

IMPORTANT INFORMATION FOR EMPLOYERS ON TITLES II AND III OF THE CARES ACT

I. Introduction

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act” or the “Act”) was signed into law. The CARES Act provides emergency economic assistance to those affected by the novel coronavirus (COVID-19). Key provisions of Titles II and III of the CARES Act are explained below.

II. Comparison of Unemployment Provisions in the CARES Act

	Pandemic Unemployment Assistance (CARES Act, § 2102)	Federal Pandemic Unemployment Compensation (CARES Act, § 2104)	Pandemic Emergency Unemployment Compensation (CARES Act, § 2107)
Who is eligible?	<p>Individuals who:</p> <ul style="list-style-type: none"> • are ineligible for regular unemployment benefits under state or federal law, including those who have exhausted their unemployment benefits; and/or • are traditionally ineligible for unemployment benefits, including independent contractors, the self-employed, gig workers, and those without sufficient work history. 	<p>Anyone who would typically qualify for unemployment benefits under state law.</p>	<p>Individuals who:</p> <ul style="list-style-type: none"> • since July 1, 2019, have exhausted their regular unemployment benefits for a benefit year; • have no rights to additional unemployment compensation under state or federal law; and • are able to work, available to work, and actively seeking work, except that states are directed to be flexible with respect to the “actively seeking work” requirement for otherwise eligible individuals who are unable to seek work because of COVID-19.
Requirements?	<p>Individuals must self-certify either that:</p> <ul style="list-style-type: none"> • they are self-employed, seeking part-time work, lack sufficient work history, or otherwise would not qualify for unemployment benefits; <p>OR</p>	<p>Same as above.</p>	<p>Same as above.</p>

	Pandemic Unemployment Assistance (CARES Act, § 2102)	Federal Pandemic Unemployment Compensation (CARES Act, § 2104)	Pandemic Emergency Unemployment Compensation (CARES Act, § 2107)
	<ul style="list-style-type: none"> • they can work, but they remain unemployed, partially unemployed, or unable or unavailable to work for the following reason(s): <ul style="list-style-type: none"> a) they have been diagnosed with COVID-19 or have symptoms of COVID-19 and are seeking a medical diagnosis; b) someone in their household has been diagnosed with COVID-19; c) they are providing care for a family or household member who has been diagnosed with COVID-19; d) a child or other person in their household for which they are the primary caregiver cannot attend school or another facility that is required for them to work but which is closed as a direct result of COVID-19; e) they are unable to go to work because of a quarantine imposed as a direct result of COVID-19; f) they have been advised by a doctor to self-quarantine due to COVID-19 concerns and are unable to go to work; g) they were scheduled to begin a new job and do not have a job or they are unable go to work as a direct result of the COVID-19 public health emergency; h) they have become the major breadwinner in their homes because the head of the household has died as a direct result of COVID-19; i) they had to quit their job as a direct result of COVID-19; j) their workplace is closed as a direct result of COVID-19; or k) they meet any additional criteria set by the Secretary of Labor. 		
How much compensation will	The state’s regular weekly benefit amount <u>plus</u> an additional \$600 in “Federal Pandemic Unemployment Compensation.”	The state’s regular weekly benefit amount <u>plus</u> an additional \$600 in “Federal	The state’s regular weekly benefit amount for the individual’s benefit year <u>plus</u> an additional \$600

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an individual receive?	For self-employed individuals and individuals who would not otherwise qualify for unemployment compensation under state law, the weekly benefit amount will be calculated according to federal law, <u>plus</u> an additional \$600 in “Federal Pandemic Unemployment Compensation.”	Pandemic Unemployment Compensation.”	in “Federal Pandemic Unemployment Compensation.”
During what time period?	For weeks of unemployment beginning on or after January 27, 2020 through December 31, 2020.	For weeks of unemployment beginning after the date on which a state enters into an agreement with the Federal government to provide this benefit through July 31, 2020.	For 13 additional weeks, beginning after the date on which a state enters into an agreement with the Federal government to provide this benefit through December 31, 2020.
Is there a cap?	Yes. There is a cap of 39 weeks, including any week for which covered individuals otherwise received unemployment benefits.	Yes. This additional \$600 benefit is available up to the maximum number of weeks under state law, or until July 31, 2020, whichever comes first.	Yes. This is a 13-week extension of unemployment benefits through December 31, 2020.
Are the benefits retroactive?	Yes, to January 27, 2020.	No.	No.
Who funds it?	For states that enter into an agreement with the Federal government to provide this unemployment assistance, the Federal government will fully reimburse the total amount of unemployment compensation paid, plus any additional administrative expenses.	For states that enter into an agreement with the Federal government to provide this unemployment compensation, the Federal government will fully reimburse the \$600 paid to covered individuals plus any additional administrative expenses.	For states that enter into an agreement with the Federal government to provide this emergency unemployment compensation, the Federal government will fully reimburse the total amount of unemployment compensation paid.
Is there a waiting period for benefits?	No.	Maybe. States may choose to enter into an agreement with the Federal government to waive the one-week waiting period for which the states would then be fully reimbursed, through December 31, 2020.	Maybe. States may choose to enter into an agreement with the Federal government to waive the one-week waiting period for which the states would then be fully reimbursed, through December 31, 2020.
Summary	Individuals who are not traditionally eligible for unemployment benefits (such as independent contractors) or who have already exhausted their benefits and are unable to work because of COVID-19 will receive the regular weekly unemployment benefit plus an additional	Individuals who would typically qualify for unemployment benefits will receive an additional \$600 weekly.	Anyone who, since July 1, 2019, has already exhausted their unemployment benefits will receive an additional 13 weeks of unemployment benefits, through December 31, 2020.

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	<p>\$600 weekly, for up to 39 weeks from January 27, 2020 through December 31, 2020.</p> <p>Unlike assistance under Section 2107, individuals <u>need not</u> be “actively seeking work” to qualify for this type of unemployment assistance</p>		<p>Eligible individuals must be able, available, and actively seeking work, but states are directed to be flexible with respect to the “actively seeking work” requirement for those who are unable to seek work because of COVID-19.</p>

III. FAQs Regarding Assistance for American Workers, Families, and Businesses

Unemployment Insurance Provisions

If an employee cannot go to work but is able to work from home (telework), is the employee eligible to receive unemployment compensation under Section 2102 of the Act?

No. Individuals with the ability to telework with pay or individuals receiving paid sick leave or other paid leave benefits are excluded from coverage.

Does the size of the employer (or former employer) impact an individual's ability to receive unemployment compensation benefits under the Act?

No. The Act does not include a limitation on eligibility for unemployment benefits based on employer size.

How do Short-Time Compensation programs factor into the unemployment provisions of the CARES Act?

A short-time compensation program is a program under which an employer reduces the number of hours worked by employees in lieu of layoffs, thus resulting in the employee receiving a pro-rata share of the unemployment compensation he/she would have received if unemployed. The Act provides that, through December 31, 2020, states that currently have, or choose to enact, a short-time compensation program shall be fully reimbursed for such programs.

Business Provisions

What is the employee retention credit under the Act?

Under the Act, employers may receive a refundable quarterly payroll tax credit of 50% of qualified wages paid to an employee, from March 13, 2020 to December 31, 2020. Eligible employers include employers:

- (1) whose trade or business is fully or partially suspended during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or
- (2) who have a 50% decrease in gross receipts for the same calendar quarter in the prior year.

If the amount of the employee retention tax credit exceeds the employer's applicable payroll taxes for a calendar quarter, the excess is treated as an overpayment of taxes which the employer may claim as a refund.

Can an employer who receives a small business loan under Section 1102 of the Act also apply the employee retention tax credit?

No. If an employer receives a covered small business loan under the Act, the employer is not eligible for the employee retention tax credit.

What constitutes “qualified wages”?

For employers who, during 2019, had an average of more than 100 full-time employees, “qualified wages” include wages paid to employees who are not providing services to the employer due to COVID-19. The amount of “qualified wages” may not exceed the amount employees would have been paid for working the same amount of time during the prior 30 days.

For employers who, during 2019, had an average of 100 or fewer full-time employees, “qualified wages” include all wages paid to employees, regardless whether the employees are providing services during the relevant period.

“Qualified wages” also include health plan expenses, to the extent they are properly allocable to such wages.

There is a cap of \$10,000 on the amount of “qualified” wages taken into account for purposes of the employer retention credit.

Can an employer elect not to apply the employee retention tax credit?

Yes. An employer may elect not to apply the employee retention tax credit for any calendar quarter.

Does the Act permit deferred payment of payroll taxes?

Yes. Under the Act, an employer may delay payments of the employer portion of payroll taxes for the period from March 27, 2020 through December 31, 2020.

Fifty percent of the deferred taxes are due by December 31, 2021, with the remaining fifty percent due December 31, 2022.

This deferral of employment taxes does not apply to employers who have a forgiven small business loan as provided under the Act.

Family Leave and Paid Sick Leave Provisions in the Families First Act

Is a rehired employee considered an “eligible employee” under the Emergency Family and Medical Leave Expansion Act in the Families First Act?

Yes. An employee who is laid off and subsequently rehired by the same employer will be considered an “eligible employee” if the employee (1) was laid off on or after March 1, 2020 and (2) had worked for the employer for at least 30 of the last 60 calendar days prior to his or her layoff.

Are there limits on the amount of paid leave an employer must pay under the Emergency Family and Medical Leave Expansion Act?

Yes. An employer will not be required to pay more than \$200 per day and \$10,000 in the aggregate for each employee for paid leave under the Emergency Family and Medical Leave Expansion Act.

Are there limits on the amount of paid leave an employer must pay under the Emergency Paid Sick Leave Act in the Families First Act?

Yes. The limits depend on the reason for the employee's leave. An employer will not be required to pay more than \$511 per day and \$5,110 in the aggregate for each employee when the employee is taking emergency paid sick leave for one of the following reasons: (i) the employee is subject to a Federal, state, or local quarantine or isolation order related to COVID-19; (ii) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or (iii) the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

An employer will not be required to pay more than \$200 per day and \$2,000 in the aggregate for each employee when the employee is taking emergency paid sick leave for one of these reasons: (i) the employee is caring for an individual who is subject to a Federal, state, or local quarantine or isolation order related to COVID-19 or has been advised to self-quarantine due to concerns related to COVID-19; (ii) the employee is caring for the employee's son or daughter if the child's school or childcare facility has been closed or the child's child care provider is unavailable due to COVID-19 precautions; or (iii) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Does the Act do anything to alleviate the burden of requiring employers to provide paid sick and family leave?

The Act allows for advances on anticipated tax credits for employers' paid sick and family leave costs. Employers can seek reimbursement for such wages through tax credits and refunds. The Act allows employers to receive an advance of these credits, including the refundable portion, equal to the amount of paid sick or family leave paid up to the end of the most recent pay period. The Treasury Department will provide instructions for the process for advancing tax credits.

Where can I find additional helpful answers to some common questions about my obligations pertaining to sick leave and paid leave under the new laws enacted?

Please refer to O'Hagan Meyer's guidance set forth in its "Families First Act: Employer FAQs" available here: <https://ohaganmeyer.com/2020/03/20/the-new-families-first-act-employer-faqs/>.

Additionally, the Department of Labor (DOL) answers a number of common questions in an easy to follow and well-organized fashion at the below link, and the DOL is continuously updating this site.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>