



Emergency Paid Sick Time and Paid Leave

Navigating New Federal Protections

The Federal Package – FFCRA/CARES Act

- FFCRA signed into law **March 18, 2020**
 - Emergency Paid Sick Leave Act (EPSLA)
 - Emergency Family and Medical Leave Expansion Act (EFMLEA)
- CARES Act signed into law **March 27, 2020**
- Effective **April 1, 2020**
- Expires **December 31, 2020**

Emergency Paid Sick Leave Act

- Applies to employers with **fewer than 500 employees**
 - DOL has discretion to exempt employers with **fewer than 50 employees** from the requirement to provide leave for school/place of care closure or child care provider unavailability if providing such leave would jeopardize their business as a going concern
- Covers **all employees**, including part-time/temporary/seasonal
 - Employers of **health care providers and emergency responders** can exclude such employees from receiving leave
- Employees may take **up to 80 hours** (two workweeks) of emergency paid sick time

Emergency Paid Sick Leave Act

- Available if you are **unable to work or telework** due to:
1. Being subject to a **government quarantine/isolation order** related to COVID-19;
 2. Having been **advised by a health care provider** to self-quarantine due to COVID-19-related concerns;
 3. Experiencing **symptoms** of COVID-19 and seeking medical **diagnosis**;
 4. Needing to **care for an individual** who is subject to an order as described in (1) or has been advised as described in (2);
 5. Needing to **care for a son or daughter** whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19; or
 6. Experiencing any other **substantially similar condition**.

Individuals for Whom Leave Can Be Taken

- Paid sick time to care for an **individual** under quarantine or isolation
 - Immediate family member
 - Person who regularly resides in employee's home
 - Similar person with whom employee has relationship that creates expectation that employee would care for the individual
 - Does not include person with whom employee has no personal relationship

- Paid sick time or family leave to care for **son or daughter** whose school or place of care is closed or unavailable
 - Biological, adopted, or foster child; stepchild; legal ward; or child of person standing in loco parentis who is either:
 - Under 18, or
 - 18 or older who is incapable of self-care because of a mental or physical disability

Emergency Paid Sick Leave Act

- If leave is for employee's own quarantine or isolation, seeking diagnosis, or substantially similar condition, benefit is **100% of wages up to \$511 per day and \$5,110 in the aggregate**
- If leave is to care for an individual in quarantine or isolation, or for a child whose school/place of care is closed or child care provider is unavailable, benefit is **2/3 of wages up to \$200 per day and \$2,000 in the aggregate**

Emergency Family and Medical Leave Expansion Act

- Applies to employers with **fewer than 500 employees**
 - DOL has discretion to exempt employers with **fewer than 50 employees** if providing leave would jeopardize their business as a going concern
- Covers employees who have worked for their employer for **at least 30 calendar days** (including certain rehired employees)
 - Employers of **health care providers and emergency responders** can exclude such employees from receiving leave
- Employees may take **up to 12 weeks of emergency family leave, 10 of which are paid**
 - Counts against 12-week FMLA allotment

Emergency Family and Medical Leave Expansion Act

- Available if you are unable to work or telework due to **need to care for a son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19**
- Benefit is **2/3 of wages up to \$200 per day and \$10,000 in the aggregate**

Health Care Providers and Emergency Responders

- Extremely broad definition of “health care providers” whom employers can exclude from receiving leave
- anyone **employed** at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, Employer, or entity
 - anyone **employed by a contractor** with any of these institutions described above to provide services or to maintain the operation of the facility where that individual's services support the operation of the facility
 - anyone **employed by any entity that provides medical services, produces medical products, or is otherwise involved** in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments
 - any individual that the highest official of a State or territory **determines** is a health care provider necessary for their response to COVID-19

Health Care Providers and Emergency Responders

- Extremely broad definition of “emergency responders” whom employers can exclude from receiving leave
 - anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of patients, or others needed for the response to COVID-19
 - includes military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility
 - any individual whom the highest official of a State or territory, including DC, determines is an emergency responder necessary for their response to COVID-19

Other Regulatory Issues

- In order for employee to qualify for leave, employer must “have work” for them
- Any FMLA leave employee has already taken counts against amount of emergency family leave available to employee
- Allows leave for child care purposes only if “no other suitable person” is available to care for the child
- Allows employers to impose vague, broad documentation requirements for employees taking leave

Proposed Changes/Challenges

- HEROES Act
- State and local action
- New York Attorney General lawsuit

Contact Info



Vasu Reddy

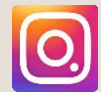
Senior Policy Counsel, Economic Justice

VReddy@NationalPartnership.org | 202.986.2600

Find & Follow Us



@NPWF



@NPWF



/NationalPartnership



NationalPartnership.org



CARES Act COVID-19 Unemployment Benefits

May 2020

Unemployment Insurance – Who's Covered?

- **Employees (people who get W-2s) who lose their jobs through no fault of their own. Some states allow for partial and part-time UI.**
- **Must have sufficient earnings in the past 18 months to qualify. Varies state by state.**
- **Replaces an average of 40% of your income, but could be higher or lower depending on the states where you are eligible.**
- **If you are at all eligible for UI, this is what you will receive even if the greater portion of your earnings are from self-employment**
- **Usually 26 weeks of benefits.**

Pandemic Unemployment Assistance (CARES Act)

- Covers workers not eligible for UI (including self-employed) who are partially or fully unemployed for specific COVID-19-related reasons (next page).
- 39 weeks (retroactive to January 27th through 2020)
- PUA weekly benefit is the same as the state's UI, but with a minimum of half the state's weekly average UI benefit.
- Does not cover those who can telework with pay or are receiving paid sick or paid leave benefits.

Covered Conditions

- They are diagnosed with or seeking diagnosis of COVID-19 or caring for someone with it;
- They are caring for a child or household member who can't attend school or work;
- They are quarantined or have been advised to self-quarantine;
- They can't start or reach a job or their place of employment is closed as a direct result of COVID-19;
- They had to quit their job as a direct result of COVID-19. (Not just because of generalized fear for your health).

The PUA Application Process

- Must first be declared ineligible for UI
- Many states will then automatically review your application for PUA eligibility, but some will require a separate application.
- You will likely be able to self-certify your income if it's not already in the system to get your PUA up and running.
- You will then need to provide documentation to substantiate your income to continue receiving benefits. Timelines will vary by state.

Common Questions

- **How do I substantiate my income for PUA?**
Documents such as 1099s, tax returns, bank statements showing deposits, and even affidavits may be used.
- **What about immigration status? Must be authorized to work in order to receive PUA.**
- **What if I work “off the books?” There are risks.**

Common Problems With PUA

- **Mixed Income Earners**
- **Delays in implementing PUA**
- **Antiquated or decrepit IT systems**
- **Some states “built to fail” – FL, NC, LA, GA, MI, AZ, TN, IN, ID**
- **People don’t realize they are entitled to it**

Additional Programs

Pandemic Unemployment Compensation (PUC):

- -\$600 increase in weekly benefits for all those on state UI and Pandemic Unemployment Assistance (through the week ending July 26th, unless extended)

Pandemic Emergency Unemployment Compensation (PEUC):

- 13 weeks more for workers who exhaust state UI
- Available through 2020
- If you've already run out of state UI, reopen your claim to get PEUC. If you run out in the future, it should sequence automatically

What You Can Do

- **Connect with UI advocates in your state and learn what the problems are. If you don't have a contact, we can get you one (jconti@nelp.org)**
- **Establish, if possible, a contact in the UI office to help you triage and troubleshoot**
- **Find champions in your state legislature to advocate for reform**
- **Advocate with your Governor for necessary reforms.**
- **Make sure your Member advocates for federal reform, including administrative funding for IT upgrades**

National Employment Law Project

90 Broad Street, Suite 1100
New York, NY 10004

www.nelp.org