



LABOR AND EMPLOYMENT CLIENT ALERT

Unemployment Qualifications and Benefits Under the CARES Act (Coronavirus and the Law)

SUMMARY

On the subject of unemployment insurance benefits (UIB), the Coronavirus Aid, Relief, and Economic Security (CARES) Act accomplishes three objectives:

1. Increasing the amount of UIB paid to individuals already covered under state or federal unemployment laws.
2. Extending coverage for an additional 13 weeks for individuals who exhaust their UIB under state or federal law.
3. Expanding the scope of individuals who may receive UIB if they are unable to work because of COVID-19.

As a result, under the CARES Act, most Virginians will qualify for up to 39 weeks of UIB until the end of 2020. All weekly unemployment benefit payments will increase by \$600 until the end of July. Finally, workers who are not eligible under current state law—such as gig economy workers, self-employed individuals, or workers paid by 1099—may now be eligible for UIB as long as they are unable to work because of a reason related to COVID-19.

The chart below and the following pages describe the details of each set of benefits.

COMPARISON OF ASSISTANCE

	Purpose	Timeframe	Additional Criteria
FPUC: Federal Pandemic Unemployment Compensation (Section 2104)	Adds \$600 to any state or federal UIB for which an individual already qualifies.	Begins after the state agrees to participate in the program. Ends July 31, 2020 (approximately four months).	None.
PEUC: Pandemic Emergency Unemployment Compensation (Section 2107)	Extends the length of UIB by 13 weeks.	Extension is available through December 31, 2020.	Individuals must have exhausted all other UIB under state or federal law and be actively engaged in searching for work.
PUA: Pandemic Unemployment Assistance (Section 2102)	Expands who can qualify for UIB if the individual cannot work for a COVID-19 related reason.	Extension available from January 27, 2020 through December 31, 2020. Lasts 39 weeks, including any week of UIB already received.	Excludes individuals who can telework or are receiving paid sick leave.

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UNEMPLOYMENT QUALIFICATIONS AND BENEFITS

Federal Pandemic Unemployment Compensation (FPUC)—Section 2104

The FPUC section of the CARES Act adds compensation of \$600 per week to any UIB an individual is already receiving. However, this increase will only be available for approximately four months.

ELIGIBILITY

If an individual is eligible to receive at least \$1.00 of underlying state or federal benefits in a given week, he or she will receive the full \$600 FPUC as well. The only grounds on which to deny FPUC is the individual's ineligibility for any underlying state or federal benefit.

[Department of Labor guidance lists the types of federal UIB under which an individual may qualify for FPUC \(link\):](#)

- Disaster Unemployment Assistance (DUA)
- Self-Employment Assistance (SEA) program
- Unemployment Compensation for Ex-Service Members (UCX)
- Trade Readjustment Allowances (TRA)
- Extended Benefits (EB)
- Short-Time Compensation (STC)
- Unemployment Compensation for Federal Employees (UCFE)
- Pandemic Emergency Unemployment Compensation (PEUC)
- Pandemic Unemployment Assistance (PUA)

Virginia law already includes provisions for extending the potential duration of benefits during periods of high unemployment. Although Virginia calls this extension "extended benefits," the Virginia Employment Commission (VEC) uses the term "additional benefits" (AB) to avoid confusion with the Federal-State Extended Benefits program.

FPUC is not payable to individuals who are receiving AB payments.

BENEFIT PAYMENTS

- Individuals are paid the amount of unemployment compensation they would normally receive plus a flat rate of \$600 per week.
- The \$600 FPUC is taxable.
- Individuals whose underlying benefit payments are intercepted to pay debts are eligible for the \$600 FPUC, even if 100% of their weekly benefit amount is intercepted. Benefits intercepted to pay debts are considered to be compensation for the week.
- Child support obligations must be deducted from FPUC payments in the same manner and to the same extent as under state law.
- Individuals' rights to FPUC must be protected in the same way as rights to regular state unemployment insurance benefits.

TIMEFRAME

[On April 7, the Virginia Employment Commission released a details about the FPUC program \(link\):](#)

- The start date is March 29, 2020.
- The end date is July 31, 2020.
- Payments could begin as early as the week of April 13, 2020.
- FPUC payments to eligible claimants will be retroactive.
- FPUC payments will be automatically made along with an eligible claimant's weekly claim.

ADDITIONAL REQUIREMENTS FOR VIRGINIA

- The cost of these additional \$600 payments to eligible individuals each week is 100% federally funded. States may not charge employers for any FPUC benefits paid. Implementation costs and ongoing administrative costs for this program are also 100% federally funded.
- Virginia must notify a potentially eligible individual of his or her entitlement to FPUC, including the beginning and end date for the FPUC program.
- Virginia must issue payments of FPUC as soon as administratively feasible.
- The CARES Act and DOL guidance states FPUC should be administered and regulated according to how states usually provide unemployment benefits.

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UNEMPLOYMENT QUALIFICATIONS AND BENEFITS

Pandemic Emergency Unemployment Compensation (PEUC)—Section 2107

The PEUC section extends the time UIB is available under state law or federal law by 13 weeks, ending on or before December 31, 2020. Individuals who have exhausted their UIB benefits and are still actively seeking work may receive 13 extra weeks of unemployment compensation benefits as well as an additional \$600 per week under section 2104 (until July 31, 2020).

ELIGIBILITY

PEUC applies to individuals who meet four requirements:

1. The individual has exhausted all rights to regular unemployment compensation under State or Federal law.
2. The individual has no rights to regular compensation under any other state or federal unemployment compensation law.
3. The individual is not receiving compensation under the unemployment compensation law of Canada.
4. The individual is able to work and actively seeking employment.

BENEFIT PAYMENTS

1. The weekly benefit amount authorized under the unemployment compensation law of the State where the covered individual was employed
and
2. The amount of the FPUC payment under section 2104
(until July 31, 2020).

TIMEFRAME

Individuals will receive an additional 13 weeks of UIB but the this extension will not continue past December 31, 2020.

ADDITIONAL REQUIREMENTS FOR VIRGINIA

- States shall offer flexibility in meeting the “actively seeking work” requirement if individuals are unable to search for work because of COVID-19, including because of illness, quarantine, or movement restriction.
- This program includes a non-reduction rule, which prohibits states from changing the computation method governing regular unemployment compensation law in a way that results in the reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., maximum benefit entitlement).

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UNEMPLOYMENT QUALIFICATIONS AND BENEFITS

Pandemic Unemployment Assistance (PUA)—Section 2102

Unlike the prior two sections, PUA only extends UIB for individuals who are unable to work because of reasons related to COVID-19. This section extends both the length of available UIB and the types of workers who may apply.

ELIGIBILITY

PUA applies to individuals who meet five requirements:

1. The individual is not eligible for regular unemployment compensation or extended benefits under Section 2107.
 - a. An individual meets the first requirement for eligibility if they have exhausted all other UIB rights under both state and federal law. Individuals may also meet this requirement because they do not qualify for regular unemployment compensation—for example, if they are self-employed, independent contractors, or have insufficient work history.
 - b. [On April 7, 2020, the VEC stated to be eligible for PUA, workers must first apply for traditional unemployment.](#) Individuals determined to be ineligible for traditional unemployment will be contacted by phone (text or voice message) on how to file the supplemental information to complete a claim under the new PUA program.
2. The individual is otherwise able and available to work.
3. The reason the individual is unemployed, partially unemployed, or unable to work is related to COVID-19. Applicants must provide self-certification they are (1) partially or fully unemployed or (2) unable and unavailable to work because of one of the following circumstances:
 - a. The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - b. A member of the individual's household has been diagnosed with COVID-19;
 - c. The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
 - d. A child or other person in the household for whom 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;
 - e. 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;
 - f. 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;

- g. 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;
 - h. 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;
 - i. The individual has to quit his or her job as a direct result of COVID-19;
 - j. The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
 - k. The individual meets other criteria established by the Secretary of Labor.
4. The individual does not have the ability to telework.
5. The individual is not receiving paid sick leave or other paid leave benefits.

BENEFIT PAYMENTS

1. The weekly benefit amount authorized under the unemployment compensation law of the state where the covered individual was employed
and
2. the amount of FPUC under section 2104.

Operationally, this program will be administered similar to the Disaster Unemployment Assistance (DUA) program in the Code of Federal Regulations.

TIMEFRAME

- These payments will last as long as the individual is unemployed or partially unemployed, beginning on or after January 27, 2020, and ending on or before December 31, 2020. The duration of these benefits is generally limited to 39 weeks, minus any weeks the individual received from regular state or federal UIB and federal extended benefits.
- The weeks for which an individual collected PEUC will not be deducted from the individual's PUA entitlement.

ADDITIONAL REQUIREMENT FOR VIRGINIA

The PUA section also includes a non-reduction rule prohibiting states from changing the computation method governing regular unemployment compensation law in a way that results in the reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., maximum benefit entitlement).

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UNEMPLOYMENT QUALIFICATIONS AND BENEFITS

Coordinating The Benefit Programs

An individual may establish eligibility for multiple benefit programs, including multiple programs authorized in the CARES Act. The information provided below regarding the order of payment depends on the individual meeting all eligibility criteria for the respective program(s).

1. For an individual who is eligible for regular state or federal UIB the following order of payment applies.
 - a. The individual must first apply for and receive regular UIB. The amount and duration of these benefits are dependent on state law.
 - b. If the individual exhausts regular UIB, the individual may then be eligible to receive PEUC under Section 2107. The duration of these benefits is limited to 13 weeks.
 - c. If the individual exhausts PEUC and the state offers Extended Benefits (EB), the individual may then be eligible to receive EB. The duration of these benefits is up to 13 or 20 weeks, dependent on the state's unemployment rate and if state law includes a trigger for periods of high unemployment. Virginia law does include such a trigger.
 - d. If the state does not offer EB or the individual exhausts EB, the individual may then be eligible to receive PUA under Section 2102. At least one of the identified COVID-19 related reasons specified above must apply to the individual in order to be eligible for PUA. The duration of these benefits is generally limited to 39 weeks, minus any weeks the individual received regular UIB and EB. The weeks for which an individual collected PEUC will not be deducted from the individual's PUA entitlement.
2. For an individual who is not eligible for regular UIB, extended benefits under state or federal law, or PEUC, and who is unable to work because of a reason related to COVID-19, the individual may collect PUA under section 2102. The duration of these benefits is limited to 39 weeks, minus any weeks that the individual may have received from regular UC and EB.
3. Federal Pandemic Unemployment Compensation (FPUC) under section 2104 provides an additional \$600 per week to an individual collecting regular UC, PEUC, PUA, EB, STC, TRA, DUA, and SEA. Individuals receive FPUC payments concurrently with payments under these programs. Upon execution of an agreement between the state and the DOL, this applies to all weeks of unemployment ending on or before July 31, 2020.

The attorneys at Woods Rogers are continuously updating our legal blog with topics relating to the COVID-19 coronavirus outbreak. You can find these articles at woodsrogers.com/covid19.

In addition, Woods Rogers has created a Pandemic Response Group of attorneys who are available to answer any specific questions or concerns about your obligations or potential liabilities in a range of different practice areas, such as contract law, labor & employment, construction law, cybersecurity, tax and employee benefits, and commercial litigation. We stand willing and able to assist you during these difficult times.

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