

## Unemployment Insurance Benefits Under the CARES Act

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)—a \$2 trillion stimulus bill to respond to the coronavirus pandemic. The unemployment insurance portion of this act, known as the Relief for Workers Affected by Coronavirus Act, provides enhanced unemployment benefits including larger benefit amounts, availability for a longer period of time, and extended coverage for individuals who are not typically eligible for unemployment benefits, as outlined below.

This article is one of a series Bond has published on the CARES Act. Articles on the other provisions of the CARES Act can be found [here](#) and [here](#) and we will continue to issue updates as additional information becomes available.

### A. Increased Benefits

Under the CARES Act, individuals who are already eligible to receive unemployment benefits under State law will receive an additional \$600 per week on top of their state benefits. This amount is a flat rate for everyone, no matter the amount of underlying benefits they would normally receive from their state. For example, a laid off worker who is eligible and receives the maximum unemployment benefit in New York of \$504 per week will receive a total of \$1,104 (\$504 in State benefits + \$600 in Federal Pandemic Unemployment Compensation). However, a laid off employee who receives a lower amount of state unemployment benefits will receive the same weekly \$600 payment. It is currently unclear, however, if this additional weekly payment will be available to individuals who are receiving partial unemployment benefits from their state, or who are participants in a shared work program.

States can provide the additional \$600 in one payment or send the extra amount separately, as long as it is all done on the same weekly basis. Because the additional Federal unemployment payment is a flat \$600 for all eligible individuals, it is possible that some individuals could receive more in unemployment benefits than they would if they continued working.

Importantly, the additional income received through enhanced unemployment benefits will not affect individuals' eligibility for other Federal benefits like Medicaid and the Children's Health Insurance Program (CHIP). While eligible individuals will apply through their state for benefits, the additional \$600 weekly payment will be fully reimbursed by the federal government. This increased unemployment benefit will be available to individuals who independently qualify for and receive state unemployment benefits through July 31, 2020.

### B. Extended Time for Benefits

Many states, including New York, provide for 26 weeks of benefits. The CARES Act will provide certain eligible workers with an additional 13 weeks of benefits, up to 39 total weeks. While each state will pay out the extended benefits to eligible workers, the federal government will reimburse each state in full for the additional benefits paid out. The 13 weeks of extended unemployment benefits would apply to two categories of applicants:

1. Those who meet the expanded eligibility criteria discussed in Section D below, who are unemployed, partially unemployed, or unable to work due to a qualifying reason related to COVID-19 at any time between January 27, 2020 through December 31, 2020; or
2. Those who have exhausted their typical 26 weeks of unemployment eligibility, and are actively seeking work, between enactment of the CARES Act and December 31, 2020, as discussed in Section E below.

### C. Waiver of Seven-Day Waiting Period

Many states, including New York, typically provide for a seven-day waiting period from layoff or termination before individuals can apply for and receive unemployment benefits. New York has already waived that seven-day waiting period for people who are out of work due to COVID-19 related closures or quarantines. For all states who waive the typical seven-day waiting period, New York included, the federal government will provide full funding for unemployment benefits paid out during that waived waiting period through December 31, 2020.

### D. Expanded Eligibility For COVID-19 Related Reasons

The CARES Act would also make far more workers eligible for unemployment benefits than usual. Newly covered individuals would receive the amount they would have received using the calculation method of their respective state, plus an additional \$600 each week. Since these workers would not typically be eligible to receive unemployment benefits, the entire amount of benefits they receive will be funded by the federal government.

Newly covered individuals include those who have exhausted their unemployment benefits, independent contractors and self-employed individuals who are unemployed, partially employed, or unable or unavailable to work because:

- The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- A member of the individual's household has been diagnosed with COVID-19;
- The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- 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 COVID-19 public health emergency and such school or facility care is required for the individual to work;
- The individual is unable to reach their place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- The individual is unable to reach their place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- 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;
- 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;
- The individual had to quit his or her job as a direct result of COVID-19;
- The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- The individual meets any additional criteria established for unemployment assistance.

Newly covered individuals include those who are seeking part-time employment, do not have sufficient work history, or who otherwise would not qualify for regular unemployment benefits under state or federal law, provided they are unable to work due to one of the above-listed COVID-19 related reasons. In order to receive these benefits, newly covered

individuals will be required to self-certify that they meet the above eligibility criteria and are otherwise able to work.

Workers who are able to work from home and those receiving paid sick leave or paid family leave (including under the recently enacted Families First Coronavirus Response Act) are ineligible to receive unemployment benefits under the CARES Act.

This expanded unemployment coverage will be available retroactively, for unemployment dating back to January 27, 2020 and continuing through December 31, 2020, subject to a cap of 39 total weeks. The United State Secretary of Labor will establish a process for making assistance available for the weeks of unemployment that eligible individuals experienced prior to enactment of the CARES Act.

### **E. Expanded Eligibility for Those Actively Seeking Work**

Similar to the expansion of benefits for individuals who are not typically eligible for benefits, the CARES Act provides an additional 13 weeks of eligibility to individuals who have exhausted their normal 26-week allotment of unemployment benefits and are actively seeking work. However, unlike the benefits available to independent contractors, self-employed individuals or certain others, benefits under this portion of the CARES Act are only available to applicants who are totally unemployed, which excludes those able to find part-time work.

To qualify for this additional benefit, an individual must:

1. Have exhausted their rights to regular unemployment compensation from their state;
2. Have no rights to unemployment compensation under state, federal or Canadian law, or to compensation under any other federal program; and
3. Be able to work, available to work and actively seeking work.

Importantly, being “actively seeking work” requires applicants to engage in a search for employment available in the labor market (while still considering their skills and capabilities) and maintain a list of employers they have contacted, including the method and date of contact. Additionally, when requested, applicants must provide these records of their job search to their state as verification that they are seeking employment.

The benefits available to individuals who are actively seeking work are the same as available under the other portions of the CARES Act, meaning they will receive a payment equal to unemployment compensation calculated using the methodology of their state, plus an additional \$600 per week in additional benefits. Because these additional benefits—including those provided under the calculation of their state—would not typically be available for these additional 13 weeks, the full amount of benefits paid out to each eligible individual will be funded by the federal government. These benefits will be available from enactment of the CARES Act through December 31, 2020.

Notably, due to the enactment of the CARES Act in late March, it is unlikely that recently unemployed workers will exhaust their 26 weeks of unemployment before the July 31 expiration of the generally available \$600 Federal Pandemic Unemployment Compensation payments. Consequently, there may be a period of time after July 31, 2020 and before an unemployed individual exhausts his or her typical allotment of 26 weeks of unemployment, where the additional Federal Pandemic Unemployment Compensation is not available, until an individual reaches their 27th week of unemployment and this benefit becomes available again, provided they are actively seeking work.

### **F. Additional Assistance for Nonprofits**

Finally, the CARES Act includes a provision to reimburse nonprofit organizations for one-half of their costs incurred to pay unemployment benefits between March 13, 2020 and December 31, 2020.

### Things to Consider

When making decisions on response and impact of the COVID-19 pandemic on employees and operations, including decisions on workforce adjustments, furloughs and continuation of pay and other benefits, employers should consider these enhanced unemployment benefit provisions, together with the business incentives provided under the CARES Act and other recently enacted state and federal legislation.

If you have any questions regarding this information memo, please contact [Paul Buehler](#), [Mallory Campbell](#), [Thomas Eron](#), [Peter Jones](#), any of the [attorneys](#) in Bond's [Labor and Emploment Practice](#), or the attorney at the firm with whom you are regularly in contact.



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