covered employees **not eligible for other unemployment benefits under PUC (still awaiting guidance from states)**
 - **Other independent contractors, 1099 workers, such as gig workers, uber drivers, and others**
 - If eligible, individual will receive
 - a weekly amount determined by state law
 - plus an additional \$600 per week until July 31, 2020
 - Maximum entitlement of unemployment benefits expanded in most states from 26 weeks to 39 weeks

PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)

- **Covered individuals** – who provide self-certification that the individual is otherwise able to work and available to work, and is unemployed, partially unemployed, or unable to work for at least one of the following reasons:
 - Diagnosed with COVID-19 or experiencing symptoms and seeking medical diagnosis
 - Member of household diagnosed with COVID-19
 - Required to care for a member of family or household diagnosed with COVID-19
 - Required to care for a child or person individual has primary caregiving responsibility because school or another facility that is closed as direct result of COVID-19 public health emergency

PANDEMIC UNEMPLOYMENT ASSISTANCE PUA (COVERED INDIVIDUALS CONTINUED)

- Unable to reach place of employment because of a quarantine imposed as a direct result of COVID-19 public health emergency
- Unable to reach place of employment because a health care provider advised individual to self-quarantine due to COVID-19 related concerns
- Scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of COVID-19 public health emergency
- Became breadwinner or major support because the head of household died from COVID-19
- Individual quit as a direct result of COVID-19
- Place of employment closed as a direct result of COVID-19 public health emergency
- Additional criteria established by Secretary of Labor

PANDEMIC UNEMPLOYMENT ASSISTANCE PUA (CONTINUED)

- Specifically includes those who traditionally are not eligible to receive state unemployment compensation benefits who are unemployed, partially unemployed, or unable to work
 - Employees not able to receive state unemployment (waiting state programs to be developed),
 - Self-employed
 - Independent contractors
 - Those seeking part-time employment
 - Those with insufficient work history
- EXCLUDES
 - Individual who has ability to telework with pay
 - Individual who is receiving paid sick leave or other paid leave benefits

Additional Considerations for PUC and PUA Benefits

– Shared Work Programs

- **Short-Time Compensation or Shared Work Programs.** The Act also provides for temporary financing, agreements, and grants for Short-Term Compensation (STC), commonly known as “shared work” or “work share” programs.
- STC programs allow employers to retain employees on a reduced schedule, while unemployment benefits make up some of the difference in income. Employees are not expected to look for subsequent employment, as the goal is for them to return to full employment with their current employer after the slow-down in business subsides.

The Unemployment Dilemma: What if An Employee Refuses Available Work

- Under the Cares Act, employees may be able to collect more in unemployment than they make in wages due to the \$600/week federal supplement
- The benefit level has created a disincentive for employees returning to work
- What can an employer do if the employee refuses to return to work?
 - Develop and implement plan and protocols to address Covid-19
 - Communication/transparency, build confidence to address worker fears
 - Make sure your employees know the workplace is safe
 - Determine how to deal with high risk employees (such as age, immune disorders), including consideration of alternative work arrangements such as telework, alternative or remote work locations, reassignment, PPE, and social distancing measures.

The Unemployment Dilemma: What if An Employee Refuses Available Work (Cont.)

- Employee has obligation to report work opportunity to the Ohio Department of Job and Family Services
- An employee will not qualify for unemployment benefits if the employee refuses work
- Exception if the employee can demonstrate good cause to refuse the job
 - Good Cause is determined on a case-by-case basis
 - Vulnerable employees, age or immune compromised

The Unemployment Dilemma: What if An Employee Refuses Available Work (Cont.)

- The employer can notify ODJFS of the return to work offer
- Section 4141.28(F) of the Ohio Revised Code ELIGIBILITY NOTICE
 - Any base period employer or subsequent employer of a claimant who has knowledge of specific facts affecting the claimant's right to receive benefits for any week **may notify the director in writing** of those facts. The director shall prescribe a form for such eligibility notice, but failure to use the form shall not preclude the director's examination of any notice.
 - Other states permit, and some require, the employer to give notice when the claimant is given a job offer.

Additional Considerations for PUC and PUA Benefits Fraud Provisions

- **Emphasis on the Fraud Provisions.** Although the Act provides workers some flexibilities, in its guidance to the states the DOL has emphasized:
 - An employee “*quitting work without good cause to obtain additional benefits may be considered fraud.*”
 - The Guidance states that if an individual obtains benefits through fraudulent measures, the employee or individual will be:
 - (1) ineligible to receive any future unemployment compensation benefit payments,
 - (2) responsible to pay back the benefits obtained because of the fraud, and
 - (3) subject to criminal sanction and prosecution.

Additional Considerations for PUC and PUA Benefits

- **Telework.** Under the PUA, and most states, an employee will not be eligible for unemployment where the employee teleworks with full pay. The employee may be eligible for partial unemployment benefits where the employee performs telework on a reduced hour basis.
- **Sick Leave.** Employees who are receiving sick leave or other fully paid leave benefits will not be eligible for weekly benefits under the PUC or PUA.
- **Recall.** Employees who refuse available work or to return to work upon being recalled, could also lose eligibility for benefits. Most states have a process for employers to notify the state agency when an work is made available
- Employers should maintain in contact with your employees during the unemployment. Consider having employees on temporary layoff check in with your HR department at the start of every week to determine work availability.

Questions?



Thank You



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