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Congress Seeks to Extend Many CARES Act Unemployment Benefits in Pandemic Relief Package

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Facing a government shutdown and the expiration of many of the relief programs included in the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") enacted in March 2020, on December 21, 2020, Congress passed a $900 billion pandemic relief package as part of a broader $1.4 trillion government funding bill. Along with other relief measures, the new legislation includes additional funding for unemployment benefit programs that had previously been funded in the CARES Act.

Unemployment Benefits under the CARES Act

The CARES Act expanded unemployment insurance benefits available to workers, including through the following three programs: (1) Federal Pandemic Unemployment Compensation ("FPUC"); (2) Pandemic Emergency Unemployment Compensation ("PEUC"); and (3) Pandemic Unemployment Assistance ("PUA"). In short:

- **FPUC** provided an extra $600 weekly benefit for all weeks of unemployment between April 5, 2020 and July 31, 2020, in addition to the benefit amount an individual would otherwise be entitled to receive under state law.
- **PEUC** provided for an additional 13 weeks of unemployment benefits for individuals who had exhausted unemployment benefits otherwise available under state law.
- **PUA** extended unemployment benefits to certain workers traditionally not eligible for unemployment benefits under state law, such as those who self-employed workers, independent contractors, or workers who have a limited work history.

These expanded benefits were all 100% federally funded under the CARES Act. The CARES Act also provided additional funds and incentives for states to promote short-time compensation ("STC") or work share programs, which provide employers with an alternative to layoffs. (For more information about these programs, see our previous post, here: "CARES Act Expands Unemployment Insurance Benefits").

The Expiration of CARES Act Funding of Unemployment Insurance Benefits

The PEUC and PUA benefit programs were slated to end on (or in many states, shortly before) December 31, which mean that these payments would soon expire without any gradual diminution or replacement benefit.

In addition, the $600 weekly supplement benefit payment under FPUC expired at the end of July. Although the President signed into law a lesser benefit called Lost Wage Assistance earlier this year, such benefits were only available for a limited time and there has otherwise been no replacement for the weekly supplemental payments.

CARES Act Unemployment Programs under the New Bill

- **FPUC:** The bill revives FPUC, but reduces the supplemental weekly benefit by half. As a result, individuals who are unemployed and receiving any unemployment benefits will now be entitled to an additional $300 in benefits for each week of unemployment between December 26, 2020 and March 14, 2021.
- **PEUC:** The bill extends PEUC by providing for up to 24 weeks of additional unemployment benefits to eligible individuals who have exhausted the unemployment benefits available under state law. Before the CARES Act, many states capped their benefits at 26 weeks. The CARES Act provided an additional 13 weeks of PEUC benefits. With the newest extension to 24 weeks, eligible recipients in many states can now can now receive up to 50 weeks benefits between state programs and PEUC. These extended benefits are also available through March 14, 2021. After March 14, 2021, new PEUC claimants will not be eligible for the extra weeks of benefits, but individuals who had been receiving PEUC benefits as of March 14, 2021 will be eligible to continue to receive benefit payments through April 4, 2021.
- **PUA:** As with PEUC, the bill extends PUA benefits until March 14, 2021. After March 14, 2021, new claimants will no longer be permitted to apply for PUA benefits, but eligible individuals who were receiving PUA benefits as of that date will continue to receive benefits until April 5, 2021. Also like PEUC, the duration of PUA benefits for eligible individuals has been extended from 39 weeks (under the CARES Act) to a total of up to 50 weeks.

The bill also extends other CARES Act unemployment provisions to March 14, 2021, including benefits made available to non-profit organizations, incentives for states to waive any one-week waiting periods, and encouraging the use of state STC programs.

New Unemployment Provisions in the New Bill

- **Fraud Provisions:** When the CARES Act went into effect, states were faced with processing significant numbers of claims through unemployment systems that in many cases had been underfunded for years, resulting in outdated technology, understaffed offices, and byzantine application processes. In particular, PUA presented a number of challenges because the program required a new application, was separate from any existing benefits, and was available to individuals who otherwise would not have been covered under unemployment programs. As a result, it was widely reported that PUA benefits were not being properly processed and paid, either due to fraud or confusion on part of both the states and applicants as to who was eligible for certain benefits and how to apply.

In an apparent effort to address these issues, the new bill describes in detail the documentation required to apply for PUA benefits. As of January 31, 2021, new applicants will have 21 days to submit documentation substantiating their employment, self-employment, or planned commencement of employment/self-employment. Individuals already receiving PUA benefits prior to January 31, 2021 must provide documentation within 90 days of January 31. In addition to the new documentation requirement, states now must have procedures in place to validate the identity of claimants and to ensure timely payments. The federal government will cover costs of these procedures.

Additionally, states must have a process in place for employers to report to the state agency instances in which a former employee refuses to return to work or refuses to accept an offer of suitable work without good cause (which renders the individual ineligible for unemployment benefits).

- **Mixed Earner Unemployment Compensation:** Individuals who receive at least $5,000 a year in self-employment income now will receive an additional $100 weekly benefit, in addition to the benefit amounts they otherwise would be entitled to receive from traditional employment under state law. Previously, such individuals were not eligible for PUA benefits if they received some regular state unemployment benefits for traditional employment, and regular state law benefits did not consider self-employment in calculating the benefit amounts. The new

federally-funded “mixed earner” benefit is in addition to the $300 supplemental weekly benefit under FPUC, and also expires on March 14, 2021.

Because the bill was not passed until the final week of the CARES Act programs, it is possible that the extensions and new benefits may not be implemented immediately. If the CARES Act rollout is any indication, it is likely that there will be additional federal guidance released to address the implementation of these unemployment provisions and answer certain questions the states may have. Employers and claimants should monitor state websites for any applicable unemployment programs and up-to-date guidance. Additionally, we will continue to monitor these development and inform our readers of any new guidance in this area.

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Proskauer’s other posts on the COVID-19 related unemployment benefits are available here, here, here, and here. Our team is closely monitoring developments on the topic and will continue to provide updates as they become available.

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