

# Employment Practices Liability

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## Summary of CARES Act Additions to Unemployment Benefits

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On March 27, 2020, the U.S. President signed into law the CARES Act. This legislation provides 2 trillion dollars of emergency assistance and health care response for certain individuals, families, and businesses affected by the COVID-19 pandemic. The CARES Act, expands unemployment compensation. On April 2, 2020, the U.S. Department of Labor (“DOL”) released the Unemployment Insurance Program Letter 14-20 (“UIPL 14-20”), summarizing the CARES Act as they pertain to unemployment benefits:

**Pandemic Unemployment Assistance (PUA).** This program provides up to 39 weeks of benefits and is available starting with weeks of unemployment beginning on or after January 27, 2020 and ending on or before December 31, 2020. This program covers individuals who are self-employed, seeking part-time employment, or whom otherwise would not qualify for regular unemployment benefits under state or federal law. Coverage also includes individuals who have exhausted all rights to regular unemployment compensation

Individuals must demonstrate that they are otherwise able to work and available for work within the meaning of applicable state law, except that they are unemployed, partially unemployed, or unable or unavailable to work because of the COVID-19 related reasons specified in section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

1. An individual has been diagnosed with COVID-19 or is experiencing COVID-19 symptoms and seeking diagnosis;
2. A member of the individual’s household has been diagnosed with COVID-19;
3. An individual is caring for a family or household member diagnosed with COVID-19;
4. An individual is the primary caregiver of a child or household member who is unable to attend school or another facility that is closed due to COVID-19;
5. An individual is unable to reach their place of employment due to an imposed quarantine or was advised by a medical provider to self-quarantine due to COVID-19.
6. An individual was scheduled to commence new employment and does not have a job or cannot reach the job as a direct result of COVID-19;
7. An individual became the breadwinner or major support for a household because the head of the household died from COVID-19;
8. An individual has to quit a job as a direct result of COVID-19; or
9. An individual’s place of employment closed as a direct result of COVID-19.

Notably, individuals who (i) can telework for pay, or (ii) are receiving paid sick leave or other paid leave benefits, are not eligible to receive PUA benefits.

**Relief for Governmental Agencies and Nonprofits.** States will receive fund transfers to provide partial reimbursements (generally 50 percent of the amount of payments in lieu of contributions) to state and local governmental entities, certain nonprofit organizations, and federally recognized

Indian tribes for weeks of unemployment between March 13, 2020 and December 31, 2020. These partial reimbursements apply to all payments made during this time period, even if the unemployed individual is not unemployed as a result of COVID-19.

In order to obtain the reimbursement from the state, the unemployment form must state that the employees were laid off due to COVID-19 related reasons.

**Emergency increase in unemployment compensation benefits, called Federal Pandemic Unemployment Compensation (FPUC).** This program provides an additional \$600 per week to individuals who are collecting regular unemployment compensation. This is available for weeks of unemployment beginning after the date on which the state enters into an agreement with the Department and ending with weeks of unemployment ending on or before July 31, 2020. Among the requirements of this program is a non-reduction rule, which prohibits states from changing the computation method governing regular UC law in a way that results in the reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., maximum benefit entitlement).

**Temporary full federal funding of the first week of compensable regular unemployment for states with no waiting week.** States that provide compensation to individuals for their first week of unemployment (i.e., states which do not require a waiting week) and that enter into an agreement with the Department will receive 100 percent federal funding for the total amount of regular UC paid to individuals for their first week of regular UC. This funding is available for weeks of unemployment beginning after the date on which the state enters into an agreement with the Department and ends with weeks of unemployment ending on or before December 31, 2020.

**Emergency state staffing flexibility.** States are provided with limited emergency flexibility regarding the suspension of the requirement to use personnel standards on a merit basis through December 31, 2020.

**Temporary financing, agreements, and grants for Short-Time Compensation.** STC, also known as Shared Work or Work Share, is a lay-off aversion program where an employer reduces the hours for a group of workers to avoid layoffs and these workers receive a partial unemployment benefit payment. CARES provides that states with an existing STC program may be reimbursed for 100 percent of STC benefit costs, up to a maximum of 26 weeks of STC per individual. These reimbursements are available starting with weeks of unemployment beginning on or after March 27, 2020 and ending with weeks of unemployment ending on or before December 31, 2020. If a state enacts a new law providing for the payment of STC after March 27, 2020, then reimbursements are available starting with the effective date of the state law enactment and ending with weeks of unemployment ending on or before December 31, 2020.

The DOL expressed its intention to provide further guidance to states to assist them in the administration of these new benefits.

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Robin Kallor is a partner at Rose Kallor, LLP. Rose Kallor, LLP regularly represents and advises private and public sector employers on matters pertaining to the employer-employee relationship, including the selection process, discrimination and harassment related issues and frequently conducts neutral workplace investigations. If you have questions about this legal update, please contact us at 860-361-7999. If you wish to receive future updates on labor and employment related topics, please contact Jacqueline Smith, Marketing and Creative Design Associate at [jsmith@ccm-ct.org](mailto:jsmith@ccm-ct.org).

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