

What Employers Need to Know About the Impact of the August 8, 2020, Presidential Memorandum on Unemployment Insurance Benefits

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Earlier this month, after Congress failed to extend emergency unemployment insurance (UI) benefits, President Donald J. Trump issued a Presidential Memorandum that provides additional weekly payments to unemployment claimants. As discussed below, the status of this new benefit is uncertain, including whether it will survive legal challenge.

BACKGROUND: THE CARES ACT

On March 27, 2020, Congress passed and President Trump signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which included additional federal money for UI benefits.

In brief, the CARES Act provided an additional \$600 federal weekly UI benefit called “Federal Pandemic Unemployment Compensation” (FPUC) to individuals receiving UI benefits—both full and partial unemployment—under their applicable state program. But this federal benefit expired on July 31, 2020.¹

THE PRESIDENTIAL MEMORANDUM

In July 2020, Congress considered multiple proposals to extend the additional UI benefits but were not able to reach agreement. After both houses of Congress recessed until September 8, 2020, President Trump issued a Presidential Memorandum on August 8, 2020 (the “Presidential Memorandum”), that included a weekly benefit up to \$400 per week for individuals receiving UI benefits—referred to as “Lost Wages Assistance” or LWA.

We expect legal challenges to the Trump Administration’s authority to issue the Presidential Memorandum, so the LWA benefits may never be paid to individuals.

In the event that the LWA benefits are upheld, however, here are some key takeaways that employers will want to know:

- Funds for the LWA payments will be drawn from the U.S. Department of Homeland Security’s Disaster Relief Fund (DRF), and requires states to use their allocation under the Coronavirus Relief Fund (CRF), provided under Title V of the CARES Act.
- LWA payments must be administered and delivered by states under grant agreements with the Federal Emergency Management Agency (FEMA), in conjunction with the state’s UI system.
- A state may request LWA by submitting an application for a grant award to administer LWA by September 10, 2020.
 - On August 24, 2020, the Washington State Employment Security Department (WA ESD) announced that the state’s LWA program application had been approved, and “[i]ndividuals who are eligible for LWA will receive an additional \$300 on top of their weekly UI benefit. The state is not providing an additional \$100 on top of this amount.”²

Disclaimer: This article is not legal advice. It is provided solely for informational and educational purposes and does not fully address the complexity of the issues or steps business must take under applicable laws.

- On August 24, 2020, the Oregon Employment Department (OED) announced that it had applied for the LWA program. According to OED, the LWA benefit will be \$300 per week and will last three to five weeks.³
- The LWA benefits will be available (with some caveats) from on or after August 1, 2020, through December 27, 2020.
 - According to OED, if approved for LWA, “[m]ost payments will be automatic and retroactive to the week ending August 1, for each week someone received benefits. You do not need to call to receiver these benefits.”
- To be eligible for LWA payments, the weekly UI benefit amount must be at least \$100 a week.
 - The WA ESD has already issued some guidance on this requirement: **“Do claimants have to receive more than \$100 in weekly unemployment benefits in order to receive the extra benefits? No.** The \$100 requirement is specific to weekly benefit amounts. Since Washington’s minimum weekly benefit amount is higher than the \$100 required by LWA, this is not a concern for Washington claimants. As long as claimants are eligible to receive at least \$1 in benefits, they can receive LWA.”
- The individual must certify that he or she is unemployed or partially unemployed due to disruptions caused by COVID-19.
 - According to the WA ESD, “Individuals who have applied and been approved for PUA already self-certified at the time of their application and they answer questions weekly about their eligibility. So, these individuals already have satisfied the LWA self-certification requirement.”
- LWA is not payable to individuals collecting Disaster Unemployment Assistance (DUA).
- Even if authorized, agencies are still working through the logistics of implementing the LWA program.

We will update you with more information as we learn it. In the meantime, for more details on the Presidential Memorandum, [please go here](#).

¹ For more detailed information about the emergency UI benefits under the CARES ACT, please see our prior alert [Employers Should Know How CARES Act Impacts Unemployment Benefits](#) and [Unemployment Insurance Benefits During COVID-19 Outbreak](#).

² For more information, please read [ESD’s Questions & Answers: Lost Wages Assistance Program, August 24, 2020](#).

³ For more information, please read [OED’s Statement](#).

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