

# Employers Should Know How CARES Act Impacts Unemployment Benefits

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As you have no doubt heard by now, on Friday, March 27, 2020, Congress passed and the President signed into law a \$2 trillion economic relief bill called the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). While the CARES Act offers a range of emergency assistance and health care response for individuals, families, and businesses affected by the 2019 novel coronavirus (COVID-19) outbreak pandemic, including special loan eligibility for businesses, it also offers some special relief for workers.

Here are the key takeaways that we think employers will want to know about the unemployment insurance benefits relief offered by one of the components of the CARES Act—specifically, the Relief Workers Affected by Coronavirus Act (the “Act”):

- It adds \$600 per week for “Pandemic Emergency Unemployment Compensation” to whatever benefits individuals who have “exhausted” their rights to unemployment insurance (UI) were already entitled to under their applicable state program.

This increase will apply to UI benefits once the individual states have entered into the necessary agreement with the federal government to obtain the funds and run through July 31, 2020, which should be approximately four months.

In Washington, this means that an employee receiving the maximum weekly benefit amount of \$790 will now receive \$1,390. In Oregon, it means that an employee receiving the maximum weekly benefit amount of \$648 will now receive \$1,248.

It also appears that this additional amount will apply to all UI benefits—both full and partial unemployment—and those who were already receiving UI for non-COVID-19-related reasons.

- The Act extends the potential eligibility period by an additional 13 weeks. So for states such as Oregon and Washington, benefits will be available for up to 39 weeks, if needed.
- It creates a new category of unemployment benefits called “Pandemic Unemployment Assistance” (PUA) that states will be able to tap into for “covered individuals”—those who were not otherwise eligible for state or federal UI benefits, including the self-employed (i.e. “gig”-economy workers, freelancers, and consultants) provided they meet the applicable eligibility criteria.<sup>1</sup>

The following individuals are expressly excluded from coverage: individuals who have the ability to telework with pay and those who are receiving paid sick leave or other paid leave benefits—regardless of whether the individuals satisfy the criteria for unemployment under the Act.

- Most of the additional funding requires participating states to waive the “waiting week” periods that usually apply. Washington has already done so, but Oregon has not yet. We expect that this may change soon.

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- The Act also provides additional payment to states to reimburse governmental entities, including Indian tribes, and nonprofits for half the costs they incur through December 31, 2020, to pay into the state unemployment fund.
- A state that enters into an agreement with the federal government to provide specific benefits will be reimbursed in whole or in part for the costs of the benefits and for administrative expenses. It is unclear whether an employer's UI premiums will be affected by claims for PUA or Pandemic Emergency Unemployment Compensation during this period.<sup>2</sup> Notably, the Act does not specifically address whether states are prohibited from raising an employer's UI premiums.
- The Act also provides temporary financing to support existing "short-time compensation programs," as defined under Section 3306(v) of the Internal Revenue Code of 1986 (Work Share in Oregon and SharedWork in Washington),<sup>3</sup> when, instead of reducing staff, an employer reduces the hours of work for a group of employees and the employees with reduced hours receive a prorated unemployment benefit. The federal government will pay 100 percent of the costs that employers incur in providing short-time compensation beginning on or after the date of the enactment of the CARES Act through December 31, 2020.

To help explain the Unemployment Insurance and Pandemic Unemployment Assistance relief for workers provided in the the CARES Act, we've created two helpful charts: [What You Need to Know About the CARES Act](#) and [Pandemic Unemployment Assistance](#).

The Secretary of Labor is now charged with enacting implementing guidance and specifically directed to supplement or revise existing guidance to enable states to apply their own UI laws so as to provide maximum flexibility to forgive, and perhaps reimburse, employers for penalties and interest associated with timely payment and other assessments.

In the meantime, we understand that the OED is currently working to incorporate the new changes into its resource guides and will issue a news release and additional online announcements about PUA and UI benefit extensions once it receives the necessary guidance from the U.S. Department of Labor (DOL).

Likewise, Washington's Employment Security Department (ESD) is also working to update its technology to ensure that everyone who is eligible gets the full amount owed, while it awaits additional guidance from the DOL. According to the ESD COVID-19 website, this means that it will take a couple of weeks to update, with a target launch of mid-April, in which case ESD suggests that it will backdate an individual's claim so that the person is paid from the time that he or she separated from his or her job or otherwise became eligible under the CARES Act.<sup>4</sup>

For more information about the CARES Act and its anticipated impacts, we encourage you to [read the additional alerts prepared by our colleagues](#). For additional guidance, please refer to Miller Nash Graham & Dunn LLP's [COVID-19 Coverage, Resources, and Continuing Operations](#).

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<sup>1</sup> To be eligible for PUA, an individual must certify that they are partially or fully unavailable because:

- they have been diagnosed with COVID-19, or are experiencing symptoms of COVID-19 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 whom the individual has primary caregiving responsibility is unable to attend school or another facility that is 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 work because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- the individual is unable to work because they were advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- the individual was scheduled to commence employment and does not have a job or is unable to work as a direct result of the COVID-19 public health emergency;

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- the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
  - the individual has to quit his or her job 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; or
  - the individual meets any additional criteria established by the Secretary of Labor;
- or*
- The individual is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation under Section 2107 of the CARES Act and meets the requirements above.

<sup>2</sup> Oregon businesses pay for UI benefits received by unemployed workers through a payroll tax. The money is deposited into a trust fund jointly held by the state and the federal government. According to the Oregon Employment Department (OED), Oregon's Unemployment Insurance Trust Fund currently has more than \$5 billion, making Oregon one of the most securely funded states. In response to the question whether taxes are raised on employers when more Oregonians qualify for and receive unemployment benefits, the OED responded:

"Unemployment Insurance tax rates are set annually; the next determination occurs in November of this year for calendar year 2021. Oregon Unemployment Insurance tax rates are set at one of eight rates (or schedules) based on the level of trust fund monies so that the fund remains solvent and can continue to pay benefits to those unemployed through no fault of their own. This tax structure has been in place for decades, and has served Oregon workers, businesses, and

<sup>3</sup> The Washington State Employment Security Department issued emergency rules regarding the SharedWork program on March 25, 2020.

<sup>4</sup> The new law also amends the Emergency Unemployment Stabilization and Access Act of 2020 (contained in Division D of the Families First Coronavirus Response Act, which was adopted in the first wave of congressional action in response to the coronavirus pandemic) by providing states with temporary, limited flexibility to hire temporary staff, rehire former staff, or take other steps to quickly process unemployment applications and claims.

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**Amy Robinson** represents public and private employers throughout Washington and Oregon in a broad range of workplace-related issues. She skillfully handles matters for clients regarding wage-and-hour, leave laws, disability and accommodation, and complaints related to discrimination, retaliation, and harassment. Amy is adept at guiding employers through policy and handbook creation, crafting employment contracts, and various other agreements.

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