



CARES Act expands unemployment benefits, aims to stem job losses

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The Coronavirus Aid, Relief and Economic Security (CARES) Act ([Pub. L. No. 116-136](#)) takes a two-pronged approach to helping workers. First, the act increases unemployment benefits for eligible individuals and broadens eligibility to include additional categories of workers affected by COVID-19. Second, the act includes financial incentives to encourage eligible employers to keep employees on payroll. Employers will want to understand all available forms of relief before deciding among various workforce actions, such as reductions in force (RIFs), layoffs, furloughs and shortened work hours.

CARES Act increases unemployment benefits, broadens eligibility

[Unemployment insurance](#) is a joint state-federal program that provides cash benefits to workers who become unemployed through no fault of their own and meet certain eligibility requirements. The CARES Act provides federal funding for expanded and new unemployment benefits, which are administered through each state's unemployment compensation program. To help states implement the act's changes to unemployment benefits, the Department of Labor (DOL) has released several unemployment insurance program letters (UIPLs) — starting with [UIPL No.14-20](#) — that outline the law's enhancements and administrative requirements.

Basic benefits

Unemployment insurance programs vary by state, but all follow federal guidelines. Variations include the duration of benefits, the minimum and maximum benefit, and the method of calculating benefits. The weekly benefit amount (WBA) is typically a percentage of an individual's average wage over a specified

period (subject to a cap). Most states pay unemployment benefits for up to 26 weeks, but may offer extended benefits for additional weeks during times of high unemployment.

For details on individual states' unemployment benefits, see DOL's [Unemployment Benefits Finder](#).

Partially unemployed individuals. Most states allow partially unemployed individuals (e.g., those with reduced hours) to receive unemployment benefits offset by wages. State-to-state variations in benefit calculations include differences in how offsets are applied. For example, in [New York](#), someone working fewer than four days per week and earning no more than the maximum WBA is eligible for benefits as follows:

- One day of work: 75% of WBA
- Two days of work: 50% of WBA
- Three days of work: 25% of WBA

In contrast, [South Carolina](#) deducts from the WBA on a dollar-for-dollar basis any wages received in excess of 25% of an individual's WBA. As shown in a [later](#) example, differences in how states calculate wage offsets can determine how an employee would fare under different reduced-hour scenarios.

Some, but not all, states allow employers to pay certain types of supplemental income (paid time off, bonuses and severance) to employees, without triggering an offset to unemployment benefits. However, employers generally can pay for health insurance without any impact on unemployment benefits.

Increased benefits

The CARES Act enhances the magnitude and duration of payments to individuals eligible for state unemployment benefit:

- **Greater weekly benefit.** Through July 31, the Federal Pandemic Unemployment Compensation (FPUC) program provides an extra \$600 per week if an individual is eligible for regular unemployment compensation under state law (even if only \$1). FPUC benefits are not available to individuals already in an extended benefit period. To receive FPUC funds, states must enter into an agreement with DOL, consenting to make no changes to the unemployment compensation formula that would reduce the average WBA or the number of weeks of benefits are payable. The additional \$600 payment is available for claims beginning on or after the date the agreement is signed. As of March 28, all states had entered the required agreement ([UIPL No. 15-20](#)).
- **Longer duration.** For individuals who remain unemployed after exhausting state unemployment benefits, the federal Pandemic Emergency Unemployment Compensation (PEUC) program will fund

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up to 13 weeks of additional unemployment benefits (at the original WBA) through Dec. 31. This increases most states' 26-week maximum to 39 weeks. PEUC benefits are available after a state signs an agreement with DOL and implements the PEUC program ([UIPL No. 17-20](#)).

- **Waiver of waiting period.** The federal government will fund benefit costs for the first week of unemployment if a state waives the typical one-week waiting period. This funding is available for weeks of unemployment beginning after the date a state signs an agreement with DOL and before Dec. 31 ([UIPL No. 14-20](#)).

Broadened eligibility

The CARES Act creates a temporary, federally funded Pandemic Unemployment Assistance (PUA) program that provides unemployment benefits to categories of workers otherwise not covered under state or federal law, including:

- Self-employed and gig workers and independent contractors
- Furloughed workers (even if they continue to receive health benefits, depending on state law)
- Workers with reduced hours (depending on state law)
- Individuals traditionally ineligible for unemployment insurance payments, such as individuals with job offers originally slated to start soon or with a limited work history

The duration of PUA benefits is generally limited to 39 weeks, minus any weeks an individual receives regular and extended unemployment compensation benefits. Any weeks of PEUC benefits received are not deducted from the individual's PUA entitlement ([UIPL No. 16-20](#)).

This broadened eligibility is retroactive to weeks beginning on or after Jan. 27. States have been updating their unemployment insurance programs to administer PUA benefits.

Self-certification of eligibility. To be eligible for PUA benefits, individuals must self-certify that they are unemployed, partially unemployed, or unable or unavailable to work because of at least one of the following:

- They have been diagnosed with or are experiencing symptoms of COVID-19 and are seeking a medical diagnosis.
- A member of their household has been diagnosed with COVID-19.
- They are caring for a family or household member diagnosed with COVID-19.

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- They are unable to work because they are the primary caregiver for a child or another household member whose school or care facility has closed due to COVID-19.
- They are unable to reach their workplace because of a COVID-19 quarantine, including a health care provider's advice to self-quarantine due to COVID-19 concerns.
- They were scheduled to begin employment but do not have a job or are unable to reach their job as a direct result of COVID-19.
- They have become the breadwinner or major support for a household because the head of the household has died from COVID-19.
- They had to quit their job as a direct result of COVID-19.
- Their workplace has closed as a direct result of COVID-19.
- They meet additional criteria established by the Labor secretary for unemployment assistance.

Individuals do not have to be actively seeking work or to have quit or lost their jobs to receive PUA benefits due to the impact of COVID-19.

Ineligible individuals. PUA benefits are not available to individuals who can telework with pay, are receiving paid sick or other paid leave benefits, or quit their jobs for reasons unrelated to COVID-19.

Nonprofits and government agencies

Certain nonprofits, government agencies and Indian tribes do not contribute to state unemployment insurance programs and instead participate as reimbursable employers. These employers either reimburse the state for unemployment benefits paid to employees or maintain self-funded programs. Under the CARES Act, the federal government will reimburse 50% of unemployment compensation paid to these organizations' affected workers between March 13 and Dec. 31 ([UIPL No. 14-20](#)).

CARES Act offers employers incentives to retain employees

The CARES Act includes several provisions designed to encourage eligible employers to keep employees on payroll.

Paycheck Protection Program

The [Paycheck Protection Program](#) (PPP) is available to employers with 500 or fewer employees (or the workforce size designated for a particular industry) — including sole proprietors, independent

contractors and self-employed individuals. Employers in the hotel and restaurant industry are eligible if they have 500 or fewer employees in a particular location, and a special rule applies to franchises.

The loans (with interest limited to 4%) are available for costs incurred between Feb. 15 and June 30. A portion of the loan will be forgiven if it is used to pay any of the following:

- Wages, salary, commissions or tips (up to \$100,000 on an annualized basis for each employee)
- Health, retirement or paid leave benefits
- State or local taxes
- Mortgage interest, rent and/or utility payments

The forgivable amount is reduced by the number of employees who are laid off or have their wages reduced. The program also offers opportunities for employers to rehire or increase wages.

Employers that obtain a PPP loan are ineligible for the [employee retention credit](#) and cannot defer [payroll tax deposits](#) once a loan is forgiven.

Employee Retention Credit

The [Employee Retention Credit](#) is a fully refundable tax credit equal to 50% of qualified employee wages. This payroll tax credit is available to employers — including certain tax-exempt employers — that (i) fully or partially shut down operations because of a government order related to COVID-19 or (ii) have quarterly revenue less than 50% of the level in the same quarter of 2019. The credit is not available to government employers.

The tax credit applies to the first \$10,000 of qualified wages, including qualified health plan expenses, paid to each employee after March 12, 2020, and before Jan. 1, 2021. The definition of qualified wages depends partly on an eligible employer's average number of 2019 full-time employees (as defined by Section [4980H](#) of the tax code):

- **More than 100 full-time employees.** For eligible employers of this size, qualified wages are amounts paid to an employee while *not* providing services due to the reduction in operations or revenue loss.
- **100 or fewer full-time employees.** For these eligible employers, qualified wages are the wages paid to an employee during the period of reduced operations or revenue loss, regardless of whether the employee is providing any services.

In either case, qualified wages exclude payments under the emergency paid sick leave or the expanded family and medical leave provisions of the Families First Coronavirus Response Act ([Pub. L. No. 116-127](#)).

Payroll tax deferral

To enhance cash flow, employers can defer paying and depositing their share of 2020 Social Security taxes (and certain Railroad Retirement Act taxes) otherwise owed from March 27 through year-end. Employers will have two years to pay and deposit the deferred taxes, with 50% due by Dec. 31, 2021, and the remaining 50% due by Dec. 31, 2022.

Title IV loans to eligible businesses

Title IV of the CARES Act authorizes up to \$500 billion in federal loans, guarantees and other investments to support eligible businesses and up to \$32 billion in payments for payroll support to air carriers and their contractors. These forms of assistance may be subject to worker retention requirements. For example, air carriers receiving payroll support must maintain their March 24 employment levels until Sept. 30, 2021, to the extent practicable — limiting any decline to no more than 10% — and must refrain from conducting involuntary furloughs or reducing pay rates and benefits until Sept. 30, 2020.

Less stringent requirements apply to small and medium-sized businesses — those with up to 10,000 employees or \$2.5 billion in 2019 revenues — seeking a loan under the recently established Main Street New Loan Facility. These businesses must attest they will “make reasonable efforts” to maintain payroll and retain employees during the loan’s term.

Federal funding for short-time compensation programs

Under the CARES Act, the federal government will reimburse a state’s costs for total “short-time compensation” (STC) or “workshare” benefits, up to a maximum of 26 weeks for each participant. For states without an existing STC program, the federal government will reimburse one-half of STC benefit costs, up to a maximum of 26 weeks for each participant.

STC programs are an alternative to layoffs. Employers can apply for state approval to provide partial unemployment benefits to a group or unit of employees whose hours are reduced (instead of targeting individual employees for reduced schedules and/or layoff). Under approved programs, employees qualify for a percentage of unemployment benefits equal to the percentage by which their hours have been reduced.

Example. Instead of laying off 25% of a work unit, an employer could cut each employee’s hours by 25%, and they would all be eligible for partial unemployment benefits. Each employee would receive:

- 75% of their regular weekly wage
- 25% of their individual WBA
- \$600 FPUC payment for weeks ending on or before July 31

But STC programs have significant drawbacks, such as:

- The programs are complicated to set up and administer.
- As a condition for participation, a state might require employers to make certain workforce commitments — for example, to continue providing employee benefits or freeze hiring of new employees into the group or unit.
- Special issues may arise for exempt employees under the Fair Labor Standards Act (FLSA).
- In the case of new state programs, employers have to reimburse the state for the 50% of STC benefits not funded by the federal government.

How do worker protections affect workforce strategy decisions?

Some employers seeking to manage costs in a challenging business environment are not eligible for any of the payroll relief described in the [previous section](#) or may find the relief insufficient. Those employers may need to consider implementing temporary layoffs or furloughs, reduced work hours, or RIFs. While all of these actions generally allow affected individuals to collect full or partial unemployment benefits, which path to take will depend on a company's unique situation and careful consideration of the costs and benefits of each alternative. The following discussion focuses on implications for unemployment compensation and health and welfare benefits. (It does not cover related HR and workforce management considerations and omits strategies that do not interact with unemployment compensation, such as early retirement packages or modified workloads or job structures.)

Unemployment compensation considerations

Layoffs, furloughs and RIFs. Temporary layoffs and furloughs — unlike permanent layoffs or RIFs — do not formally terminate employment. Instead, a temporary layoff or furlough is typically a mandatory short-term, unpaid leave of absence. Employees generally are eligible for unemployment insurance after a permanent layoff or RIF and, in most cases, during a temporary layoff or furlough.

Reduced hours. Employees on reduced hours may be eligible for partial unemployment benefits. No set formula determines whether an employee is better off having hours reduced than experiencing a temporary layoff or furlough. The answer *for each individual* will depend on factors such as:

- The state's duration of benefits and minimum/maximum WBA
- The state's method of calculating benefits (including offsets for continued wages)
- The employee's wage history

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Example. In a state like South Carolina, the unemployment program provides a WBA equal to the lesser of 50% of an employee's wages or \$326 for 20 weeks. Employees eligible for partial unemployment benefits can receive wages up to 25% of their individual WBA, with no offset to the WBA. Wages earned in excess of 25% of the individual WBA are deducted dollar for dollar from the WBA. For example, assume an employee's WBA is \$300:

- If the employee's reduced wages are \$75/week, the employee will collect the full WBA (\$300), plus \$600/week from the FPUC program through July 31, for a weekly total of \$975 in wages and benefits.
- If the employee's reduced wages are \$100/week, the employee will collect \$275/week in state unemployment (\$300-\$25), plus \$600/week from the FPUC program through July 31, for a weekly total of \$975 in wages and benefits.
- If the employee's reduced wages are \$400/week, the employee will not be eligible for any state unemployment or the \$600/week from the FPUC because the amount of reduced wages exceeding 25% of the WBA ($\$400 - \$75 = \$325$) is more than the value of the WBA. The employee will receive only the \$400 in wages/week.

Employees whose employers participate in a state STC program might fare better receiving STC benefits than partial unemployment benefits. Employers located in one of the [states with STC programs](#) should consider the pros and cons of participating, as described [above](#).

Health and welfare benefit considerations

A RIF, permanent layoff or significant reduction in hours can affect an employee's eligibility for a variety of benefits. A loss of eligibility can trigger health benefit continuation requirements under COBRA and similar state insurance laws, along with conversion and portability options for other insured employee-paid benefits. In contrast, a temporary layoff or furlough does not result in a termination of employment, and benefits may continue if the plan documents allow.

Self-insured employers typically have more discretion than fully insured employers to interpret plan provisions — including eligibility and unpaid leave-of-absence terms — if the plan document does not specifically address furloughs or temporary layoffs. In either case, employer plan sponsors generally can change plan terms to extend or terminate these employees' eligibility.

If eligibility is going to continue, a few things to keep in mind include:

- Cooperation from the stop-loss carrier or insurer

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- Payment of benefit premiums during a mandatory unpaid leave of absence (and consequences of nonpayment)
- Opportunity (or not) for pretax benefit election changes
- Options to suspend and then re-elect voluntary benefits (such as life, accidental death and dismemberment, disability or critical illness)
- Consequences for salary-based benefits (e.g., life and short- or long-term disability)
- Need for plan amendments and communication to employees

If terminating benefits for employees on a mandatory unpaid leave of absence, employers should consider the following:

- Obligation to offer COBRA continuation coverage to health plan participants and dependents
- Potential need to extend conversion and portability options for insured benefits like group term life insurance
- Risk of employer shared-responsibility payments under the Affordable Care Act if terminating group health coverage for furloughed full-time employees in a stability period
- Any ERISA-required plan amendments and participant communications
- Plan eligibility, waiting periods and election options for employees returning from a leave of absence

Other considerations

Employers will need to review plan documents and work with legal counsel experienced in employment and benefits law (and labor law, if the employees are subject to a collective bargaining agreement) before pursuing a course of action. Examples of some of the questions to resolve include:

- When do temporary layoffs or furloughs turn into RIFs?
- Will reducing hours and wages trigger notice requirements, violate FLSA provisions, force the reclassification of exempt employees as nonexempt employees and/or violate collective bargaining agreements?
- Will reducing hours and wages trigger severance pay and benefits under severance plans and employment agreements?

- What are the implications for paid time-off policies (payments and accruals)?
- What are the implications for retirement and nonqualified deferred compensation plans?
- What are the implications for long-term incentive plans (e.g., are awards forfeited or is vesting accelerated or tolled)?
- Will actions trigger federal and/or state Worker Adjustment and Retraining Notification (WARN) Act notices?
- What are the implications for paid sick and family leave policies?
- What are the implications for rehire policies?

Related resources

Non-Mercer resources

- [Unemployment insurance program letter no. 17-20](#) (DOL, April 10, 2020)
- [Unemployment insurance program letter no. 16-20](#) (DOL, April 5, 2020)
- [Unemployment insurance program letter no. 15-20](#) (DOL, April 4, 2020)
- [Unemployment insurance program letter no. 14-20](#) (DOL, April 2, 2020)
- [Pub. L. No. 116-136](#), the CARES Act (Congress, March 27, 2020)
- [Unemployment insurance program letter no. 13-20](#) (DOL, March 22, 2020)
- [Pub. L. No. 116-127](#), the Families First Coronavirus Response Act (Congress, March 14, 2020)
- [Unemployment insurance program letter no. 10-20](#) (DOL, March 12, 2020)
- [CareerOneStop](#): State-by-state unemployment insurance information (DOL)

Mercer Executive Law & Regulatory Group resources

- [CARES Act includes executive pay, worker protection and government provisions](#) (April 2020)
- [Managing incentives in uncertain times](#) (March 2020)

Mercer Law & Policy resources

- [Cities, states tackle COVID-19 paid leave](#) (April 15, 2020)
- [Delving into CARES Act relief for retirement plan participants](#) (April 10, 2020)
- [DOL and IRS issue guidance on COVID-19 emergency paid leave](#) (April 9, 2020)
- [CARES Act boosts telehealth, makes other health, paid leave changes](#) (March 27, 2020)
- [Virus aid legislation includes cost-sharing curbs, new leave rights](#) (March 18, 2020)

Other Mercer resources

- [Stay informed on the coronavirus](#) (regularly updated)
- [Do benefits continue during furloughs? It's a matter of plan interpretation](#) (March 26, 2020)
- [Short-term actions to safeguard your workforce](#) (March 27, 2020)
- [Designing a Covid-19 emergency leave policy: Four key considerations](#) (March 17, 2020)
- [Update: Rapid action plan on paid leave during the pandemic](#) (March 12, 2020)
- [Ten considerations to support your workforce](#) (March 5, 2020)
- [COVID-19 and paid leave: Three scenarios to plan for](#) (March 5, 2020)

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