

Department of Labor Expands Temporary Federal Unemployment Eligibility

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CLIENT ALERT | 3.1.2021

Late last week, the U.S. Department of Labor (DOL) issued guidance expanding the categories of workers eligible to receive federally-funded unemployment benefits under the Pandemic Unemployment Assistance (PUA) program. In addition to several other categories of workers, the expansion of eligibility extends unemployment benefits to workers who refuse to work or accept an offer of work at a worksite that is not in compliance with coronavirus health and safety standards. The guidance takes effect immediately.

The CARES Act, which Congress passed in the early stages of the pandemic, created several new programs to assist unemployed workers. One of these programs was the PUA program. PUA provided up to 39 weeks of federally-funded unemployment benefits to certain workers who were unemployed because of the COVID-19 pandemic but were otherwise ineligible for state unemployment benefits. At the end of 2020, the federal government extended the PUA program into Spring 2021. The extended PUA program was, again, fully federally-funded.

The DOL's new guidance, released on February 25, specifically extends PUA benefits to three categories of workers:

1. Individuals who refuse to return to work, or accept an offer of work, at a worksite not in compliance with coronavirus health and safety standards.
2. Individuals laid off, or who have had their work hours reduced as a direct result of the pandemic.
3. Certain school employees facing reduced paychecks and no assurance of continued pay when schools are closed due to coronavirus.

The "coronavirus health and safety standards" contemplated in the guidance include local, state, or federal standards. The guidance states that this includes, but is not limited to, standards "related to facial mask wearing, physical distancing measures, or the provision of personal

protective equipment consistent with public health guidelines.” Workers seeking benefits under this category will have to attest to their worksite’s noncompliance under penalty of perjury.

It is presently unclear whether employers will have the opportunity to challenge this attestation. This could pose problems for employers, as a lack of opportunity to object to an employee’s attestation may incentivize bad-faith claims of safety noncompliance, particularly in light of the available \$400 per week Federal Pandemic Unemployment Compensation add-on to unemployment benefits that runs through Spring 2021 (and which is expected to be continued in the next stimulus package). However, because the DOL requires states to verify whether workers are actually eligible for PUA, employers may be able to object through their state’s standard process for responding to workers’ claims for unemployment benefits.

The guidance also sheds light on the meaning of “as a direct result of the pandemic” for workers who fall under category #2 above. According to the DOL, this category applies to workers who are laid off or experience a reduction in hours because their place of employment is partially closed (either permanently or temporarily). While these workers would, in many situations, qualify for state unemployment benefits, the guidance notes that this category is intended to cover such workers in the event they do not qualify for their state’s unemployment benefits.

Covered workers will be eligible to receive benefits retroactive to the beginning of the PUA program. However, covered workers who file their first PUA claim after December 27, 2020, are only eligible to receive benefits for weeks of unemployment beginning on or after December 6, 2020. But although these workers are now eligible for unemployment benefits under PUA, it may be some time before they actually receive those benefits. The DOL anticipates it will take state agencies until late March (at the earliest) to implement these policy changes. Nevertheless, covered workers should receive an amount of benefits retroactive to their date of eligibility.

Please contact your Vorys lawyer if you have questions about the expansion of the PUA program and/or how this may impact you.

Vorys COVID-19 Task Force

Vorys attorneys and professionals continue to counsel our clients in the myriad issues related to the coronavirus (COVID-19) pandemic. Vorys has also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines in which we have been and expect to continue to receive questions regarding coronavirus. Learn more and see the latest updates from the task force at [vorys.com/coronavirus](https://www.vorys.com/coronavirus).