

FEDERAL CARES ACT EXPANDS UNEMPLOYMENT BENEFITS FOR WORKERS AFFECTED BY COVID-19

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), a \$2.2 trillion stimulus package intended to spread relief across the American economy during the COVID-19 public health emergency. Title II of the CARES Act provides monetary relief for workers affected by COVID-19 by both increasing unemployment benefits and expanding eligibility.

INCREASED UNEMPLOYMENT BENEFITS

In an effort to fill the gap between the average paycheck and state unemployment benefits, the CARES Act will provide eligible employees an extra \$600 per week in unemployment benefits in addition to what they are eligible for under existing state programs. This boosted payment will last for approximately four months until its current expiration date of July 31, 2020.

The CARES Act also provides for an additional 13 weeks of continued \$600 weekly payments for individuals who remain unemployed after exhausting their state unemployment benefits. This means eligible workers will be able to receive unemployment benefits for up to 39 weeks rather than the 26-week cap under most state programs.

Workers should be aware of the possible implications of receiving the additional \$600 benefit. For example, the expanded benefit will count as income when determining eligibility for certain means-tested programs, including Supplemental Nutrition Assistance Program but not for Medicaid or the Children's Health Insurance Program.

EXPANDED UNEMPLOYMENT ELIGIBILITY

The CARES Act expands unemployment eligibility to individuals who are able and available to work within the meaning of applicable state law but are unemployed, partially unemployed or unable or unavailable to work. To receive benefits, the individual must self-certify that:

- 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 the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- 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;
- 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;
- 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 supporter for a household because the head of the household has died as a direct result of COVID-19;
- the individual has to quit his or her job as a direct result of COVID-19; or
- the individual's place of employment is closed as a direct result of the COVID-19 public health emergency.

The CARES Act also expands coverage to include individuals who historically have been ineligible for unemployment benefits, including individuals who are self-employed, "gig" workers, freelancers, independent contractors and part-time workers. New hires who could not

begin their employment are also covered even if they do not have a sufficient work history to qualify under their normal state unemployment eligibility rules.

WHO IS NOT ELIGIBLE?

Based on the specified list of qualifying reasons for eligibility, it does not appear that an individual who stops working in response to a general fear of contracting COVID-19 would be eligible for the increased benefits under the CARES Act.

Other ineligible individuals under the CARES Act include:

- those who can telework with pay;
- those who are already receiving paid leave under their employer's plans/policies;
- those who are already receiving paid leave under an applicable federal, state or local law; and
- new entrants to the workforce who cannot find employment.

WHAT SHOULD EMPLOYERS DO?

Employers that are considering COVID-19 related operational changes that will impact their workforces may want to take into account the expanded and increased unemployment benefits potentially available to their employees under the CARES Act. Whether affected employees will be eligible for these benefits will depend not only on the reason their normal work is unavailable but also on whether the affected employees will be receiving some form of paid leave at the time they apply for unemployment benefits. Such paid leave could derive from an applicable federal, state or local law or an employer-provided plan or policy. Accordingly, employers should understand these various sources of paid leave and be able to communicate them to their employees.

Health care employers who only recently learned they can affirmatively exclude their employees from the paid sick/family leave provisions under the Emergency Families First Coronavirus Response Act should be prepared for the possibility that critical workers may choose to stay home anyway knowing they can apply for unemployment benefits if, for example, their child's school or daycare is closed.