CARES ACT UNEMPLOYMENT PROVISIONS

NONPROFIT EMPLOYERS AND STATE UNEMPLOYMENT INSURANCE

Charitable nonprofit employers are exempt from federal unemployment taxes. They fall into three groups with respect to state unemployment insurance.

- **Paying nonprofits.** Those that pay state unemployment taxes (SUTA) based on their experience rating, which takes into consideration the recent history of claims by employees that are terminated or laid off.
- **Self-insured nonprofits.** Those that reimburse the state for unemployment compensation that the state pays on claims by the nonprofit's terminated and laid off employees.
- **Exempt nonprofits.** Those whose employees are not entitled to regular unemployment compensation. These include synagogues and affiliated religious organizations, day schools, and nonprofits with fewer than four employees on any given 20 days within a calendar year.

THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT

The CARES Act created three new unemployment insurance programs that are fully funded by the Federal Government: a $600 boost in weekly unemployment compensation, extended unemployment compensation for 13 weeks after an individual exhausts regular state unemployment compensation, and unemployment compensation for the first week of unemployment in states that have a statutory one-week waiting period and waive it. In addition, the CARES Act provides emergency unemployment assistance to workers that ordinarily are not entitled to unemployment compensation, if they would be willing and able to work were it not for conditions related to the COVID-19 health emergency.

THE PROGRAMS

Note: *The CARES Act refers in many places to unemployment-related benefits that will be reimbursed to a state if the state "enters into an agreement . . . with the Secretary of Labor." The US Department of Labor (DOL) has indicated that all states have signed required agreements.*

Sec 2104. **Federal Pandemic Unemployment Compensation (FPUC)** provides individuals with a federally funded boost of $600 per week to their unemployment compensation for weeks beginning after the date of a signed agreement between the state and the Secretary of Labor through July 31, 2020. The $600 benefit will be taxable, but it will not count in determining Medicaid or Children's Health Insurance Program (CHIP) eligibility.

***Sec. 2107.* Pandemic Emergency Unemployment Compensation (PEUC)** provides up to 13 weeks of federally funded unemployment benefits for individuals that have exhausted their regular unemployment benefits under state or federal law, are not receiving unemployment compensation under Canadian law and are able and available to work and actively seeking it. The requirements are relaxed for COVID-19 illness, quarantine or movement restriction.

***Sec. 2102.* Pandemic Unemployment Assistance (PUA)** is modeled on Disaster Unemployment Assistance and provides up to 39 weeks of unemployment benefits to individuals who do not qualify for regular unemployment compensation and are unable to work because of COVID-19-related causes. Individuals who are self-employed, seek part-time employment, have short work histories or have exhausted all rights to regular unemployment compensation or extended benefits under state or federal law or PEUC are eligible for PUA. PUA benefits must include no less than the minimum weekly benefit under Federal law, plus the $600 weekly Section 2104 benefit. Weeks of unemployment beginning on or after January 27 through December 21, 2020, are covered.

***Sec. 2103.* Emergency Unemployment Relief of Governmental Entities and Non-profit Organizations** provides for federal transfers to states to allow self-insured nonprofits, state and local governmental entities and federally recognized Indian Tribes to cut their payments in lieu of SUTA generally by 50%. Weeks of unemployment from March 13 through December 31, 2020, are covered. DOL is also authorized to issue guidance to allow states to interpret their unemployment compensation laws to provide maximum flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest. Self-insured nonprofits should monitor the website of their State Department of Employment Security or comparable governmental unit for developments.

***Sec. 2105.* Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week** is intended to eliminate one-week waiting periods for unemployment compensation. The Federal Government will fully reimburse states that enter into an agreement with the Secretary of Labor to pay unemployment compensation to individuals for their first week of unemployment. The covered period begins when the state and Secretary of Labor enter an agreement and ends on December 31, 2020.

***Secs. 2108 – 2011.* Temporary Financing of Short-Time Compensation (STC) Payments, Grants, Assistance and Guidance in Implementation** provisions are designed to promote short -time compensation programs. Under an STC program, an employer may be reimbursed for costs associated with retaining employees at reduced hours rather than laying off some employees and keeping others full time. Under the CARES ACT, the Federal Government will reimburse 100% of STC benefit costs for up to 26 weeks for existing state programs. A state without an STC program may enter into an agreement with the Secretary of Labor to provide STC benefits and be reimbursed for 50% of the costs. Reimbursement in both cases is for weeks of unemployment ending on or before December 31, 2020. The CARES Act provides for grants to states to be used for implementation, improved administration and promotion and enrollment and for developing model language to be used to enact STC programs.

FAQ for Reimbursing Employers

CARES Act Unemployment Benefits

Note: *The CARES Act refers in many places to unemployment-related benefits that will be reimbursed to a state if the state "enters into an agreement… with the Secretary of Labor." The Department of Labor has indicated that all states have signed required agreements.*

New Types of Unemployment Benefits Created by the CARES Act

Q1: Will the Federal Government cover the additional $600 weekly federal pandemic unemployment compensation benefit ("Section 2104 Benefit"), or is it possible that the burden will shift back to the self-insured non-profit sector through the state?

A1: The Federal government will reimburse the applicable states for all Section 2104 Benefits that are paid. The states would have no basis for seeking additional funds from any employers (including reimbursing employers).

Q2: Will the Federal Government cover the 13-week extension of pandemic emergency unemployment compensation benefit ("Section 2107 Benefit") or will states bill these benefits back to non-profit employers?

A2: The Federal government will reimburse the applicable states for all Section 2107 Benefits that are paid, i.e. *both* standard unemployment compensation payments and enhanced Section 2104 Benefits paid during the 13-week extension. The states would have no basis for seeking additional funds from any employers (including reimbursing employers).

Q3: Will the Federal Government cover the cost of Pandemic Unemployment Assistance (PUA) benefits paid to individuals under Section 2102 of the Cares Act?

A3: Section 2102 of the CARES Act provides that the Federal Government will cover the cost of PUA benefits. (See Q&A 4 for information regarding covered individuals.) Because some individuals eligible to receive PUA benefits will have no employer, (*i.e.,*self-employed individuals), the PUA program is designed to be funded exclusively from federal funds. The states, which will administer the program, would have no basis for seeking additional funds from any employers (including self-insured employers).

Interaction of CARES Act and Existing State Unemployment Compensation Programs

Q4: Can an individual that would not otherwise receive unemployment compensation receive any payments under the CARES Act?

A4: The PUA program (*see* Q&A-3) covers individuals who are unemployed, partially unemployed or unable to work because of the coronavirus, and are not otherwise eligible for regular unemployment compensation for any reason, including:

- people who have exhausted their unemployment insurance benefits and
- self-employed individuals.

Workers that can telework for pay or are receiving sick leave or other paid leave benefits are ineligible.

We have been asked whether employees of religious organizations and small nonprofits, who are otherwise ineligible for state unemployment compensation by virtue of Internal Revenue Code Section 3309, are eligible for PUA benefits. These employees include synagogue and day school workers and employees of small nonprofits, (i.e., nonprofits with fewer than four employees on any given 20 days within the current or prior calendar year). In its Unemployment Insurance Program Letter No. 16-20 (April 5, 2020), DOL stated:

> The CARES Act was designed to mitigate the economic effects of the COVID-19 pandemic in a variety of ways. The CARES Act includes a provision of temporary benefits for individuals who have exhausted their entitlement to regular unemployment compensation (UC) as well as coverage for individuals who are not eligible for regular UC (such as individuals who are self-employed or who have limited recent work history). These individuals *may also include* certain gig economy workers, clergy and those working for religious organizations who are not covered by regular unemployment compensation, and other workers who may not be covered by the regular UC [unemployment compensation] program under some state laws. [Emphasis added.]

We believe, along with other informed observers with whom we have spoken, that this means that clergy, synagogue and day school workers are eligible for PUA benefits if they satisfy the other eligibility requirements. Prospective applicants, however, should monitor the DOL website and the website of their state unemployment security department for specific guidance.

Q5: Is it possible that the cost of the first week of unemployment benefits granted under Section 2105 will somehow shift to self-insurers?

A5: The Federal government will reimburse the applicable states for benefits paid during what would otherwise have been a one-week waiting period before unemployment compensation begins. The states would have no basis for seeking additional funds from any employers (including self-insured employers).

Q6: Who bears financial responsibility under Section 2108 for benefits under Short-Time Compensation ("STC") programs?

A6: The answer depends upon whether the state in question has an existing STC program or is adopting the federal one. However, the reimbursement amounts are limited in all cases to 26 weeks of benefits.

- No Employer Responsibility. If a state has its own STC Program, Section 2108 provides that the Federal Government will reimburse 100% of the cost of the program from March 27, 2020 (or the date of the state's STC Program, if later) through December 31, 2020, subject to the 26-week maximum. In these cases, the states would have no basis for seeking additional reimbursement from employers.

- 50% Employer Responsibility. If a state without its own STC Program chooses to participate in the federal STC Program, the Federal Government will reimburse 50% of the cost of the Program through the earlier of December 31, 2020 or the end of 26 weeks. Employers will be expected to fund the remaining 50% of benefits paid through the STC Program.

  As of February, 2016, 27 states and the District of Columbia maintained their own STC Programs .

States with Short-Time Compensation (STC) Programs as of February 2016*

Arizona	**Iowa**	**Minnesota**	**Oregon**
Arkansas	**Illinois**	**Missouri**	**Pennsylvania**
California	**Kansas**	**Nebraska**	**Rhode Island**
Colorado	**Maine**	**New Hampshire**	**Texas**
Connecticut	**Maryland**	**New Jersey**	**Vermont**
District of Columbia	**Massachusetts**	**New York**	**Washington**
Florida	**Michigan**	**Ohio**	**Wisconsin**

* From Department of Labor Report to the President and Congress on the Implementation of the Short-Time Compensation (STC) Program Provisions in the Middle Class Tax Relief and Job Creation Act of 2012.

Questions Specific to Non-Profit Employers

Q7: Did the final CARES Act legislation include a provision for federal funding of 50% of unemployment claims paid to terminated or laid-off employees of self-insured non-profits (Section 2103)?

A7: Yes. Under Section 2103, the Federal Government will pay states to reimburse 501(c)(3) nonprofits, government agencies, and federally recognized Indian tribes for half of the costs incurred to pay for unemployment benefits through December 31, 2020.

Section 2103 also provides that the Department of Labor can issue guidance to states to provide reimbursing employers with maximum flexibility for making payments and avoiding penalties.

Q8: What is included under Section 2103 when calculating the 50% amount that the Federal government will fund?

A8: Section 2103 provides funding for 50% of regular unemployment compensation benefits. The 50% amount does not include Section 2104 Benefits, Section 2107 Benefits or PUA amounts (*see* Q&As 1-3 above), which are all 100% funded by the Federal government.

JNFA will continue to advocate with other nonprofits for Congress to pay for the other 50% of unemployment claims for which self-insured non-profits must reimburse state unemployment insurance trust funds. Alternatively, nonprofits in many states are advocating for their states to pay for the other 50% or at least to defer the dates when reimbursement of COVID-19 related claims must be made.

Q9: Is a nonprofit that voluntarily pays SUTA eligible for the 50% reimbursement under Section 2103 if it receives a Paycheck Protection Program (PPP) loan under Section 7(a) of the Small Business Act?

A9: Receiving a PPP loan does not prevent a nonprofit that voluntarily pays SUTA from taking advantage of the 50% reimbursement of SUTA payments under Section 2103. An employer, however, that receives a PPP loan is not eligible for the Employee Retention Credit (which would provide a refundable payroll tax credit for 50 % of wages paid to certain employees during the COVID COVID-19 crisis). In addition, if the employer has indebtedness on a PPP loan forgiven, the employer may not defer the payment of employer payroll taxes (50% to 2021 and 50% to 2022).

For Employees

Q10: How do I apply for unemployment compensation?

A10: Check the DOL Benefits Finder. Select your state on the dropdown menu to file. The website cautions: "Please note that states are in the process of updating their websites to reflect these new laws. For now you should file for benefits as directed on your state's website and look for information about how to receive future updates. Also note that many states are experiencing high volumes of traffic and ask filers to be patient and persistent."

For individuals that have been laid off, furloughed, or have lost contract work: JPRO Network, in collaboration with JFNA, is developing supports for Jewish community professionals who have lost work during this crisis. To stay informed about these offerings, please subscribe at http://bit.ly/JPROnews or email info@jpro.org.

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Additional Resources

DOL's Unemployment Insurance Program Letter No. 14-20 on Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility (including a helpful chart of the Cares Act provisions)
https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3390

DOL's Unemployment Insurance Program Letter No. 16-20 on Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Progam Operating, Financial, and Reporting Instructions
https://wdr.doleta.gov/directives/corr_doc.cfm?docn=4628

DOL's Unemployment Benefits Finder to find the websites for state departments of employment security and state-specific information about the CARES Act unemployment compensation provisions
https://www.careeronestop.org/LocalHelp/UnemploymentBenefits/find-unemployment-benefits.aspx

"Self-Insured Nonprofits and Unemployment Insurance," David Heinen (March 23, 2020)
https://www.councilofnonprofits.org/thought-leadership/self-insured-nonprofits-and-unemployment-insurance

"How to get the coronavirus unemployment benefits, explained," Ella Nilsen,
Vox (April 3, 2020)
https://www.vox.com/2020/4/3/21199689/how-to-get-coronavirus-unemployment-insurance-furlough