

COVID-19 and Its Effect on Unemployment Benefits

By: James P. Anelli and Robert M. Pettigrew

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In March 2020, the U.S. unemployment rate jumped to 4.4% as the COVID-19 pandemic caused millions of workers to lose their jobs in a short period of time. In April 2020, private sector payrolls reported losses exceeding 20 million jobs as companies shed their workforces amid various government-ordered shutdowns that forced most of the U.S. economy offline. These statistics were confirmed by the most recent report showing that the unemployment rate jumped to 14.7% with the loss of 20.5 million jobs, which has not been seen since the Great Depression.

In an effort to mitigate the economic effects of the COVID-19 pandemic, Congress passed The Coronavirus Aid, Relief and Economic Security Act (CARES Act), which both enhances and extends traditional unemployment benefits provided by the states. With regard to unemployment assistance, the CARES Act specifically (i) provides for enhanced monetary benefits; (ii) extends the benefits eligibility period provided by state unemployment programs; and (iii) establishes a work-sharing layoff aversion program. For employers accustomed to the traditional unemployment benefits framework, this new program casts a much wider net. As such, employers should heed certain distinctions between these two unemployment assistance programs that may complicate the upcoming process of returning furloughed employees.

Traditional Criteria for Benefits Eligibility

Prior to the COVID-19 crisis, most employers likely had limited interaction (or interest) in the administration of unemployment benefits. It is not unusual for companies to handle most unemployment issues in-house. These benefits are not only limited to employees (as opposed to contractors or consultants) of the company, but they typically marked the end of the employment relationship with the recipient. Most commonly, employers might get involved to contest eligibility on grounds relating to the separation of employment, *i.e.*, whether the employee became voluntarily unemployed or there was a disqualifying reason for the termination (*i.e.*, gross misconduct). The traditional test observed by most states for determining eligibility for their unemployment benefits is relatively straightforward: (i) there was an involuntary separation with no work being available from the employer; (ii) the individual is able and available to work; and (iii) the individual is actively seeking suitable work. Thus, recipients must show that they did not become voluntarily unemployed (without good cause) and thereafter they are ready, willing and able to work to be eligible for unemployment benefits.

Pandemic Unemployment Assistance Benefits

The CARES Act provides several initiatives to combat the effects of mass unemployment that differ conceptually from the traditional test for unemployment benefits. First and foremost, the CARES Act created a federal program called Pandemic Unemployment Assistance (PUA) that is designed to ameliorate the economic effects of the COVID-19 crisis. The PUA weekly monetary benefit consists of \$600, which will be available through July 2020. These benefits are in addition to existing state unemployment benefits that are typically a percentage (*e.g.*, 60%) of the employee's weekly base wage rate. The PUA further extends the benefit eligibility period up to 39 weeks, which is an increase of 13 weeks from the maximum period offered under most state unemployment programs.

Unlike traditional unemployment benefits, the scope of covered individuals is rather expansive. In addition to employees generally eligible for traditional unemployment benefits, covered individuals also include those that are typically ineligible to receive unemployment benefits, such as self-employed individuals (*i.e.*, independent contractors), those seeking part-time employment and individuals with insufficient wage history. While PUA benefits are generally not provided to persons who either have the ability to telework (with pay) or are receiving full paid leave benefits, individuals receiving paid leave benefits in an amount *less than* their “customary work hours” may be eligible for reduced PUA benefits. In addition, a PUA recipient must certify that they are otherwise able to and available for work except that the individual is either (i) unemployed; (ii) unable to work; or (iii) unavailable to work on account of at least one of the following categories:

1. The individual is diagnosed with or experiencing symptoms of COVID-19 and is seeking medical diagnosis;
2. A member of the individual’s household has been diagnosed with COVID-19;
3. The individual is caring for a family or household member diagnosed with COVID-19;
4. A child for which the individual has primary caregiving responsibility is out of school/daycare due to COVID-19 *and* such school/daycare is required for the individual to work;
5. The individual is unable to work due to a public COVID-19 quarantine or physician imposed self-quarantine;
6. The individual became the head of the household due to a COVID-19-related death;
7. The individual had to quit his/her job due to the COVID-19 crisis;
8. The individual’s worksite closed due to COVID-19; or
9. Any additional criteria established by the U.S. Department of Labor (DOL), such as for independent contractors who are unemployed or unavailable for work due to COVID-19 limiting their ability to perform “customary work activities.”

Notably, an individual is not required to quit a job if they are receiving paid leave benefits. Under this factor, the decision to quit must have been “an involuntary decision compelled by the circumstances” above. An employee who quits their job solely to receive these benefits without good cause has committed fraud. Where employees have been offered the option of teleworking for the same hours, they too may be disqualified from receiving PUA benefits.

Short-Term Compensation Program

Under the CARES Act, Congress also created a voluntary work-sharing program designed to deter employers from conducting mass layoffs during the pandemic. Currently, approximately thirty states have work-sharing provisions on the books, some of which, however, are no longer operating. Under the newly created Short-Time Compensation (STC) program, an employer reduces the work hours for a group of workers, who are then eligible to collect reduced unemployment benefits (similar to traditional *partial* unemployment benefits). This program also enables employers to bring back employees furloughed as a result of the pandemic at a reduced hourly schedule. The overarching goal of this program is to minimize business disruption and improve employee morale by implementing group hourly reductions instead of a reduction-in-force where employees are selected for either full lay off or continued full-time employment.

To be eligible for participation in the STC program, an employer must submit a written plan setting out the percentage reduction for the affected employees to the state for approval and agree to maintain healthcare coverage despite the hourly reduction. Additionally, individuals are only eligible to receive these benefits if they involuntarily stopped working and are able or available to work. As with PUA benefits, an employee quitting their job to receive these benefits without good cause is committing fraud. On May 3, 2020, the DOL announced that states may choose to waive the costs during the pandemic that are typically charged to employers if they meet the criteria for full reimbursement under the Federal Unemployment Tax Act.

Summary

The PUA benefits provided by the CARES Act have resulted in entirely new considerations for determining eligibility for unemployment benefits. While furloughs are not new to the traditional employment test, the additional aspects associated with being *voluntarily* unable and/or unavailable to work due to a pandemic are somewhat novel. This is further complicated by the fact that many furloughed employees are receiving more income from the combination of regular unemployment and PUA benefits than when they were employed, which will inevitably result in resistance to returning to work. What remains to be seen is the extent (if any) state agencies will modify their pre-existing eligibility requirements for purposes of facilitating administration during the COVID-19 crisis. For example, it appears some states have waived waiting periods, relaxed job search requirements and even extended eligibility to workers who “quit” because of COVID-19 exposure risks. What remains clear, however, is that this new benefit program is not intended to be an alternative to employment. Considering the inordinate amount of applications the states have been besieged with during the COVID-19 crisis, it is fair to assume that their ability to individually address some of these issues has been hampered. Thus, while the federal government’s efforts to offset historic unemployment caused by the COVID-19 crisis have been largely successful, they have simultaneously created unique challenges for employers entering into the return-to-work phase of the pandemic.

If you have any questions please reach out to James Anelli (anellij@whiteandwilliams.com; 201.368.7224), Rob Pettigrew (pettigrewr@whiteandwilliams.com; 201.368.7210) another member of the Labor and Employment Group.

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

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