

Unemployment Insurance under the CARES Act¹

Unemployment insurance (**UI**) is a joint state-federal program that provides cash benefits to eligible workers who become unemployed through no fault of their own (as determined under state law). Each state administers its own UI program in which it determines the eligibility criteria, specific benefits and length of time of benefits. Prior to the Coronavirus Aid, Relief, and Economic Security (**CARES**) Act, many church employees have not been eligible to receive UI benefits because churches are exempt from the requirement to participate in state UI programs. However, some states allow churches to participate voluntarily in their UI programs either by paying the unemployment taxes like other employers or by being a reimbursing (also called self-insuring) employer. A reimbursing employer typically makes contributions through the state UI program after an employee is terminated or laid off.

The CARES Act has, for the moment, made some important changes to UI eligibility and benefits that have important implications for churches and their employees. These changes are under three programs: Pandemic Unemployment Assistance (**PUA**), Federal Pandemic Unemployment Compensation (**FPUC**), and Pandemic Emergency Unemployment Compensation (**PEUC**). All these special programs under the CARES Act are 100% federally funded. They require that states enter into agreements with the Department of Labor in order to receive the federal funding and that states administer the programs. Many states are still working to put the necessary procedures in place to administer these programs.

Please note that, as discussed later in this memo, **before any layoffs or furloughs are made, churches should consider their potentially negative impact on the forgiveness of any loans obtained through the Paycheck Protection Program (PPP) of the CARES Act.**

A. Implications for Church Employees

(1) PEUC: New Benefits for Employees Normally Eligible for State UI Benefits (Section 2107)

Church employees whose employers normally participate in state UI programs (either as regular or reimbursing participants) and who were/are furloughed² or laid off after July 1, 2019 are entitled to state UI benefits, regardless of the CARES Act. The number of weeks employees are entitled to those benefits vary according to their particular state.³ When or if they have exhausted those benefits, these employees may apply through their state UI programs for additional benefits under PEUC where they:

¹ The guidance in this memo is as of April 13, 2020.

² Furloughed employees are those who are temporarily laid off with the expectation that they will return to work in the future. In general, furloughed employees do not get paid but retain their employment benefits such as health insurance during the furlough.

³ The majority of states provide for a standard 26 week maximum, but state maximums have ranged from 12 to 30 weeks in recent times. Some states adjust their maximums periodically depending on changes in the states' unemployment rate.

- Have exhausted all rights to regular unemployment compensation under state⁴ or federal law;
- Have no rights to regular unemployment compensation under any other state or federal law;
- Are not receiving compensation under the unemployment compensation laws of Canada; and
- Are able to work, available for work, and actively seeking work (the requirement for “actively seek work” is to be viewed flexibly so as to cover individuals unable to search for work for COVID-19 reasons including illness, quarantine or movement restriction).

PEUC provides **up to 13 weeks of benefits at the state UI level** (in addition to the normal benefits under state law). These PEUC benefits and the cost of its administration are **100% federally funded** – states may not charge employers for any PEUC benefits paid. It is only payable in states that have an agreement with the Department of Labor **and begins with weeks of unemployment ending on or after April 4 or 5, 2020 and ends on or before December 31, 2020**. Entitlement to PEUC benefits under this category lasts only while individuals are within the benefit year of their original UI claim.

Although individuals are responsible for filing PEUC applications with their state UI programs, states are required to identify individuals who are potentially eligible for PEUC and to write to them about their potential entitlement (with filing instructions). States are also required to notify all news media with statewide coverage of the beginning of the PEUC program.

Individuals eligible to receive benefits under PEUC are also automatically eligible (meaning no separate application is necessary) to receive concurrent benefits under FPUC, which is discussed later in this memo.

(2) PUA: New Benefits for Employees **Not Normally Eligible** for State UI Benefits, including Those Who Have Already Exhausted All Rights to UI or PEUC Benefits (Section 2102)

PUA provides new benefits to two categories of people (if they are unable to work for a COVID-19 related reason):

(a) Those who are **not normally eligible** for state UI benefits (which typically includes many self-employed individuals, independent contractors and part-time employees who work for churches and church-affiliated organizations); and

(b) Those who have already exhausted all rights to UI or PEUC benefits.

In order to be eligible for either category, church employees must self-certify that they are otherwise able and available to work but are “unemployed, partially unemployed, or unable or unavailable to work” because:

- The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is 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;

⁴ “Exhausted all rights to regular unemployment compensation under state law” means that either individuals have received all regular state UI compensation available or individuals’ rights to such compensation have been terminated because the benefit year on their original UI claim has expired.

- 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 support 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.**

PUA is generally not available to individuals in either category who have the ability to work remotely with pay or who are eligible for and/or receive paid sick leave or other paid leave benefits. PUA benefits are also not available for weeks where individuals already receive Disaster Unemployment Assistance (**DUA**), which is a federal program that provides UI benefits directly to individuals who have become unemployed as a direct result of a Presidentially declared major disaster.

For those not normally eligible for state UI benefits, PUA provides **up to 39 weeks of benefits** and is available retroactively for unemployment beginning on or after January 27, 2020 and ending on or before December 31, 2020. Because there is no system under state law for calculating benefits for these individuals, **benefits are equal to the benefits under DUA.**

For those who have already exhausted all rights to UI or PEUC benefits, PUA provides **up to 39 weeks of benefits minus any weeks those individuals received regular UI** (but the weeks for which individuals collected PEUC will not be deducted from any PUA entitlement). It is available retroactively for unemployment beginning on or after January 27, 2020 and ending on or before December 31, 2020. The benefits for this category of individuals is **equal to the benefits authorized under state UI law where the individual is employed.** Entitlement to PUA benefits under this category lasts only while individuals are within the benefit year of their original UI claim.

PUA benefits and the cost of its administration are **100% federally funded.** States must enter into an agreement with the Department of Labor in order to receive the funding. The federal government anticipates that the "qualifying circumstances" of PUA benefits will often be much shorter than 39 weeks because, for example, a person who has been advised by a health care provider to self-quarantine because of COVID-19 concerns may be able to return to work after 14 days if they have no symptoms or have tested negative for COVID-19. Similarly, a school is not closed as a direct result of COVID-19 after the date the school year was originally scheduled to end.

Church employees who are either not normally eligible for UI benefits or have exhausted all rights to UI or PEUC benefits **must first be officially determined ineligible for state UI benefits in order to**

receive PUA. States will have their own processes for employees to follow. For example, in New York, individuals must apply for UI benefits and be rejected before they apply for PUA.

Individuals eligible to receive benefits under PUA are also automatically eligible to receive concurrent benefits under FPUC.

(3) FPUC: Additional Benefits for Employees Eligible for State Unemployment Benefits and for Employees Eligible for Benefits under PEUC or PUA (Section 2104)

Church employees are entitled to receive benefits under FPUC if they are collecting benefits under:

- Any state UI program;
- PUA;
- PEUC;
- Extended Benefits;
- Short-Time Compensation;
- Trade Readjustment Allowances;
- DUA; or
- Self-Employment Assistance program.

FPUC provides **\$600 each week per individual**, which is **100% federally funded**. It is **in addition to any benefits under any of the UI programs listed above**. The \$600 per week under FPUC will be automatically added to all state UI, PEUC or PUA benefits – there is no need to submit a separate application. FPUC is payable for weeks of unemployment beginning on or after the date on which the unemployed person's state enters into an agreement with the Department of Labor **through July 31, 2020**.

(4) A Note on Taxes

Regular UI is counted as income and taxed on individual tax returns, and these expansions of UI are similarly counted as income and taxable.

B. Implications for Churches

(1) Funding Available for Churches that Self-Insure or Reimburse UI Benefits

Section 2103 of the CARES Act provides emergency unemployment relief to churches that reimburse UI benefits between March 13, 2020, and December 31, 2020. These churches are entitled to **reimbursement from federal funds of up to one-half the cost of benefits** provided to employees who are laid off **even if the lay-off is not a result of COVID-19**. The Department of Labor has yet to issue a program letter clarifying this section.

(2) The Impact of Lay-Offs on PPP loans⁵

It is important that churches that have obtained PPP loans think carefully about any furloughs or layoffs of employees until the eight-week period of the loan has ended.⁶ **PPP loans can be fully forgiven by the government, but forgiveness amounts will decline if full-time headcount declines or if salaries and wages decrease by more than 25 percent during the period of the loan, which could result in a church having to pay the full loan amount.**

Anacronym Key

DUA: Disaster Unemployment Assistance

FPUC: Federal Pandemic Unemployment Compensation

PEUC: Pandemic Emergency Unemployment Compensation

PPP: Paycheck Protection Program

PUA: Pandemic Unemployment Assistance

UI: Unemployment Insurance

⁵ The Paycheck Protection Program (PPP) provides loans for employers with fewer than 500 employees – including churches – to help cover payroll and other limited costs for an eight-week period after the loan is made. Part or all of the loan may be forgiven if certain terms (retaining employees on the payroll, for example) are met.

⁶ The eight-week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower.