On April 27, 2020, the U.S. Department of Labor (DOL) issued its latest guidance to state unemployment agencies regarding the application of Pandemic Unemployment Assistance (PUA) to impacted individuals in Unemployment Insurance Program Letter No 16-20. PUA applies to self-employed persons, gig economy workers, and independent contractors. PUA is also applicable to those impacted individuals who did not qualify for state unemployment assistance due to an inability to meet state qualifying criteria. All PUA unemployment benefits are paid by the federal government and do not impact state unemployment accounts. The new advice from the DOL was issued followed a webinar with state unemployment agencies in which states and the DOL discussed the application of many of the key provisions of PUA to ensure uniform application. PUA is now open and available in all 50 states.

For most employers, PUA will have little to no impact on their workforces. If an impacted individual qualifies for state unemployment benefits, the state unemployment benefit is applied. Only in those circumstances in which state unemployment benefits are not available will an impacted individual who previously worked for a company qualify for PUA. Common scenarios in which this may occur are the following:

1. A job offer was rescinded or delayed;
2. An employee new to the company did not meet base wage qualifying requirements;
3. The individual is sick or caring for someone who is sick with COVID-19 and the state unemployment insurance (UI) program does not consider the impacted individual as qualified due to his or her inability to obtain and accept work; or
4. The impacted individual cannot work due to the closure of a minor child’s school or daycare as a result of COVID-19, and the state UI program does not consider the impacted individual as qualified due to his or her inability to obtain and accept work.

Below are 20 frequently asked questions related to PUA, who is qualified to receive PUA, and how PUA is being processed by state UI agencies.

**Question 1. Who is eligible to receive PUA?**

**Answer 1.** PUA is applicable to any individual who is not eligible for state unemployment and is unemployed, partially unemployed, or unable or unavailable to work because of one of the following COVID-19-related reasons:
The individual was diagnosed with COVID-19.

The individual has symptoms of COVID-19 and is seeking a medical diagnosis.

A member of the individual’s household has COVID-19.

The individual is providing care to a household member with COVID-19;

A child or other person in the household for which the individual is the primary caregiver is unable to attend school or daycare due to COVID-19;

The individual is unable to reach work due to quarantine;

The individual is unable to attend work because he or she has been advised by a healthcare professional to self-quarantine.

The individual is scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of COVID-19.

The individual has become the breadwinner due to the death of the head of household as a result of COVID-19.

The individual had to quit job as a result of COVID-19.

The individual’s place of employment closed due to COVID-19.

The individual is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for unemployment under another state unemployment program.

Individuals who are able to telework with pay or who are receiving sick leave or other paid leave benefits are not eligible.

Q2. Is PUA available if an impacted individual has the option and ability to telework with pay?

A2. Generally no. Limited exceptions include when an issue of domestic violence, sexual violence, or stalking is present. A person may also qualify if he or she is now partially unemployed as a result of COVID-19 and now works fewer hours than prior to COVID-19.

Q3. Are PUA claims backdated?

A3. Yes. Unemployment claims for PUA will be backdated to the first week during the PUA period in which an employee was unemployed, partially unemployed, or unable and unavailable to work due to COVID-19.

Q4. What if an impacted individual already applied and was denied unemployment by the state unemployment agency?

A4. The unemployment agency must go back and review the denial of prior claims under the PUA criteria. The review period includes January 27, 2020, forward. If an impacted individual may qualify for PUA, the state should provide written notification of the individual’s potential eligibility. Some states are affirmatively asking impacted individuals to resubmit their applications to assist with the processing of claims.
Q5. Is the individual required to meet a minimum monetary requirement in the base period for a PUA claim similar to the monetary requirement for a state unemployment claim?

A5. No. There is no minimum monetary requirement for an individual to be eligible for PUA. The amount of income earned will impact the weekly benefit amount received.

Q6. How will an individual prove wages?

A6. Individuals will self-certify that a COVID-19 reason exists for the reduction or elimination of employment. Impacted individuals must then provide documentation of 2019 wages. Acceptable documents include tax filings, 1099, ledgers, contracts, etc. If no documentation is available, the minimum PUA benefit will be provided (see below).

Q7. How is the weekly benefit amount calculated for PUA?

A7. PUA uses the calendar year 2019 for the base period for computing PUA benefits. The normal state calculation is then applied to the 2019 base period to determine the PUA benefit. If there is no wage history available, the state will use the minimum PUA benefit amount to determine the weekly benefit. The minimum weekly PUA benefit amount is “50% of the average weekly payment of regular compensation in the state, as provided quarterly by the Department.”

In addition, $600 from the Federal Pandemic Unemployment Compensation program is available weekly to PUA beneficiaries for 16 weeks or through July 31, 2020, in the same manner as state unemployment recipients.

Q8. Does the PUA benefit amount change if the impacted individual was employed or self-employed less than full time?

A8. No. Section 2102(d)(1)(A)(i) of the Coronavirus, Aid, Relief, and Economic Security (CARES) Act provides that the minimum PUA weekly benefit amount may not be less than the minimum weekly benefit amount described in 20 C.F.R. §625.6. For purposes of PUA, the minimum weekly benefit amount is 50 percent of the weekly payment of regular compensation (see above).

Q9. Is there a maximum PUA benefit amount?

A9. Yes. The maximum PUA benefit is equal to the maximum benefit under the state unemployment guidelines.

Q10. How is PUA impacted by partial unemployment?

A10. An impacted individual may be eligible for PUA if in a partial unemployment situation. The weekly amount of PUA payable to an unemployed individual for a week of partial unemployment shall be the weekly benefit amount (WBA) reduced (but not below zero) by the full amount of any income received during the week for the performance of services, regardless of whether any services were performed during that same week. This reduction is in accordance with provision 20 C.F.R. §626.6(f)(1).

Example 1: A PUA applicant with a weekly benefit amount of $80 earned $31.75 for a week in a state where only earnings in excess of $10 are deductible/disregarded:
PUA WBA: $80.00
Earnings: $31.75
Reduction: $21.75 (Earnings over $10.00)
Balance: $58.25
PUA payable: $5900 (round to next higher dollar)
Through July 31: +$6000

PUA partial unemployment per week = $65900

Example 2: A PUA applicant with a weekly benefit amount of $300 earned $50000 for a week in a state where only earnings in excess of $10 are deductible/disregarded:

PUA WBA: $30000
Earnings: $500.00
Reduction: $490.00 (Earnings over $1000)
Balance: -$19000
PUA payable: $000 (round to next higher dollar)
Through July 31: +$000

PUA partial unemployment per week = $000

Q11. Are PUA benefits taxable?

A11. Yes. PUA benefits are included in an individual’s gross income for federal income tax purposes and are subject to federal income tax withholdings. An individual will receive a Form 1099-G to file with his or her income taxes.

Q12. Are child support obligations deductible from PUA?

A12. Yes. Just like state unemployment, child support obligations will be deducted from PUA.

Q13. If an individual is not eligible for state unemployment because he or she has not earned enough in wages to requalify after a prior unemployment claim, is the impacted individual eligible for PUA?

A13. Yes. There are no minimum wage qualifying criteria for PUA.

Q14. If an impacted individual refused to return to work when recalled by the employer because he or she wanted to receive unemployment benefits, would he or she be eligible for PUA?
A14. No. If the individual refused work in order to file unemployment benefits, the individual would not be eligible for state unemployment or PUA unemployment benefits.

Q15. An individual is on an approved unpaid medical leave from the employer. The impacted individual is unable to qualify for state unemployment benefits because he or she is unable to work. Can the impacted individual receive PUA?

A15. It depends. If the medical leave is unrelated to COVID-19 the individual will not be eligible to receive PUA. If the medical leave is directly related to COVID-19 and one of the qualifying reasons listed in Section 2101(a)(3)(A)(i)(I) of the CARES Act, the individual may be eligible to receive PUA.

Q16. Some of the reasons identified under the CARES Act to qualify for PUA require a medical diagnosis. Does this mean the individual must have tested positive for COVID-19?

A16. No. While a positive test will be sufficient to qualify for PUA, any diagnosis from a qualified medical professional including one made via phone or telehealth is also sufficient.

Q17. The CARES Act allows for PUA if the individual is the primary caregiver for a child who is unable to attend school that is closed as a direct result of the COVID-19 pandemic. Does this apply during the summer months?

A17. Maybe. At the end of the originally scheduled 2019–2020 school year, a school is no longer considered to be closed as a direct result of the COVID-19 pandemic. Once the school year is over, parents may want to rely on their customary summer childcare arrangements. Absent some qualifying circumstance, the individual will not be eligible for PUA after the school year ends. If summer childcare is closed as a direct result of COVID-19, the impacted individual may continue to qualify for PUA.

Q18. Is PUA applicable to impacted individuals unable to work or get to work due to a quarantine order and/or a stay-at-home order?

A18. Yes. Either restriction on travel or any other state or municipal restriction will qualify an individual for PUA.

Q19. Is an employee eligible for PUA if he or she self-quarantines?

A19. Maybe. If the impacted individual is in self-quarantine at the direction of a medical professional he or she will qualify for PUA. If the individual is in self-quarantine due to general concerns about exposure to COVID-19, the individual will not meet the criteria to receive PUA.

Q20. What are the penalties if an individual is not truthful on the PUA application?

A20. Each state has fraud penalties that will be enforced.

As stated above, PUA is a federally funded benefit applicable to those impacted individuals who are self-employed, gig economy workers, and independent contractors. PUA is also applicable to those impacted individuals who did not qualify for state unemployment assistance due to an inability to meet state qualifying...
criteria. Because these individuals did not previously qualify for or pay into the state unemployment insurance programs, they were not previously eligible for unemployment assistance.

Ogletree Deakins will continue to monitor and report on developments with respect to the COVID-19 pandemic and will post updates in the firm’s Coronavirus (COVID-19) Resource Center as additional information becomes available. Critical information for employers is also available via the firm’s webinar programs.