

CLIENT ALERT

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COVID-19: Expanded Unemployment Insurance Benefits Under The CARES Act

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The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act that the President signed into law on March 27, 2020, includes the Relief for Workers Affected by Coronavirus Act (Sections 2101 through 2116), which provides for certain enhanced unemployment insurance benefits. Unemployment insurance is administered at the State level, and thus the unemployment insurance available to workers depends on each State’s own existing regulations and the State’s interpretation and implementation of the applicable CARES Act provisions. On March 31, 2020, the New York Department of Labor (“NYDOL”) issued guidance, in the form of frequently asked questions, regarding its unemployment insurance program in light of The CARES Act (the “FAQs”).¹ On April 1, 2020, the NYDOL also issued Guidance for Self-Employed Individuals (the “Self-Employed Guidance”).² This Alert focuses on the NYDOL FAQs and Self-Employed Guidance. The NYDOL’s FAQs state that its guidance is subject to change, and as the NYDOL begins to administer claims and navigate this new program, we expect additional

guidance and potential changes to the process. There is no way to predict with certainty how the New York DOL will determine any particular unemployment insurance claim.

There are three key aspects of the unemployment insurance provisions of The CARES Act that are addressed in the NYDOL’s recent guidance.

1. **Pandemic Unemployment Assistance (“PUA”)**

Section 2102 of The CARES Act provides for PUA unemployment benefits to certain individuals who would not otherwise be eligible for traditional unemployment benefits, such as self-employed workers and independent contractors, or who have exhausted traditional unemployment or extended benefits. The FAQs provide that these individuals are eligible for PUA benefits if they “cannot work because” they fall into one of several categories listed in Section 2102(a)(3)(A) of The CARES Act:

¹ <https://labor.ny.gov/ui/pdfs/ui-covid-faq.pdf>

² <https://www.labor.ny.gov/ui/pdfs/self-employed-ui-guide.pdf>

- Are diagnosed COVID-19 or have COVID-19 symptoms and are seeking diagnosis;
- Have a member of the household who is diagnosed with COVID-19;
- Are providing care for a family or household member diagnosed with COVID-19;
- Are the primary caregiver for a child whose school or care facility closed, due to COVID-19;
- Are unable to reach their place of employment due to an imposed quarantine, or because advised by medical provider to self-quarantine, due to COVID-19;
- Were scheduled to start new employment and cannot reach the workplace as direct result of COVID-19;
- Became the major breadwinner because the head of household died from COVID-19;
- Quit their job as a direct result of COVID-19;
- Had their place of employment closed as a direct result of COVID-19; or
- Meet any additional criteria specified by U.S. Secretary of Labor.³

The FAQs further make clear, in accordance with Section 2102(a)(3)(B) of The CARES Act, that “[i]ndividuals are not eligible for PUA if they can telework or are receiving paid sick leave or other paid leave benefits (regardless of meeting a category listed above).”

PUA benefits cover periods of unemployment up to 39 weeks, and will be paid retroactively for unemployment beginning as early as January 27, 2020. As set forth in the FAQs, The CARES Act sets a floor for the minimum PUA benefits. While the weekly benefit rate in New York under the traditional unemployment insurance regime ranges from \$104 to \$504, the minimum PUA benefit rate is 50% of the average weekly benefit

amount in the State. The FAQs demonstrate as follows for the State of New York: For January 27, 2020-March 31, 2020, the minimum benefit rate is \$172, and for April 1, 2020-June 30, 2020, the minimum benefit rate is \$182. The PUA benefits also include *an additional* \$600 per week in Pandemic Unemployment Compensation through July 31, 2020, discussed further below.

In connection with the expansion of benefits to self-employed individuals, the NYDOL issued the Self-Employed Guidance, which provides instructions for self-employed individuals to file a claim on the NYDOL website. Among other things, the claim form requires the worker to confirm that he or she is not currently engaged in any activity “which brings in or may bring in income.” Notably, the sample application form does not separately ask the individual to confirm that he or she falls within one of the Section 2102(a)(3)(A) required categories, as discussed above. It is unclear at this time whether the NYDOL is not requiring self-employed individuals to satisfy one of these categories, whether a separate certification will be required at a later date, or whether the NYDOL considers a self-employed individual who is not engaged in any activity “which brings in or may bring in income” to satisfy these requirements automatically (for example, if your “place of employment closed as a direct result of COVID-19,” an individual presumably could not “bring in income”).⁴ We expect there will be clarity as additional guidance becomes available.

2. Pandemic Unemployment Compensation

Section 2104 of The CARES Act provides for an additional \$600 per week payment, referred to as Pandemic Unemployment Compensation (“PUC”), to recipients of traditional unemployment insurance and recipients of PUA benefits, up to

³ As of the date of this Alert, we are not aware of any addition criteria specified by the U.S. Secretary of Labor to qualify for PUA benefits.

⁴ The sample application form also does not ask whether the individual can telework, which would be another barrier to PUA benefits under The CARES Act and FAQs.

July 31, 2020 (unless that date is extended by further legislative action).

The FAQs make clear that the PUC benefit is fixed at \$600 regardless of the amount of traditional unemployment or PUA benefits to which the individual is entitled. In other words, if an individual is entitled to any amount of traditional unemployment or PUA benefits, he or she will also receive the full \$600 PUC payment. The FAQs also clarify that the individual does not need to make any separate application for the PUC benefit – it will be automatically added to the payment.

3. Pandemic Emergency Unemployment Compensation

Section 2107 of The CARES Act extends the period of unemployment benefits for an additional 13 weeks beyond the coverage period provided for under pre-existing law. In New York, the traditional 26-week coverage period is extended to 39 weeks. This 13-week extension will also include the additional \$600 per week PUC payment until July 31, 2020.

The FAQs clarify that even individuals who have already exhausted their 26 weeks of unemployment benefits are eligible to receive 13 additional weeks of benefits, provided that they exhausted their benefits after July 1, 2019. It appears that for these individuals who have already exhausted the 26 weeks of benefits, they will need to re-apply with the NYDOL to obtain the additional 13 weeks; the benefits will not resume automatically.

In addition to the three key components discussed above, Governor Cuomo has also suspended the traditional one-week waiting period for unemployment benefits for individuals impacted by the COVID-19 crisis. The suspension of the waiting period means that the individual will be credited with unemployment benefits for the first week of the claim, not the second week.

We know that employers experiencing disruption of their business as a result of COVID-19 are trying to navigate through these uncertain times, while also trying to make the best decisions for their employees, and the new CARES Act unemployment insurance provisions may impact those considerations. However, employers should not make any promises or predictions to their employees as to what unemployment benefits they may be eligible for or receive upon termination of the employment relationship. Each unemployment claim depends on its particular facts and circumstances and is ultimately subject to the determination of the Department of Labor.

For further assistance evaluating employment issues relating to COVID-19, please contact your primary GEABP attorney, or any of the attorneys listed below:

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