Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Congress created a federal unemployment supplement program, Pandemic Unemployment Assistance (PUA), which extends emergency jobless benefits to gig workers and others who may be ineligible for benefits under existing programs, but are out of work because of the coronavirus pandemic.

The expanded unemployment offerings will be administered through state unemployment agencies, and the U.S. Department of Labor (DOL) recently released guidance to states concerning various aspects of the PUA program. Generally, the PUA program provides up to 39 weeks of benefits for individuals who are ineligible for unemployment compensation (UC) or extended benefits (EB) through their state programs but who are unable to work for a COVID-19-related reason. The federal government provides funding to states to administer the PUA program, and individuals receiving PUA benefits may also receive the $600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program, if eligible. PUA benefits are retroactive to January 27, 2020, and extend to December 31, 2020.
The DOL guidance addresses a variety of issues, most notably related to worker eligibility and calculations of an individual’s benefit entitlement. While the guidance addresses issues that states face in implementing the PUA program, the information is important for employers with workforces affected by COVID-19.

**Worker Eligibility**

The PUA program provides benefits to workers who have experienced partial or full unemployment because of a COVID-related reason and who do not fit within the traditional eligibility categories for UC or EB in their states. Examples of such workers include full-time students let go from part-time jobs, independent contractors who have experienced a significant diminution of work because of COVID-19, and workers who have previously exhausted UC benefits and have insufficient earnings to reestablish their eligibility.

PUA benefits do not extend to anyone out of work, but rather, are available only to those who are unemployed for a COVID-related reason. These COVID-related reasons, as defined in section 2102(a)(3)(A)(ii)(I) of the CARES ACT, include:

- The individual has been diagnosed with COVID-19 or has COVID-19 symptoms and is seeking a diagnosis;
- A member of the individual’s household has been diagnosed with COVID-19;
- The individual is providing care for a family or household member diagnosed with COVID-19;
- A person over whom the individual has primary caregiver responsibility (like a child) cannot attend school because of COVID-19;
- The individual cannot reach their place of employment because of quarantine related to COVID-19;
- The individual cannot reach their place of employment because of a health professional’s advisement of self-quarantine due to COVID-19;
- The individual was scheduled to start employment and does not have job or cannot reach their job because of COVID-19;
- The individual has become the primary breadwinner in their household because the previous household breadwinner has died from COVID-19;
- The individual has quit their job as a direct result of COVID-19;
- The individual’s place of employment is closed because of COVID-19; or
- The individual meets subsequent criteria laid out by the Secretary of Labor.

Workers applying for PUA benefits because of a COVID-19 diagnosis do not need to have a positive test; instead, they just need a diagnosis for COVID-19 from a medical professional. Workers who apply for PUA benefits because of a child’s school closure will lose eligibility once the scheduled 2019-20 school year has ended. However,
where the child’s summer care provider is also closed because of COVID-19, the worker will remain eligible for PUA benefits.

Workers who are out of work for a COVID-related reason but have been provided the opportunity to return, either in-person or through telework, are ineligible for PUA benefits. However, where a worker is offered the opportunity to telework but is unable to do so because of domestic violence, sexual violence, or stalking, they are still able to collect PUA benefits.

A worker who applies for PUA benefits must be ineligible for regular UC benefits through their state. But, the worker does not need to have been previously rejected for UC in order to receive PUA where ineligibility for state UC benefits is facially apparent (because of factors like failure to meet minimum income thresholds). To establish eligibility for PUA benefits, the worker will have to sign an attestation stating they meet the eligibility criteria laid out in the CARES Act.

The state will recertify the PUA claimants each week. An individual who receives PUA benefits for one reason but subsequently fits another COVID-related reason (i.e., a parent of a child affected by school closure has a household member contract COVID-19 right at the end of the scheduled 2019-20 school year) does not need to specify the change with the state, but does need to certify that they continue to be eligible under the CARES Act.

**Calculating Weekly Benefit Amount**

The DOL guidance also provides helpful information for states to calculate an individual’s weekly benefit amount. Generally, an individual’s weekly benefit amount will be calculated based on his or her 2019 calendar year income. However, there are exceptions.

The minimum PUA WBA is 50 percent of the average weekly payment of regular compensation in the state, as published quarterly by the U.S. Department of Labor. If a worker applies for PUA but does not have reportable income or has an income below the minimum WBA threshold, they will receive the minimum PUA payment amount. No one will be deemed ineligible for PUA benefits for failure to meet a minimum income threshold.

The maximum PUA weekly benefit amount is equivalent to the maximum WBA for unemployment compensation in the state. If an individual is self-employed, their net income will used to identify the proper weekly benefit amount under the PUA.

The DOL guidance provides a wealth of information about implementation of the PUA program. Most important for employers is the confirmation that PUA benefits do not extend to employees who have been offered the opportunity to return to work but who refuse to do so without a COVID-related reason. This means employees who refuse to come to work solely because of fear of contracting the virus will not be eligible for PUA benefits. When discussing employment options with employees, human resources professionals should be ready to discuss these PUA limitations.

© 2020 Schiff Hardin LLP