

April 7, 2020

UPDATE:
DEPARTMENT OF LABOR GUIDANCE REGARDING
FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION BENEFITS

On April 4, 2020, the U.S. Department of Labor (“DOL”) issued Unemployment Insurance Program Letter (“UIPL”) [15-20](#), which provides guidance to states regarding the Federal Pandemic Unemployment Compensation (“FPUC”) Program created under Section 2104 of the CARES Act. The Program allows states to provide an additional \$600 per week to individuals who are collecting regular unemployment compensation benefits through July 31, 2020.

The guidance is primarily intended for states who will be administering the Program, but there is a key takeaway for employers:

- **Reduced Employee Hours/Wages:** UIPL 15-20 clarifies that after states calculate the weekly benefit amount under applicable state unemployment benefit laws, if the individual is eligible to receive at least one dollar (\$1) of underlying state unemployment benefits for the claimed week, the claimant, in addition, will receive the \$600 per week of FPUC unemployment benefits. This is true even if the individual’s benefit payments are intercepted to pay debts, such as child support or recoupment of prior overpayments of unemployment benefits.

This is an important clarification for employers who have reduced employee work schedules or wages. The Utah Department of Workforce Services [advises](#) that full-time employees whose hours have been reduced due to COVID-19 may be eligible for unemployment benefits. But if an employee’s earnings for a given week exceed the weekly benefit amount (“WBA”) allowed under applicable state law, the employee would receive \$0 in regular unemployment compensation (“UC”) benefits—meaning the employee also would be ineligible to receive the \$600 FPUC. Consequently, if employers want their employees to receive the additional \$600 weekly payment, they need to take steps to ensure that employees do not earn more than the WBA per week.

To assist employees in calculating their WBA, the Utah Department of Workforce Services (“DWS”) has published this helpful [chart](#). The maximum WBA for any employee is \$580.

On April 5, 2020, the DOL issued UIPL [16-20](#), which addresses the Pandemic Unemployment Assistance (“PUA”) Program under Section 2102 of the CARES Act. The PUA Program generally provides up to 39 weeks of unemployment benefits to individuals who have exhausted their entitlement to regular UC or who are not eligible to receive regular UC, such as self-employed workers, employees with limited recent work histories, and employees with only part-time employment. PUA benefits are available to qualifying individuals who would otherwise be able to work and are available for work but for one of ten COVID-19 related reasons identified in the Cares Act. (The list of reasons is included on page 3 of UIPL 16-20).

Finally, be advised that given the prospect for potential fraud in recovery of unemployment benefits, the DOL makes clear in both of the above-program letters that quitting work without good cause to obtain insurance benefits qualifies as fraud. The DOL will be actively working with the Office of Inspector General to ensure program integrity. Any individual who obtains benefits through fraud (1) is ineligible for any additional benefit payments, (2) must pay back the benefits, and (3) is subject to criminal prosecution under 18 U.S.C. § 1001. Utah law provides for similar penalties if an individual commits unemployment insurance fraud, including repayment of at least twice the amount of benefits paid, denial of future benefits, wage garnishments, tax interceptions, and liens.

We encourage you to review the Department of Labor’s website at www.dol.gov and the IRS’s website at www.irs.gov for additional guidance regarding the FFCRA and other resources on preparing your workplace for the COVID-19 virus. We also encourage you to review the Utah Department of Workforce Services’ website for unemployment related guidance at <https://jobs.utah.gov/covid19/>.

The foregoing legislative update is designed to be accurate and authoritative but is not intended to provide and should not be construed as providing legal advice or as creating any attorney-client relationship with the author or Parr Brown Gee & Loveless, P.C. For legal advice regarding the Families First Coronavirus Response Act, you should consult with your legal counsel.