New Jersey Commences Payments Under Pandemic Unemployment Assistance Program Covering Independent Contractors, Self-Employed, Sole Proprietors and "Gig" Workers

Client Alert

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Today, May 5, 2020, New Jersey will start making its first payments under the Pandemic Unemployment Assistance (PUA) program announced as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27.

PUA provides supplemental unemployment coverage to those not ordinarily covered by unemployment insurance laws. The intent is to provide income replacement to independent contractors, self-employed individuals, sole proprietors, "gig" economy workers and other "covered individuals" impacted by COVID-19 who would otherwise be without any income or unemployment benefits during the pandemic. The term "covered individuals" also includes those "lacking sufficient work history" or seeking part-time employment.

The implementation of the PUA program has been hindered by both numerous logistical issues and the sheer volume of applicants. The program is federally financed but is administered through individual states. While the states have been able to streamline "clean" unemployment applications - such as those resulting from terminations and furloughs - in a manner that allows the process to be entirely online and does not require the intervention of an agent, the same is not true for PUA.

This Alert highlights basic PUA eligibility and application requirements, addresses frequently asked questions about the program, and provides links to online resources for further reference.

PUA Overview

PUA is available to those independent contractors and sole proprietors who certify that they:

- Are diagnosed with COVID-19 or have experienced symptoms or are seeking a diagnosis;
- have a member of his/her household who has been diagnosed with COVID-19;

- are providing care for a family member or a member of that person's household who has been diagnosed with COVID-19;
- have primary caregiving responsibility for a child that is unable to attend school or another childcare facility due to COVID-19;
- cannot reach his/her place of work due to a quarantine;
- have been advised by a health care provider to self-quarantine;
- have become a breadwinner after the head of household has died from COVID-19;
- have had to quit his/her work as a result of COVID-19;
- have a work location that is closed as a direct result of the COVID-19 public health emergency; or
- meet any additional criteria established by the Secretary for Unemployment Assistance.

The last two categories on this list are by far the most prevalent, as they pertain to individuals not physically impacted by COVID-19, but whose ability to perform their customary work has been severely limited or suspended entirely due to the pandemic.

It is important to note that to qualify for PUA, an applicant must be otherwise ineligible for unemployment benefits. Thus, **the preliminary step in asserting a PUA claim** is applying for regular Unemployment Insurance (UI) **online** and being denied. Each state is obligated to review all UI denials for possible eligibility for PUA. Therefore, once an applicant's UI denial is received, in the form of either an explicit denial or a determination that the claimant is entitled to $0, the claimant will then be instructed to apply for PUA.

PUA applicants must provide a self-certification stating the reason why they cannot work. As provided in recent U.S. Department of Labor (DOL) guidelines directed to states (see link below), the self-certification process must include acknowledgement that the actual certification is made under the penalty of perjury and that intentional misrepresentation in self-certifying represents fraud. The **self-certification must be submitted each week**. If the certification is submitted on Friday, Saturday, or Sunday, the payment will be received on Tuesday. Those who certify on Monday, Tuesday, Wednesday, or Thursday will receive the payment two days after submitting the certification.

In terms of the **amount of PUA**, those who qualify are eligible for unemployment assistance calculated in accordance with their existing state unemployment programs as well as an additional $600 per week of Federal Pandemic Unemployment Compensation (FPUC). The DOL recently issued additional guidelines on calculating a weekly benefit amount. The formula is the same as that used to determine regular UI, which is 60% of a claimant's average weekly salary. In New Jersey, the weekly maximum is $731; the minimum is $231.

It should also be noted that PUA is **available retroactively to January 27, 2020** and will continue through December 31, 2020 as long as the individual's unemployment, partial unemployment, or inability to work caused by COVID-19 continues, up to the maximum of 39 weeks. The supplemental $600 is available for each week of PUA eligibility starting on March 29, 2020 through the week of July 25, 2020. All payment received through the PUA program are taxable as income.

In order to receive PUA for past periods of unemployment, the application should be backdated to the first week of the COVID-19 pandemic during which the applicant was unemployed, partially employed, or unable or unavailable to work due to one of the reasons specified above.

Among the significant challenges in calculating PUA are that the amount of income for eligible PUA applicants fluctuates considerably; that this income is not reported in one form (W-2) easily accessible and verifiable by the unemployment agency; and that the deadline for submitting 2019 income tax returns has been deferred to July 15, 2020. Nonetheless, in order to facilitate the calculation of an average weekly benefit amount, applicants will have to provide proofs of income for the past two years. To this end, helpful documents would include tax returns, 1099s, and K-1 schedules.

Importantly, PUA is available to qualifying applicants who are "partially unemployed," and individuals with a demonstrable decline in income may therefore qualify. However, benefits are not available to individuals who are receiving paid sick leave or other paid leave benefits, including benefits available to independent contractors under the federal Families First Coronavirus Response Act (FFCRA) or under a state law providing such paid benefits to self-employed workers. PUA is also not available to individuals who are able to telework or who have opted not to work for other reasons.

Online Resources

The CARES Act left many PUA program questions unanswered, including those related to basic qualification requirements, the application process, and the calculation of benefits. Many of those questions have subsequently been addressed by DOL guidelines that can be accessed **here** and **here**.

In addition, New Jersey Department of Labor & Workforce Development Commissioner Robert Asaro-Angelo conducted a series of webinars to address pressing issues. Valuable information and answers to common questions can be found **here**.

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For many individuals, PUA benefits may provide their only source of the income at this time. For that reason, it is essential to ensure that there are no missteps in the application process.

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