As most everyone now knows, among other things, the massive $2 trillion-plus CARES Act created multiple federal unemployment compensation programs for individuals impacted by the novel coronavirus disease (COVID-19). These programs provide federal funding to the states to administer and provide unemployment compensation assistance to a broad range of COVID-19-impacted employees including, notably, those who would not otherwise qualify for assistance under state unemployment compensation laws for a variety of reasons, including, for example, due to insufficient work history or earnings. What has remained murky, however, is precisely how the states are to implement and administer the programs, in particular, those aspects that create entitlements where previously an applicant would be deemed ineligible for benefits. To address these and related issues, the US Department of Labor (DOL) has been issuing “Program Letters” to the states answering many of the questions raised concerning the CARES Act-created
On April 27, 2020, the DOL issued additional guidance, updating a previously-issued Program Letter. Although addressed to state agencies, “Change 1” to the Unemployment Insurance Program Letter No. 16-20 provides helpful Q&A-format guidance for employers regarding the Pandemic Unemployment Assistance (PUA) program under the CARES Act. As we previously discussed here, the PUA creates a temporary federal program that provides up to 39 weeks of unemployment compensation benefits, and provides funding to states for administration of the program. Individuals receiving PUA benefits also may receive a $600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation program (FPUC). Summarized below are several highlights from the DOL’s updated Program Letter.

**PUA is available to otherwise ineligible individuals:** The updated Program Letter clarifies that, like Disaster Unemployment Assistance, the PUA program is intended to provide benefits to certain individuals who are not otherwise eligible for, or who have exhausted, regular unemployment compensation benefits. Eligibility criteria for the PUA program include: the individual must have no entitlement to regular unemployment compensation, and no entitlement to Pandemic Emergency Unemployment Compensation (PEUC) under the CARES Act (which provides an extension of a benefit period to persons who were receiving unemployment prior to the COVID-19 pandemic and who have exhausted state benefits); and the individual’s certification that he or she is unemployed, partially unemployed, or unable/unavailable to work because of a listed COVID-19 reason. The listed reasons include:

- 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 caring for a family member or household member who has been diagnosed with COVID-19;
- the individual cannot work because his or her child or other household member for whom the individual provides primary care cannot attend school or another facility that is closed due to COVID-19;
- the individual cannot reach his or her workplace due to an imposed COVID-19 quarantine;
- the individual cannot reach his or her workplace because a health care professional advised the individual to self-quarantine due to COVID-19 concerns;
- the individual was scheduled to start work but does not have a job or cannot reach the job due to COVID-19;
- the individual has become the “breadwinner” or “major support” for a household because the head of household has died due to COVID-19;
the individual has to quit his or her job due to COVID-19;

the individual’s workplace is closed as a direct result of COVID-19; or

the individual meets other criteria established for unemployment assistance under the law.

Per the updated letter, the above-listed reasons requiring a COVID-19 medical diagnosis do not in fact require a positive COVID-19 test. Although a positive test is sufficient, any diagnosis from a qualified medical professional, including one made via phone or telehealth, is also sufficient. In addition, PUA eligibility requires that the individual be able and available to work, unless the individual is unable to work as a direct result of COVID-19 (reasons listed above). General concern about exposure to COVID-19 is not a permissible basis for PUA eligibility.

An individual filing for PUA does not need to prove employment or self-employment to qualify, nor is the individual’s principal source of income considered in eligibility. However, base period wages are considered when calculating the individual’s weekly benefit amount (WBA). The guidance clarifies that if an individual does not have sufficient wages to qualify for a state WBA, the individual is entitled to receive the applicable state’s minimum WBA, plus the $600 FPUC weekly payment.

**PUA limits during summer months when school is out:** Under the CARES Act, and as addressed in the Program Letter No. 16-20, an individual who is unemployed, partially unemployed, or unable to work may be eligible for PUA if he or she is the primary caregiver for a child who is unable to attend school that is closed as a direct result of COVID-19. However, the DOL’s update to that letter clarifies that, once the 2019-2020 school year ends, a school is no longer considered closed “as a direct result of” COVID-19. Accordingly, during summer break, parents must rely on customary summer arrangements for child care and are no longer eligible for PUA. However, the DOL’s guidance contains an important caveat: if the facility that the parent relies on to provide summer care for the child is also closed as a direct result of COVID-19, then the parent may still continue to qualify for PUA.

**Gig workers, independent contractors, and the self-employed:** Gig workers, independent contractors, and self-employed individuals may be eligible for PUA if they are unemployed, partially unemployed, or unable/unavailable to work because of one of the above-listed COVID-19 reasons. Per the updated letter, this includes an independent contractor who faces a significant reduction in work as a result of COVID-19. In calculating the PUA WBA, states are directed to treat employment wages and self-employment income not covered by applicable state unemployment compensation law in the same manner and with the same effects as covered employment.

In closing, we note the updated Program Letter contains various additional interesting clarifications that employers and individuals should keep in mind. For one, a full-time student who works part-time may be eligible for PUA if the student is unemployed, partially unemployed, or unable/unavailable to work due to one of the above-listed COVID-19 reasons, as the typical requirement that the employment be the “principal source of income” is inapplicable for purposes of PUA eligibility. In addition, individuals ineligible for regular unemployment compensation because
they have not earned requalifying wages since a prior unemployment compensation claim (i.e. the “double dip provision”) may nonetheless be eligible for PUA if the individual is unemployed, partially unemployed, or unable/unavailable to work because of one of the above-listed COVID-19 reasons. Finally, the above link to the updated Program Letter contains a helpful table calculating the WBA based on the individual’s base period wages or lack thereof under state law.

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