

CARES Act: Unemployment Relief

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act” or the “Act”), a \$2 trillion COVID-19 relief and stimulus package that offers extraordinary financial assistance to employers who meet certain requirements. Among many other provisions in the Act, which the Firm has separately written on as part of its COVID-19 Resource Center (available [here](#)), the new law expands unemployment insurance in many ways for affected workers.

Unemployment Relief

Federal Pandemic Unemployment Compensation. Workers eligible for unemployment benefits—either through an existing state program or through the Act’s Pandemic Unemployment Assistance and Pandemic Emergency Unemployment Compensation programs (each discussed below)—will receive \$600 per week, in addition to the benefit provided under the state program, until July 31, 2020. The amount received by a given worker will depend on that worker’s situation and the applicable state program. But in New York, for example, a furloughed employee who regularly earns approximately \$57,000 per year may be eligible to receive unemployment benefits equivalent to their salary through July 31, 2020. An employee who makes more than \$57,000 will receive incrementally less than their salary, and an employee who makes less than \$57,000 has the potential to receive more in combined weekly unemployment benefits than they would have made while working.

Pandemic Emergency Unemployment Compensation. The Act’s Pandemic Emergency Unemployment Compensation (“PEUC”) program provides additional benefits to workers who would otherwise qualify for unemployment benefits under an existing state program but have already exhausted their available benefits. Through December 31, 2020, PEUC extends the benefits period for these workers by 13 weeks, for a total of up to 39 weeks of benefits.

Pandemic Unemployment Assistance. The Act further establishes a Pandemic Unemployment Assistance (“PUA”) program, which expands state unemployment benefits to include workers who are self-employed (e.g., independent contractors / gig workers), seeking part-time employment, do not have sufficient work history, or otherwise would not qualify for regular unemployment (or extended benefits under State or federal law or PEUC).¹ These workers may qualify for increased benefits from January 27, 2020 until December 31, 2020, if they are unemployed, partially employed, or unable or unavailable to work (or telework) because:

- they have been diagnosed with COVID-19;
- they have experienced symptoms of COVID-19 and are seeking a COVID-19 diagnosis or test;
- a member of their household has been diagnosed with COVID-19;
- they are caring for a family member or household member who has been diagnosed with COVID-19;

¹ It appears that expansion of the categories of eligible workers under PUA is also intended to cover workers of certain non-profit organizations that are normally exempt under state law from, and do not contribute to, applicable state unemployment insurance programs (and, thus, those workers are normally not eligible for unemployment benefits, but would be eligible under PUA).

- they are caring for a child or other household member whose facility has been shut down due to the coronavirus pandemic;
- they are unable to reach their place of work due to a quarantine imposed as a direct result of COVID-19;
- they are unable to reach their place of employment because a health care provider has advised them to self-quarantine due to COVID-19;
- they had been scheduled to begin employment but do not have a job or are unable to reach their job as a direct result of COVID-19;
- they have become the breadwinner or major support for a household because the head of the household died as a direct result of COVID-19;
- they had to quit their job as a direct result of COVID-19;
- their place of employment has closed as a direct result of COVID-19; or
- they meet any additional criteria later established by the Secretary of Labor for eligibility.

The weekly benefit will be calculated according to the amount of compensation the eligible worker would have received if he or she had qualified for unemployment benefits under the state's existing program. The benefits apply retroactively beginning with the recipient's first week of unemployment on or after January 27, 2020. Note, however, that workers do not qualify for PUA if they (i) have the ability to telework with pay or (ii) are receiving paid sick leave or other paid leave benefits. Further, if a state's stay-at-home order is lifted and employees are called back to work, any employee who refuses to return to work because of concern about COVID-19, but who does not have one of the COVID-19 related reasons noted above, is ineligible for PUA.

Unemployment Relief for Governmental Entities and Nonprofits. The Act reduces the amount paid by governmental entities, nonprofit organizations and tribal businesses to reimburse states for benefits paid to workers who claim unemployment benefits. This provision may be relevant in situations where non-profit organizations normally self-insure unemployment benefits (to the extent allowable by applicable state law). During the period beginning on March 13, 2020 and ending on December 31, 2020, the Secretary of the Treasury will cover 50% of the reimbursement costs borne by these entities to reimburse states for unemployment claims.

Short-Time Compensation Programs. The Act also provides additional funding to states to support the operation of "short-time compensation programs." Under these programs, if an employer reduces employees' salaries in lieu of conducting layoffs, it is intended that the state program will pay the employees a pro-rated unemployment insurance benefit.²

Although these programs are intended to be state-run programs, the Act provides certain broad parameters for the design of these programs. It is intended that qualifying short-time compensation programs will not pay a benefit in excess of 26 weeks of a worker's state unemployment benefit and will not provide payments to workers who are employed on a seasonal, temporary, or intermittent basis. In addition, qualifying programs implemented by states must require any employer who enters into a short-time compensation plan to pay to the state 50% of the

² We note that many states (including New York State) already have similar so-called "work share" programs that provide for partial unemployment benefits in similar situations (e.g., hours reductions or partial furloughs, in lieu of layoffs).

amount of short-time benefits paid to each employee. The employer's contribution will be deposited into the state's unemployment insurance fund, but this contribution cannot be counted for purposes of calculating the employer's unemployment tax rate under the federal tax code.

Next Steps

These provisions of the CARES Act related to unemployment and "work share" benefits should be considered during the COVID-19 pandemic in connection with any decisions by employers to reduce hours, furlough, or lay off any portion of their workforce. And to the extent reductions in force become necessary, the Act's expanded unemployment insurance program should provide a softer landing for workers who are let go during the crisis. The particular rules and requirements that may be applied by each state that implements these programs may vary, and employers should watch for anticipated guidance from the regulatory agencies. On April 2, 2020, the Department of Labor issued its [preliminary guidance](#) regarding the implementation of the Act's rules and requirements with respect to unemployment benefits. The New York Department of Labor also recently published answers to a list of [frequently asked questions](#) concerning the application of the CARES Act's unemployment provisions to New York's state program. Employers should consult these resources carefully and stay tuned for additional published guidance from the Department of Labor and the state unemployment insurance agencies regarding the roll-out of the expanded benefits for displaced workers.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

<u>Lisa E. Cleary</u>	212.336.2159	lecleary@pbwt.com
<u>Catherine A. Williams</u>	212.336.2207	cawilliams@pbwt.com
<u>Maren J. Messing</u>	212.336.7645	mmessing@pbwt.com
<u>Douglas L. Tang</u>	212.336.2844	dtang@pbwt.com
<u>Sara A. Arrow</u>	212.336.2031	sarrow@pbwt.com
<u>Leigh E. Barnwell</u>	212.336.2176	lbarnwell@pbwt.com
<u>Dakotah M. Burns</u>	212.336.2532	dburns@pbwt.com
<u>Emma Ellman-Golan</u>	212.336.2214	eellmangolan@pbwt.com
<u>Hyatt M. Howard</u>	212.336.2567	hhoward@pbwt.com
<u>Ryan J. Kurtz</u>	212.336.2405	rkurtz@pbwt.com
<u>Julia R. Livingston</u>	212.336.2579	jlivingston@pbwt.com
<u>Andrew M. Willinger</u>	212.336.2003	awillinger@pbwt.com

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