

LABOR AND EMPLOYMENT

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A Pair of New DOL Guidance Documents Address Additional Unemployment Compensation Programs Under the CARES Act

By Karen Baillie

On April 4 and 5, the United States Department of Labor issued two guidance documents to assist states in applying for and receiving reimbursement for the new benefits created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. These guidance documents are known as Unemployment Insurance Program Letters, No. 15-20 and 16-20.

The CARES Act empowered the Secretary of Labor to create additional categories of workers who may receive some benefits. In response, the Secretary has made it clear that independent contractors (such as those in the ride share industry) may qualify for benefits if they are unable or unavailable to work because the COVID-19 public health emergency has severely limited their ability to continue performing customary work activities and has thereby forced suspension of such activities.

The CARES Act addressed unemployment compensation benefits in two ways. First, the Federal Pandemic Unemployment Compensation (FPUC) program awards an additional \$600 per week to each worker eligible under existing state unemployment compensation programs for the time period between March 27, 2020 and July 31, 2020, provided the state has signed an agreement with the Secretary of the Department of Labor and provided the individual worker is otherwise eligible for at least \$1 in state unemployment compensation.

The second program is the Pandemic Unemployment Assistance (PUA) Program. The PUA provides unemployment compensation to individual workers who would not otherwise be qualified under their

state program. The PUA expands the list of reasons individuals will qualify for benefits. It too requires that each state sign an agreement with the Secretary of the Department of Labor. The PUA program lasts for up to 39 weeks, ending at the end of December 2020. Both programs rely on existing state unemployment compensation structures and create new forms and reporting obligations for states that are addressed in the new guidance documents.

To be covered by the PUA, individuals must self-certify that they are able and available for work, and that they are unemployed or partially unemployed for one of the following eleven reasons.

(1) The individual has been diagnosed with COVID-19 or is experiencing symptoms and is seeking a medical diagnosis. An individual who quits can be eligible if he or she quit on the advice of a medical professional.

(2) A member of the individual's household has been diagnosed, and as a result, the individual is unable to work.¹

(3) The individual is providing care to a family member or a member of the individual's household who has been diagnosed with COVID-19, if such care renders the individual unable to work. An individual is not eligible if the family member is able to adequately care for himself or herself.

(4) The individual is unable to work due to the need to provide primary caregiving responsibilities to a child or other member of the household whose school or care facility is unavailable as a direct result of the COVID-19 public health emergency. This includes individuals

who are required to remain at home to provide care and who are unable to telework due to their job responsibilities or caregiver responsibilities.

(5) The individual is unable to reach the place of employment because of quarantine due to COVID-19.

(6) The individual is unable to reach the place of employment due to having been advised by a health care provider to self-quarantine due to COVID-19, for example, due to possible exposure to an infected person or due to the individual's own compromised immune system.

(7) The individual who had been scheduled to commence employment is rendered unable to reach the new job due to COVID-19, for example, due to the employer rescinding the job offer or due to a state or municipal travel ban.

(8) The individual has become the breadwinner or major support for a household because the head of the household has died as a result of COVID-19.

(9) The individual has to quit his or her job due to COVID-19. The DOL Guidance suggests that this category is meant to cover individuals who recover from COVID-19 with health complications that render the individuals unable to perform essential job functions with or without reasonable accommodations.

(10) The individual's workplace is closed due to COVID-19.

(11) The individual meets additional criteria that may be added by the Secretary. The newsworthy takeaway from this Guidance is that the Secretary has specifically added individuals who work as independent contractors if they are unemployed, partially employed or unable or unavailable to work or severely limited in their ability to work due to the COVID-19 pandemic. The Guidance states that this category includes drivers for ride-sharing programs, who may not otherwise have a place of employment closed by COVID-19, but whose continued operations are made unsustainable by emergency state or municipal orders restricting movement.

Importantly, individuals who have been offered the opportunity to telework with pay and who are able to

do so and maintain the same number of hours are not eligible for PUA. Also, individuals who are receiving paid sick leave or other paid leave benefits for their customary work hours are not eligible.

Individuals who were unemployed and looking for work prior to the pandemic and who have exhausted benefits are eligible for PUA, but only within the same benefits year as their initial eligibility. A PUA claimant who establishes a new benefit year may not receive PUA benefits, but may be eligible for additional regular benefits.

TAKEAWAYS

The Guidance provides employers and employees with additional clarity regarding eligibility criteria for federal unemployment assistance. As issues arise under these criteria, we expect the DOL to further supplement this guidance in the future.

This Alert is based on information available at the time of publishing. It is subject to change. Business leaders should consult with counsel and refer to government websites and publications for the most up-to-date information.

For more detailed analysis on a wide range of legal issues, please see Schnader's COVID-19 Resource Center at www.schnader.com/blog/covid-19-coronavirus-resource-center. ♦

¹ The DOL does not provide guidance on what is meant by being unable to work as a direct result of a COVID-19 diagnosis of a member of the household. By way of example, the guidance explains that when "a business is shut down due to an emergency declaration or due to necessary social distancing protocols, the unemployment of individuals who worked in the business would be considered a direct result of COVID-19." Likewise, the Guidance references 20 C.F.R. 625.5(c), which explains that unemployment is a "direct result" of a disaster when, "the unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster."

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For more information about Schnader's Labor and Employment Practices Group or to speak with a member of the firm, please contact:

*Jo Bennett
Co-Chair, Labor and Employment Practices Group
215-751-2134
jbennett@schnader.com*

*Michael J. Wietrzychowski
Co-Chair, Labor and Employment Practices Group
856-482-5723
mwietrzychowski@schnader.com*

*Karen Baillie
Partner
412-577-5118
kbaillie@schnader.com*

www.schnader.com

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