

Department of Labor Releases Guidance on Lost Wages Assistance Program

Law and the Workplace Blog on August 14, 2020

On August 8, 2020, the President issued an executive memoranda establishing the Lost Wages Assistance (“LWA”) program, a new unemployment benefit intended to replace the recently-expired \$600 per week Federal Pandemic Unemployment Compensation (“FPUC”) payment.

As a refresher, the CARES Act created three unemployment benefits programs: (1) Pandemic Unemployment Assistance (“PUA”), providing benefits for those not traditionally eligible for unemployment; (2) Pandemic Emergency Unemployment Compensation (“PEUC”), providing 13 additional weeks of benefits for those whose benefits expire; and (3) FPUC, providing a \$600 per week additional benefit if the individual received other unemployment benefits in that week. While PUA and PEUC are funded until the end of this year, the FPUC benefit was set to end on July 31. Congress and the President were unable to agree on a replacement or extension, and the program expired without substitute. It was in that context that the President announced the LWA program, which the Department of Labor clarified on Wednesday.

As of August 14, no state has implemented LWA, and it is likely that the legality of the program will be challenged. Notwithstanding the foregoing, here is what you should know about the program.

Is this the same program as FPUC?

No. LWA is an entirely new program.

How much money will claimants receive under LWA?

LWA is designed as a \$400 per week benefit. Of the \$400/week benefit, the federal government will pay for \$300. States can then elect to provide the additional \$100 benefit.

How is LWA funded?

While states will administer the program, the \$300 benefit funded by the federal government will be covered by grants through the Department of Homeland Security—more specifically, \$44 billion in funds initially earmarked for the FEMA Disaster Relief Fund (“DRF”). If states choose to pay the additional \$100 benefit, those funds will be drawn from either already-allocated CARES Act funds or other sources of state funding.

What is the term of the LWA program?

LWA is available for weeks of unemployment ending on or after August 1, 2020 until weeks of unemployment ending on or before December 27, 2020. **However**, the program will end prematurely if: (i) FEMA runs out of funds; (ii) the total value of the DRF falls below \$25 billion; or (iii) Congress passes other legislation addressing unemployment benefits.

Who is eligible for LWA?

Individuals receiving the following benefits are eligible for LWA:

- Unemployment Compensation for Federal Employees;
- Unemployment Compensation for Ex-Service Members;
- Pandemic Emergency Unemployment Compensation;
- Pandemic Unemployment Assistance;
- Extended Benefits;
- Short-Time Compensation;
- Trade Readjustment Allowances; and
- Payments under the Self-Employment Assistance program.

While these are the same programs that qualified someone to receive FPUC benefits, there is one key difference. Whereas anyone who received **\$1** of the above benefits qualified for all \$600 of FPUC, **only those receiving at least \$100 per week** of the above benefits are eligible to receive LWA.

LWA benefits are unlikely to be paid any time in the near future as states must take various steps to administer the program and, as described above, the program is likely to face legal challenges. Moreover, Congress and the White House have expressed interest in reaching another agreement on unemployment benefits—though those discussions have reportedly stalled. [[CNN – “Congressional Action on New Relief Package Likely to Wait Until September – At Least”](#)]. We will continue to monitor these developments.

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- **Jacob P. Tucker**
Associate