



## The CARES Act - Unemployment Insurance Benefits, Tax and Employee Benefits Provisions

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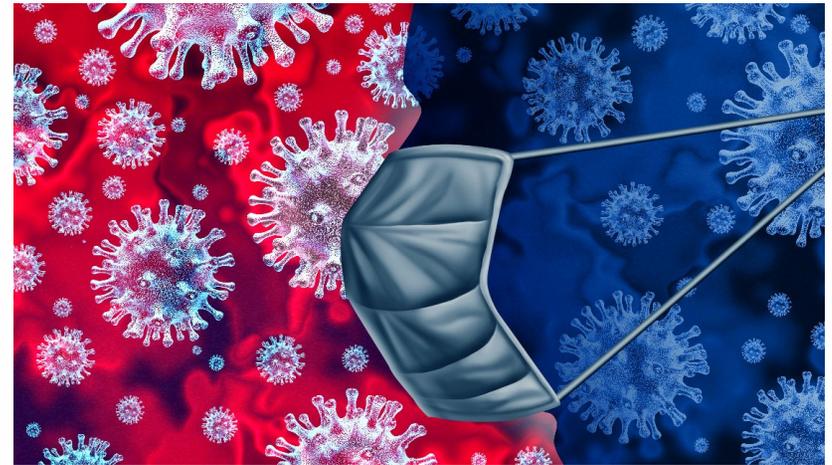
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# CARES Act

## Unemployment Insurance Provisions



## Existing Unemployment Benefits Basics

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- All states follow the same guidelines established by federal law.
- However, **each state administers a separate unemployment insurance programs**, which dictate (among other things):
  - Eligibility levels
  - Benefit amounts
  - Duration of benefits
  - Whether benefits are charged to employer accounts
- Usually, UI is **not** available for individuals that are self-employed, unable to work, quit, were fired for misconduct, or refused to accept a job without a good reason.

# March 12, 2020: DOL Encourages UI Flexibilities Related to COVID-19

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## U.S. DEPARTMENT OF LABOR

### News Release

#### U.S. DEPARTMENT OF LABOR ANNOUNCES NEW GUIDANCE ON UNEMPLOYMENT INSURANCE FLEXIBILITIES DURING COVID-19 OUTBREAK

**WASHINGTON, DC** – Following President Donald J. Trump’s swift action to protect the American workforce from exposure to COVID-19 – also known as novel coronavirus – the U.S. Department of Labor today announced new guidance outlining flexibilities that states have in administering their unemployment insurance (UI) programs to assist Americans affected by the COVID-19 outbreak.

[https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_10-20.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_10-20.pdf)

# CARES Act – Unemployment Insurance Provisions

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- The CARES Act establishes three core programs.
- The CARES Act requires each state to enter into an agreement with the federal government.
  - In progress: AR, CA, CT, GA, IL, IN, KS, MA, MN, MT, NY, NC, OK, OR, SC, SD, TN, TX, UT, VA, WA, WI, WY
  - Entered into an agreement, FL, IO, KY, LA, ME, MD, MI, MO, NE, NV, NH, PA, RI, VT, WV
- Whether a state has entered into an agreement is triggering event for some provisions.

## Federal Pandemic Unemployment Compensation (FPUC)

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- *Statutory Section:* Section 2104
- *Who is Eligible:* Individuals who, as determined by the applicable state unemployment agency, meet that state's criteria to receive UI benefits.
- *Benefit Provided:* The law provides an increase of a flat payment of \$600 per week to the amount regularly available for unemployment under state law.
- *Additional Criteria that Must be Met to Receive PUC:* None
- *Time Period for Increased Compensation:* This increase applies to weeks of unemployment beginning after the state agrees to participate in the program through July 31, 2020 (approximately four months).

# Pandemic Unemployment Assistance (PUA)

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- *Statutory Section:* Section 2102
- *Who is Eligible:* Individuals who are not usually eligible for unemployment benefits, including those who are furloughed or out of work as a direct result of COVID-19, self-employed and independent contractors, and **those who have exhausted all rights to regular or extended UI benefits under state or federal law.**
  - *Excluded from Eligibility:* Individuals who have the ability to telework with pay and those who are receiving paid sick leave or other paid benefits (even if they otherwise satisfy the criteria described below to receive assistance under the new law) are expressly excluded from coverage.
- *Benefit Provided:* The PUA will equal the minimum weekly benefit amount described in the Stafford Act Disaster Unemployment Assistance (DUA) program, which is the model for the PUA program (CFR 625.6 of Title 20), **plus** the \$600 per week federally funded supplement (similar to that provided to UI recipients under the PUC).
- *Additional Criteria that must be Met to Receive the PUA:* Applicants for PUA must provide self-certification that they are (1) partially or fully unemployed or (2) unable and unavailable to work because of one of the reasons listed on the next slide

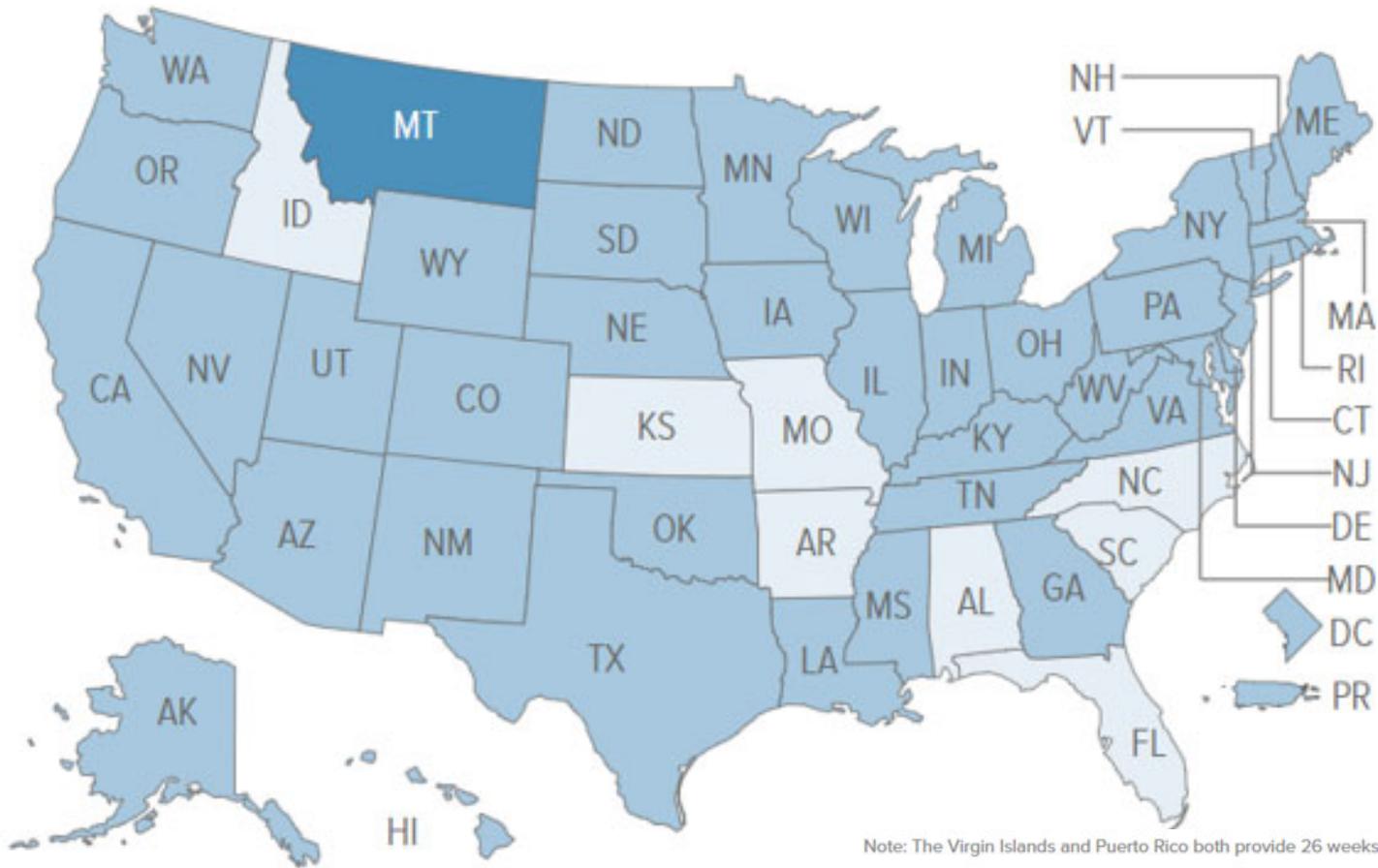
- *Additional Criteria that must be Met to Receive the PUA:* Applicants for PUA must provide self-certification that they are (1) partially or fully unemployed or (2) unable and unavailable to work because of one of the reasons listed on the next slide
  1. the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
  2. a member of the individual's household has been diagnosed with COVID-19;
  3. the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
  4. a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
  5. the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
  6. the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
  7. the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
  8. the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
  9. the individual has to quit his or her job as a direct result of COVID-19;
  10. the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
  11. the individual meets other criteria established by the Secretary of Labor.
- *Time Period for Expanded Compensation: January 27, 2020 through December 31, 2020.*

# Pandemic Emergency Unemployment Compensation (PEUC)

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- *Statutory Section:* Section 2107
- *Who is Eligible:* UI recipients who exhaust all of their regular state UI benefits, which range from as few as 12 weeks to a maximum of 26 weeks depending on the state
- *Benefit Provided:* Additional 13 weeks of state UI benefits
- *Additional Criteria that Must be Met to Receive PEUC:* Individuals must have exhausted their regular state UI benefits and be actively engaged in searching for work
- *Time Period for Extended Benefits:* The benefits extension is available through December 31, 2020, unless otherwise extended.

fewer than 26 weeks    26 weeks    more than 26 weeks



Note: The Virgin Islands and Puerto Rico both provide 26 weeks of regular unemployment insurance (UI).

Source: Congressional Research Service, Department of Labor

## Prohibitions on Fraud

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- While the Act does provide workers some flexibilities, quitting work without good cause to obtain additional benefits would be fraud.
- Sections 2104(f) and 2107(e) expressly provide that if an individual has obtained the benefit through fraud, the individual is ineligible for any additional benefit payments, must pay back the benefits, and is subject to prosecution under 18 USC § 1001.

## Unemployment Insurance Provisions in the CARES Act

This chart provides an overview of the three main supplemental unemployment insurance (UI) programs established under the CARES Act. The programs are designed to either boost or enhance existing UI benefits or extend benefits to individuals who previously were not eligible for UI benefits.

	<b>Federal Pandemic Unemployment Compensation (FPUC)</b>	<b>Pandemic Unemployment Assistance (FPUA)</b>	<b>Pandemic Emergency Unemployment Compensation (FPEUC)</b>
<b>Statutory Cite</b>	Section 2104	Section 2102	Section 2107
<b>Who is Eligible</b>	Individuals receiving UI	1 Individuals who	UI recipients who exhaust all

## CARES Act – Unemployment Insurance Team

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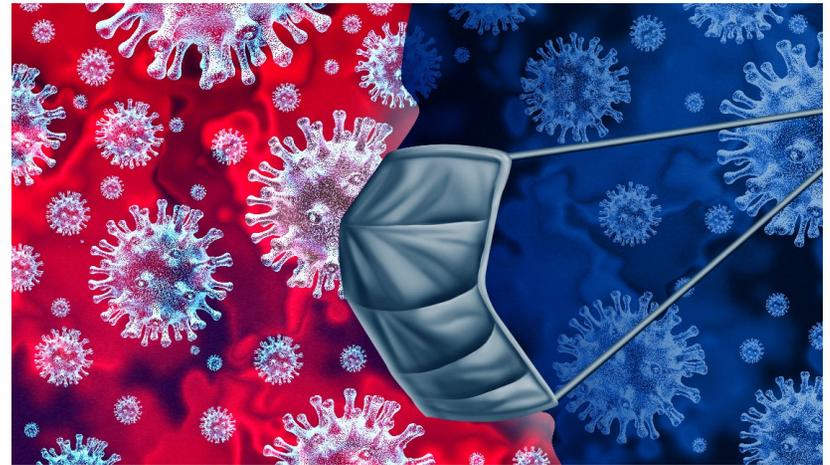
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# CARES Act

## Tax and Benefit Provisions



# Agenda

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- Coronavirus Aid, Relief, and Economic Security Act (“CARES”)
- Determining cost of healthcare coverage for tax credits and PPP loans

# CARES ACT

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- The third law aimed at providing relief to those affected by providing assistance to individuals and businesses
- Signed into law on March 27, 2020 and impacts health plans, retirement plans, executive compensation
- IRS issued FAQ on tax credits:
  - <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

# CARES ACT – Tax Provisions

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- Employee retention credit for an employer against its employer Social Security tax that is equal to 50% of the wages paid to employees who continue to be paid during a period for which the employer's business is fully or partially suspended by orders of governmental entity limiting commercial or other activity due to COVID-19
- Deferral of employment tax provisions
- Advance refunding of tax credits

## CARES ACT – IRS FAQ Tax Credits

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- Refundable tax credits are available to private and tax exempt employers, but not public entity employers
- IRS will allow employers to offset the credits against payroll tax withholdings the employer owes to the IRS
- IRS will pay the employer the difference to the employer if the amount of the credit is more than what the employer owes to the IRS
- <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

## CARES ACT – Other Provisions

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- Expands educational assistance programs to allow employers to contribute up to \$5,250 for each employee toward tuition and textbook assistance combined with student loan repayment assistance on a tax free basis through December 31, 2020
- Allowable uses of the loan include covering costs related to employee compensation and benefits, including: (i) payroll costs, (ii) costs related to the continuation of health care benefits during periods of paid sick, medical or family leave and insurance premiums, (iii) employee compensation (up to \$100,000 per employee as prorated during the covered period) and more
  - Payroll costs do not include sick leave wages or family leave wages for which a tax credit is allowed under the FFCRA
  - No clear guidance on how to determine continuation costs for healthcare coverage for self-funded plan
  - SBA issued Interim Final Rule but rule does not address it specifically:  
[https://home.treasury.gov/system/files/136/PPP--IFRN\\_FINAL.pdf](https://home.treasury.gov/system/files/136/PPP--IFRN_FINAL.pdf)

# Cost of Continuation of Benefits in Payroll Protection Loans

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- f. What qualifies as “payroll costs?”
  - Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation.
- r. How can PPP loans be used?
  - The proceeds of a PPP loan are to be used for:
    - i. payroll costs (as defined in the Act and in 2.f.);
    - ii. costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; ...
- <https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf>

## CARES ACT – Health Plans

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- Expands coverage of COVID-19 testing required by FFCRA to include coverage of testing by out-of-network providers setting at the rate the provider must publicly post on its website or at a lower rate negotiated with the provider
- Requires coverage of COVID-19 vaccinations at no cost to the participant
- Allows telehealth services to be covered under a high deductible health plan (HDHP) on a first dollar basis (before the deductible is met) for plan years beginning before 2022
- Repeals Affordable Care Act (“ACA”) exclusion for coverage of over-the-counter drugs with no prescription for health savings accounts (“HSAs”), health reimbursement arrangements (“HRAs”), health flexible spending accounts (“FSAs”) and Archer medical savings accounts (“MSAs:)
- Expands coverage to include menstrual care products as of January 1, 2020

# COVID-19 Testing Coverage Triggers Plan Amendments

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- COVID-19 Coverage Mandate is a Material Modification
- Material modification can be address by updating Summary Plan Description or Summary of Material Modifications (“SMM”)
  - A material modification is any modification that would be considered by an average participant to be an important change in covered benefits or other terms of coverage under the plan
- Timing:
  - Recommended to provide as soon as possible, but generally must be provided within 210 days after the close of the plan year in which the modification was adopted
- Distribution:
  - electronically to employees with work-related computer access that is an integral part of their job duties or those employees that provide consent for electronic disclosure
  - posting on an intranet or benefit administration portal and notify employees of the posting, or
  - mailing

# CARES ACT – Health Plans – Practical Implications

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- Waiting Periods for healthcare coverage
  - If an employee begins a period of sick leave and is in a waiting period for healthcare coverage, coverage must begin after satisfaction of the waiting period

# CARES ACT – Retirement Plans

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- For Defined Contribution (“DC”) plans assistance is available for
  - individuals who are diagnosed with COVID-19 or whose spouse or dependent is diagnosed with the disease AND
  - individuals who are negatively affected financially due to quarantine, furlough, layoff, work hour reduction or who lack of child care impacts ability to work
- 10% early withdrawal penalty does not apply for in-service distributions (capped at \$100,000) from DC retirement accounts for withdrawals taken in the 2020 calendar year
  - 20% federal income tax withholding does not apply
- No required minimum distributions (“RMDs”) from employer-sponsored DC retirement accounts, such as 401(k) plans or individual retirement accounts (“IRAs”), in calendar year 2020

# CARES ACT – Retirement Plans – OPTIONAL ACTIONS

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- For Defined Contribution (“DC”) plans assistance
  - Increase in maximum amount allowed for loans until September 23, 2020 (180 days from enactment of the CARES Act)
    - Plan Sponsor may change loan provisions or add new loan provisions to allow loan limit of the lesser of 100% of vested balance (up from 50% of vested balance) or \$100,000 (up from \$50,000)
  - One year extension to pay off a loan from a retirement plan that was due on or before 12/31/20
- Loan payments due on new and existing loans at any time between March 27, 2020 and December 31, 2020 are deferred for one year, but re-amortization is required for delayed payment and additional interest will accrue
  - A new loan made in 2020 also need not take not account the 1 year deferral in determining its five year max term

# CARES ACT – Retirement Plans – OPTIONAL ACTIONS

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- For Defined Contribution (“DC”) plans assistance is available for
  - individuals who are diagnosed with COVID-19 or whose spouse or dependent is diagnosed with the disease AND
  - individuals who are negatively affected financially due to quarantine, furlough, layoff, work hour reduction or who lack of child care impacts ability to work
- Exempt from statutory distribution requirements such as
  - 401(k) deferrals not being able to be distributed prior to age 59-1/2
  - Direct-rollover and mandatory withholding requirements applicable to “eligible rollover distributions”
  - Distributions can be paid to another plan or IRA within three years (as opposed to 60 days) and still be treated as a rollover

# CARES ACT – Pension Plans

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- For Defined Benefit (“DB”) pension plans assistance is available for
  - Plan Sponsor may delay funding of required 2020 minimum contributions to a single employer DB plan for annual contributions and quarterly contributions until January 1, 2021, but interest will accrue
  - Plan Sponsor with a DB plan may use its 2019 funding status (AFTAP) when determining whether to impose benefit restrictions based on the funding level of below 80% for 2020

# Questions??



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