

COVID-19 Pandemic Unemployment Insurance Law, Guidance and FAQs

(Prepared by Ways and Means Republican Staff as of April 20, 2020)

Laws

FFRCA, [Division D](#) (P.L. 116-127/ H.R.6201)

CARES Act (P.L. 116-136/H.R.748), Title II, [Subtitle A](#)

WAMR Resources

UI Explainer: https://gop-waysandmeans.house.gov/wp-content/uploads/2020/03/UI-Explainer_3.30-1.pdf

CARES Act Section-by-Section: <https://gop-waysandmeans.house.gov/wp-content/uploads/2020/03/CARES-Bill-UI-Provisions-1-2.pdf>

FFRCA FAQ: <https://gop-waysandmeans.house.gov/phase-ii-coronavirus-package-unemployment-insurance/>

DOL Unemployment Insurance Program Letter (UIPL) Guidance

Federal Pandemic Unemployment Compensation (FPUC)

Extra \$600/week benefit thru July 31 (April 4, 2020)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_15-20.pdf

Pandemic Unemployment Assistance (PUA)

Expanded eligibility to self-employed and independent contractors (April 5, 2020)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf

Pandemic Emergency Unemployment Compensation (PEUC)

Additional 13 weeks of benefits (April 10, 2020)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_17-20.pdf

CARES Act of 2020

Summary of Provisions (April 2, 2020)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_14-20.pdf

Families First Coronavirus Response Act, Division D

Administrative grants, Extended Benefits and federal loans (March 22, 2020)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_13-20.pdf

State Tables: [https://wdr.doleta.gov/directives/attach/UIPL/UIPL_13-20 Attachment I.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_13-20_Attachment_I.pdf)

COVID-19

State Flexibility (March 12, 2020)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_10-20.pdf

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Extra \$600/week (FPUC)

Do states have the option to make the \$600 additional payment retroactive into March?

No, the additional \$600 is restricted to Unemployment Benefits paid between April 1-July 31. However, the expansion of coverage to self-employed and independent contractors and plus 13 weeks is retroactive to Jan 27.

With the extra \$600 will some people get more on UI than their paycheck?

This is going to be the case for some workers. The additional \$600 in weekly benefits is designed to keep as many workers as whole as possible through the emergency. Some may temporarily receive more benefit than their paycheck – though that number is very small compared to everyone receiving Unemployment. Of course, people receiving Unemployment do not receive health insurance, retirement or other important benefits that can be available at work. The temporary \$600 is only available through July 31.

https://gop-waysandmeans.house.gov/wp-content/uploads/2020/03/UI-Explainer_3.30-1.pdf

How much do people get on UI?

It varies. Unemployment benefits across the country averaged \$385 per week in February 2020 but [vary significantly by state](#). Generally, a person's benefits replace about 1/3 to 1/2 of their wages. The CARES Act provides an additional \$600 per week on top of whatever a person would normally receive in their state – limited to the next 4 months (expires July 31, 2020). This will end up providing a higher than average wage replacement rate for low-wage workers.

Refusing a Job Offer

What if someone receiving unemployment insurance is offered their job back but refuses to return to work?

States have long-standing practices for ensuring individuals do not receive unemployment insurance payments if they refuse “suitable work” (as defined under [state law](#)). While the definition of “suitable work” varies by state, refusal of

an offer to return to the same job the person was working in previously would likely disqualify an individual from receiving unemployment insurance payments (unless, in accordance with existing state laws, employment conditions have changed substantially, such as the rate of pay, the distance to work, or the degree of risk to health and safety).

How does a state know if someone refuses a job offer?

This will vary across states. Most states already have processes in place to ensure individuals do not receive unemployment insurance payments if they refuse “suitable work” (defined by the state). Refusal of an offer to return to the same job the person was working in previously would disqualify an individual from receiving unemployment insurance payments – unless they can provide good cause (defined by the state).

For example, one State said: Employers can notify us at any time when they make offers of employment. They just need to contact us to report. In “normal” times if a claimant is referred to an interview through our labor exchange site the employer can report through that system if they offered a job that was declined.

Individuals receiving unemployment benefits must demonstrate that they are able to work, available to work, and actively seeking work. Most states require individuals to record and report job search and contacts with employers on a weekly basis to certify continuation of benefits.

Paycheck Protection Program and UI

What happens if someone was laid off or furloughed, but then the employer gets a Paycheck Protection Program loan and the person returns to work?

The individual would receive unemployment insurance payments for the period in which they were not being paid by an employer. When the employer re-hires the person or puts them back on the payroll, the individual would no longer be eligible for unemployment insurance as they are receiving wages. Employers report quarterly wages for each employee to the state unemployment agency, which allows the state agency to determine if and when the individual was eligible for unemployment insurance payments. If the individual ends up receiving pay for

a week in which they also received unemployment insurance payments, the employer will report this information on the quarterly wage report provided to the state unemployment agency, and the individual will have to pay back the unemployment insurance payments they received for that period. In such a situation, the state will follow their [regular practices for dealing with overpayments](#).

[Is the employer still eligible for loan forgiveness when their employees refuse to come back to work and choose to stay on unemployment?](#)

If the business has former employees that are now receiving unemployment benefits, those employees would be jeopardizing their unemployment benefits by refusing to go back to work. When an employee refuses recall to a position they held prior to layoff, the bar is fairly high to support a good cause exception for refusal. In the large majority of cases refusal to accept the recall would result in the termination of benefits. The main issue is the state would have to know that the refusal, in fact, occurred. As businesses re-open and move toward economic recovery, states will need to have accessible and easy-to-use mechanisms in place to allow employers to report when there is a job refusal.

[Quitting Your Job](#)

[Is it your interpretation in the CARES Act that someone who quits their job would still be eligible for the Pandemic Unemployment Assistance program?](#)

The CARES Act-authorized Pandemic Unemployment Assistance (PUA) program covers an individual who is not eligible for regular unemployment compensation, extended benefits, or pandemic emergency unemployment compensation under section 2107 of the CARES Act, and who otherwise is able to work and available for work, but cannot due to circumstances related to COVID-19. The individual must demonstrate that they are unemployed or partially unemployed because of the provisions included under Sec. 2102(a)(3)(A)(ii)(I) of the CARES Act. The law includes language at 2102 under “covered employee” to include “the individual has to quit his or her job as a direct result of COVID-19.”

Generally, Unemployment Insurance (UI) payments provide temporary financial assistance to unemployed workers who are unemployed through no fault of their

own. Each State sets its own guidelines for eligibility for UI benefits, but an individual usually qualifies if they:

1. Are unemployed through no fault of their own;
2. Meet work and wage requirements;
3. Meet the specific State's requirements for wages earned or time worked during an established period of time referred to as a "base period"; and
4. Meet any additional State requirements.

Under the CARES Act, requirements that would result in the denial of benefit payments generally remain in place, including when a worker voluntarily leaves work without good cause.

Can employees refuse to go to work and collect UI? I thought DOL put restrictions on something like this, but we have an essential business in the district where the employees are refusing to show up to work because UI benefits are more generous. If this is not allowed, what actions does the employer have?

Unless an employee can provide "good cause," if they are offered their job back, they can't decline it and continue to receive UI. When an employee refuses recall to a position that they held prior to layoff, the bar is fairly high to support a good cause exception for refusal. In the large majority of cases refusal to accept the recall would result in the termination of benefits. The main issue is the state would have to know that the refusal, in fact, occurred.

In general, States have long-standing practices for ensuring individuals do not receive unemployment insurance payments if they refuse "suitable work" (as defined under state law). While the definition of "suitable work" varies by state, refusal of an offer to return to the same job the person was working in previously would likely disqualify an individual from receiving unemployment insurance payments (unless, in accordance with existing state laws, employment conditions have changed substantially, such as the rate of pay, the distance to work, or the degree of risk to health and safety). As businesses re-open and move toward economic recovery states will need to have accessible and easy-to-use mechanisms in place to allow employers to report when there is a refusal.

Work Search Requirement

Is the work activity requirement suspended w/CARES?

Individuals receiving unemployment benefits must demonstrate that they are able to work, available to work, and actively seeking work. Most states require individuals to record and report job search and contacts with employers on a weekly basis. The work search requirement hasn't been formally waived or suspended, instead states have flexibility to continue providing benefits if someone is unable to search for work due to COVID-19 related reasons.

Under the current crisis, most states have temporarily waived and given flexibility on these requirements, but they undergird the system. States work with individuals to provide reemployment services and support to get them back into the workforce – that is a bedrock of the system.

Guidance on flexibility in job search requirements:

DOL COVID-19 State Flexibility (03/12/2020)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_10-20.pdf

DOL guidance issued March 12th clarified that states have discretion in how determining how individuals demonstrate they are able and actively seeking work and could consider a person to be eligible for UI if they are unable to look for work due to COVID-19 related reasons.

In FFRCA, for states to get their 2nd allotment of the \$500 million in emergency administrative grants (no states have gotten their 2nd allotment yet) -they have to certify that they are taking steps to ease eligibility requirements that might otherwise limit access to UI during the pandemic, including work search requirements.

In CARES Act, DOL's guidance says "The programs and provisions in the CARES Act operate in tandem with the fundamental eligibility requirements of the Federal-State UI program must be adhered to... These requirements include that individuals are only entitled to benefits if they are no longer working through no fault of their own and that individuals must be able and available to work. The CARES Act requires that states provide flexibility for PEUC "in case of individuals unable to search for work because of COVID-19, including because of illness quarantine, or movement restriction."

Income (Taxable and Counting)

Unemployment Insurance benefits are being temporarily increased, would the additional benefits in UI each week also be taxable like normal benefits?

Section 2104 of the CARES Act increases weekly unemployment compensation by \$600 per week to each recipient of Unemployment insurance or Pandemic Unemployment Assistance for up to four months, from April 1 through July 31, 2020. These additional amounts are taxed the same way as normal Unemployment benefits.

Does the extra UI allotment count as income for a person applying for SNAP?

Yes. The only disregard is for Medicaid and SCHIP: (I-3)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_15-20.pdf

Disregard of FPUC for Purposes of Medicaid and State Children's Health Insurance Program (SCHIP). Under Section 2104(h) of the CARES Act, the monthly equivalent of any FPUC amount paid to an individual must be disregarded when determining income for any purpose under programs established under Titles XIX and Title XXI of the Social Security Act (SSA) (42 U.S.C. §1396 et seq., §1397aa et seq.).

If someone withdraws money from their 401(k) does that count against their UI benefit amount?

Qualification for unemployment is based on your prior quarterly or “base amount” wages, not assets or income from other sources. For those who have higher salaries the benefit amount is capped usually at ½ the state’s average weekly wage. The weekly benefit amount could be reduced based on retirement payments an individual receives (per below) but it doesn’t sound like lump sum retirement withdrawals qualify for purposes of reducing the benefit amount.

FUTA is the Federal Unemployment Tax Act

<https://oui.doleta.gov/unemploy/pdf/uilawcompar/2019/nonmonetary.pdf> (P.47)

RETIREMENT PAYMENTS—FUTA requires states to reduce the weekly benefit amount of any individual by the amount, allocated weekly, of any “governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual....” This

requirement applies only to payments made under a plan maintained or contributed to by a base-period or chargeable employer that affected eligibility for or increased the amount of the retirement pay. States are permitted to reduce benefits on less than a dollar-for-dollar basis by taking into account the contributions made by the individual to the plan in question. (This effectively means the FUTA requirement is limited to 100 percent employer-financed pensions.) Also, the requirement applies only to those payments made on a periodic (as opposed to lump-sum) basis. As a result, states may choose from a variety of options in creating a retirement pay provision. FUTA also prohibits reductions for pensions, retirement or retired pay, annuity, or other similar payment not includible in the gross income of the individual because it was part of a rollover distribution.

Is unemployment insurance counted for SSI determination?

Unemployment insurance is considered unearned income for SSI (see: <https://www.ssa.gov/ssi/text-income-ussi.htm>). So that means SSI benefits are offset by \$1 for every \$1 of unearned income above \$20. SSA is not currently taking adverse actions, including redetermination so in the short term it is unlikely an individual's SSI benefit would change.

Non-Profits and Churches

I work at a Church and understand I'm not eligible for the normal Unemployment Insurance system. Does this bill do anything for me?

The bill includes a provision to provide federal funding (through states) to reimburse non-profits for 50% of the costs of providing unemployment benefits to their employees. Churches are not generally covered by this, but their employees would be eligible for the Pandemic Unemployment Assistance under Section 2102 of the CARES Act.

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf

Background – The CARES Act was designed to mitigate the economic effects of the COVID-19 pandemic in a variety of ways. The CARES Act includes a provision of temporary benefits for individuals who have exhausted their entitlement to regular unemployment compensation (UC) as well as coverage for individuals who are not eligible for regular UC (such as individuals who are self-employed or who

have limited recent work history). These individuals may also include certain gig economy workers, clergy **and those working for religious organizations who are not covered by regular unemployment compensation**, and other workers who may not be covered by the regular UC program under some state laws.

Is it up to states whether to accept the 50% match and offer Unemployment Insurance to employees of non-profits, or is it mandatory? Is that coverage limited to 501(c)3 employees like other parts of the bill, or will it also be open to other employees of exempt non-profits like churches?

The 50% is to reimburse states so that they don't "charge" the state and local governments/non-profits the full amount of whatever the state ended up paying out for their employees. Unlike other employers who pay a State Unemployment Tax Act (SUTA) tax that is adjustable based on the number of layoffs, state and local/non-profits are "reimbursable employers" (i.e., they pay the state back on a dollar for dollar basis). This relieves those entities of half their financial burden by having the federal government pick up half their tab. For churches, they are not covered under that arrangement. However, church employees who are laid off will be covered by the new Pandemic Unemployment Assistance program which covers workers not typically covered by state programs.

How are Non-Profits and Unemployment Insurance treated in the CARES Act?

- Section 2103 of the CARES Act provides relief to non-profits organizations by providing federal funding to cover 50% of unemployment compensation paid to their former employees during the period March 13- Dec. 31, 2020.
- Many non-profit organizations are considered "reimbursable employers" because they can opt out of unemployment taxes paid by private sector companies. Instead, these organizations are charged on a dollar-for-dollar basis by the state for the costs of any unemployment compensation paid to employees laid off from their organizations.
- Under the CARES Act, the federal government is essentially picking up half the tab (50%) of non-profit organizations and state and local governments. It also allows states flexibility in the timing of when they charge non-profit employers for those reimbursable payments.
- Some have expressed concern that this relief does not go far enough because the layoffs have been so substantial, and the pandemic has jeopardized the

viability of so many non-profit charitable organizations. Non-profit and community-based organizations play an important role in serving low-income children and families.

One of our non-profits hasn't been paying a solvency fee, however, they think this may exclude them from being eligible for relief due to the Covid-19 crisis. Do you know if this is the case?

No. Reimbursing employers do not pay solvency fees (as described below). Section 2103 of the CARES Act provides financial relief for reimbursing employers. There is no requirement under Section 2103 that conditions this financial relief on paying solvency fees. DOL's [Comparison of State Unemployment Laws](#) 2019 explains that many states have solvency fees, various surcharges, surtaxes, and adjustments under state UI tax laws. For example, PA lists a "Solvency Measure," which is described as a "Surcharge adjustment of 5.4% and additional contributions of 0.5%." (See [Table 2-11](#) in Chapter 2 FINANCING) These adjustments may be in the form of a direct modification of the employer's tax rate (for example, by adding 0.1 percent to, or subtracting 0.1 percent from, the employer's tax rate) or by taking these costs into account when calculating the employer's experience rate (for example, charging a prorated portion of socialized costs to the employer's account in a reserve-ratio state). Reimbursing employers are exempted from solvency adjustments since they already reimburse the state's unemployment fund for 100 percent of their benefit costs.

Getting UI and Being Employed

How exactly does the provision work that allows workers to maintain their employment and also receive UI benefits? Is there a certain reduction in income they have to realize? And do they still need to get at least some pay from their employer?

States have rules for allowing furloughed workers to receive unemployment benefits. Most require the employer to continue paying healthcare for the employee but have processes in place to accommodate that the worker is expected to return to work. Also, the Pandemic Unemployment Assistance covers individuals under certain circumstances if they are still employed but unable to work due to COVID-19 related reasons (Title II sec. 2102). Finally, states do pay

partial unemployment for part-time workers that meet minimum requirements as determined by the state.

It is your interpretation in the CARES Act that someone could be employed and “unable or unavailable to work” and get Pandemic unemployment assistance?

State laws may vary, but generally, if an individual remains attached to his/her employer, but is “unable or unavailable to work” and is experiencing a reduction in hours and a reduction in pay for one of the reasons identified in Sec.

2102(a)(3)(A)(ii)(I) of the CARES Act, the individual may be eligible for Pandemic Unemployment Assistance (PUA).

Sec. 2102(a)(3)(A)(ii)(I) of the CARES Act requires that the individual is “otherwise able to work and available for work” within the meaning of applicable State law, except that the individual is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons identified in the subclause.

We have a long-standing interpretation that an individual is unemployed when they have a reduction in hours and a reduction in pay. The statute reflects this interpretation by specifically excluding those who may telework with pay or receive paid sick leave or other paid benefits (Sec. 2102(a)(3)(B)).

Part-Time Workers and UI

Would folks who still have their job but have had their salary reduced qualify?

Yes. If an individual is working less than the individual customarily worked prior to the COVID 19 pandemic, the individual may be eligible for a reduced PUA weekly benefit. The weekly benefit amount will be connected to what the state pays normally and include a +\$600 federal supplement through July 31. Here is the DOL guidance on PUA: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf (I-3); also see https://wdr.doleta.gov/directives/attach/UIPL/UIPL_15-20.pdf (P.2 and I-5).

Disability Insurance and UI

Can someone receive Disability Insurance benefits and UI benefits at the same time?

Yes.

- The Unemployment Insurance (UI) program assists unemployed individuals by offering weekly benefit checks while they look for work. In order to be eligible, jobless workers must have a history of attachment to the workforce and must be able to and available for work.
- To qualify for Disability Insurance (DI) benefits, a person must be unable to engage in substantial gainful activity because of a medically determinable impairment that is expected to last 12 months or result in death.
- Currently, a person can receive UI benefits (which requires an individual be willing and able to work) while also receiving DI benefits (be unable to work).

Supplemental Administrative Funds for States

How does the H.R. 6201 support states that are experiencing a spike in claim for unemployment benefits due to COVID-19 layoffs and business closings?

Congress made available \$1 billion for emergency administrative grants to state unemployment agencies that can be used to help with spike in claims, processing and applications. The funds are separated into two allotments. The first is immediately available, the 2nd allotment is available to a state that experiences a 10% increase in claims from the previous quarter.

How much additional money for administration is my State getting for support in dealing with the spike in claims from COVID-19?

DOL recently issued guidance to states that includes an Attachment with [state-by-state allocations](#). DOL Guidance to States for implementing the Families First Coronavirus Response Act, Public Law (Pub. L.) 116-127, specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA): https://wdr.doleta.gov/directives/attach/UIPL/UIPL_13-20.pdf

What's in the law?

What unemployment provisions were included in the phase 2 Families First Coronavirus Response Act (FFRCA)?

Unemployment Provisions, Division D – Emergency Unemployment Insurance Stabilization and Access Act of 2020

Section 4102. Emergency Transfers for Unemployment Compensation Administration. This section provides \$1 billion in 2020 for emergency administration grants to states for activities related to processing and paying unemployment insurance (UI) benefits, under certain conditions. \$500 million is provide immediate additional funding to states for staffing, technology, systems, and other administrative costs, so long as they meet basic requirements about ensuring access to earned benefits for eligible workers. Those requirements are:

- Require employers to provide notification of potential UI eligibility to laid off workers.
- Ensure that workers have at least two ways (for example, online and phone) to apply for benefits.
- Notify applicants when an application is received and being processed and if the application cannot be processed, provide information to the applicant about how to ensure successful processing.

States are required to report on the share of eligible individuals who received UI benefits and the state's efforts to ensure access within one year of receiving the funding. The funding is distributed in the same proportions as regular UI administrative funding provided through annual appropriations.

\$500 million is reserved for emergency grants to states which experience at least a 10 percent increase in unemployment. Those states would be eligible to receive an additional grant, in the same amount as the initial grant, to assist with costs related to the unemployment spike, and would also be required to take steps to temporarily ease eligibility requirements that might be limiting access to UI during the COVID-19 outbreak, like work search requirements, required waiting periods, and requirements to increase employer UI taxes if they have high layoff rates. Depending on the state, those actions might require changes in state law, or might just require changes in state policy. This section also provides temporary

federal flexibility regarding those UI restrictions which are also in federal law.

Section 4103. Temporary Assistance for States with Advances. This section provides states with access to interest-free loans to help pay regular UI benefits through December 31, 2020, if needed.

Section 4104. Technical Assistance and Guidance for Short-Time Compensation Programs. This section requires the Secretary of Labor to provide technical assistance to states that want to set up work-sharing programs, in which employers reduce hours instead of laying employees off, and then employees receive partial unemployment benefits to offset the wage loss.

Section 4105. Full Federal Funding of Extended Unemployment Compensation for a Limited Period. For states that experience an increase of 10 percent or more in their unemployment rate (over the previous year) and comply with all the beneficiary access provisions in section 102, this section provides 100 percent federal funding for Extended Benefits, which normally require 50 percent of funding to come from states. Extended Benefits are triggered when unemployment is high in a state and provide up to an additional 26 weeks after regular UI benefits (usually 26 weeks) are exhausted.

[What are the unemployment provisions in the latest version of McConnell's CARE package?](#)

Because so many workers are now working in non-traditional arenas, the CARES act provides relief for workers who are self-employed, as well as independent contractors, while adding significantly

- About \$250 Billion to Expand Unemployment Benefits: The Senate economic relief package provides much-needed support for workers by making a significant investment.
- Unemployment Benefits for More Americans: The bill will make sure self-employed and independent contractors like Uber drivers and gig workers can receive unemployment.
- More Money for a Longer Period for More Workers: It also makes benefits more generous by adding \$600 per week on top of what the state normally pays in unemployment and provides an additional 13 weeks of benefits.

And provisions will ensure state and local governments and non-profits can pay unemployment to their employees.

- Temporary Provisions: Most of the unemployment provisions go through the end of 2020, in recognition of the temporary nature of this challenge.

I nearly exhausted my maximum weeks of unemployment. Does this do anything for me?

Yes, The CARES Act provides an additional 13 weeks of unemployment to help those who remain unemployed after weeks of state unemployment are exhausted.

I'm an independent contractor and am non-eligible for traditional Unemployment Insurance. Does this bill do anything for me?

Yes, Section 2102 of the CARES Act creates a temporary Pandemic Unemployment Assistance program through December 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work or telework as a direct result of the coronavirus public health emergency. The expansion of coverage to self-employed and independent contractors is retroactive to Jan 27th. https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf (P.4)

What does unemployment look like in my state?

To find out how to apply for unemployment in your state visit:

<https://www.careeronestop.org/WorkerReEmployment/UnemploymentBenefits/unemployment-benefits.aspx>

A state-by-state summary of how each state determines weekly unemployment benefits amounts can be found here:

<https://oui.doleta.gov/unemploy/content/sigpros/2020-2029/January2020.pdf>

For information about how your state's unemployment agency is responding to the COVID-19 public health emergency visit:

<https://www.naswa.org/resources/coronavirus>