

Unemployment Insurance Benefits During COVID-19 Outbreak

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The U.S. House of Representatives passed an emergency-relief package on March 16, 2020, to address the widespread effects of COVID-19—also known as novel coronavirus—and soften the economic blow to Americans. On Wednesday, March 18, 2020, the Senate passed it.

As explained by our colleagues in the [other Families First Coronavirus Response Act \(FFCRA\) e-flashes](#), the federal government has passed the FFCRA, with a number of provisions that apply to employers, including emergency paid sick leave and emergency family and medical leave, unemployment benefits, and additional protections for health care workers, all related to COVID-19. The bill also allows free coronavirus testing for all (including the uninsured) and provides additional funding to food-assistance programs.

EMERGENCY UNEMPLOYMENT INSURANCE STABILIZATION AND ACCESS ACT OF 2020

The FFCRA includes the Emergency Unemployment Insurance Stabilization and Access Act of 2020, which allocates \$1 billion in emergency state grants to assist with processing and paying unemployment insurance (UI) benefits under some circumstances. Of that amount, \$500 million will provide funding for administrative costs, as long as states have met certain requirements to provide eligible workers with access to benefits.

Once enacted, temporary assistance will be available through December 31, 2020. Employers should keep in mind the following points with regard to this section of the FFCRA:

- The UI benefit is for job losses (or, in some cases, reduced hours)² related to COVID-19 economic downturn. It is not paid leave.
- Employers will be required to notify laid-off workers about potential UI eligibility. The U.S. Department of Labor will prepare a notice with model language.
- States with at least a 10 percent increase in unemployment will be eligible for additional funding to assist with costs related to the unemployment spike, as long as they take steps to ease unemployment eligibility requirements during the COVID-19 outbreak. Such steps may include waiving waiting periods and increasing employer UI taxes for those employers with high layoff rates.

*Unless the Administration declares an earlier effective date.

¹ Among other things, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 imposes the following requirements in order to receive the additional funding:

1. States must require employers to provide employees with notice about availability of unemployment benefits at the time of separation of employment.
2. States must ensure that applications for unemployment compensation and assistance with the application process are accessible in person, by phone, or online.
3. States must notify applicants of receipt and processing of (or inability to process) the application.
4. States must express their commitment to maintain and strengthen access to the UI benefits system, including through initial and continued claims.
5. States must demonstrate the steps they have taken or will take to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work-search requirements and the waiting week, and non-charging employers directly impacted by COVID-19 because of an illness in the workplace or direction from a public health official to isolate or quarantine workers.

² The FFCRA requires the Secretary of Labor to provide technical assistance to states that want to set up work-sharing programs, which would allow employers to reduce hours instead of laying employees off. Employees could then receive partial UI benefits to offset reduced lost wages.

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RELATED OREGON EMERGENCY MEASURES

The Oregon Employment Department (OED) provides UI benefits to most employees who are out of work through no fault of their own, including employees who are laid off because of issues related to COVID-19. In general, to receive UI benefits for a week, employees must be able to work, be available for work, and be actively seeking work.

As of Tuesday, March 17, the OED is advising that employees who are laid off because of issues related to COVID-19 may be able to receive UI benefits:

UI benefits may be available to those who are on a temporary layoff. These benefits occur for claimants whose employer stops operation for a short period of time, such as cleaning following a coronavirus exposure. In these cases, employees expect to be back to work in four weeks or less. Workers can get UI benefits, and do not need to seek work with other employers. They must be able to work, stay in contact with you as their employer, and be available to work when you call them back to the job.

On March 18, 2020, the [OED adopted emergency temporary rules for UI benefits flexibility](#) to alleviate the impact of COVID-19, which apply retroactively to March 8, 2020, when Oregon Governor Kate Brown issued Executive Order No. 20-03 declaring a statewide emergency due to the infectious novel coronavirus. The emergency temporary rules include, among other things, the following:

- **Definition of “COVID-19 related conditions.”** Those conditions include a person being unable to work because:
 - » they are ill with COVID-19;
 - » they have been potentially exposed to COVID-19 and have been subjected to a mandatory quarantine period;
 - » they have been advised by their health care provider or by advice issued by public health officials to self-quarantine due to possible risk of exposure to, or spread of, COVID-19;
 - » their employer has ceased or curtailed operations due to COVID-19, including closures or curtailments based on the direction or advice of the Governor or of public health officials;
 - » they have to stay home to care for a family member, or other person with whom they live or for whom they provide care, who is suffering from COVID-19 or subject to a mandatory quarantine; and
 - » they have to stay home to care for a child due to the closure of schools, child care providers, or similar facilities due to COVID-19.

A COVID-19 related condition also includes a situation where a person is being asked to work when it would require them to act in violation of a mandatory quarantine or Governor Brown’s directive regarding the limitation of activities to limit the spread of the novel coronavirus.

- **Disqualifications from UI benefits.** People are not disqualified from receiving UI benefits under the following circumstances (although they still must meet the weekly eligibility requirements to receive benefits):
 - » A person is discharged because of a COVID-19 related situation;
 - » A person quits work because of a COVID-19 related situation;

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- » A person fails to apply for work when referred by the employment office or the director because of a COVID-19 related situation; or
- » A person fails to accept an offer of work because of a COVID-19 related situation.
- **Able to work.** Under the emergency temporary rules, a person will not be deemed unable to work because:
 - » They are quarantined by their health care provider, or by advice issued by public health officials to self-quarantine due to possible risk of exposure to, or spread of, COVID-19, but they are not sick;
 - » They are home sick because of COVID-19 or a condition with similar flu like symptoms and they have not turned down an offer of work since they began being at home due to the sickness; or
 - » They are hospitalized, or in other institutionalized care, due to COVID-19, but for less than half of the week, and they did not turn down an offer to work that week.

A person is unable to work in a week if they are offered suitable work and do not accept it because they are sick with COVID-19, or a condition with similar flu like symptoms.

- **Actively seeking work.** A person will be considered actively seeking work if they are unemployed because of a COVID-19 related situation, or if their work search efforts are significantly impacted by COVID-19, and:
 - » They and their employer intend on the person resuming work for their employer when COVID-19 related situations permit (they are “employer attached”) and the person stays in contact with their employer, as reasonably required by their employer, so they can return to work when the employer permits them to do so; or
 - » They or their employer do not intend for the employee to return to work for their employer (they are not “employer attached”) and the person is doing what they can to find employment.
- **Available for work.** A person will not be deemed unavailable for work because:
 - » They are staying in their home, or are quarantined, due to risk of exposure to, or spread of, COVID-19 at the advice of a health care provider or by advice issued by public health officials or by directive of a government official, even if their employer had work for them they could otherwise have performed;
 - » They are home solely because they lack childcare for a child or children due to school or daycare closures or curtailments; or
 - » They are home to care for a family member due to the effects of COVID-19.

Additionally, the [OED has published an easy-to-read comparison guide](#) that lists some of the most common scenarios that may occur and benefits that may apply.

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RELATED WASHINGTON EMERGENCY MEASURES

The Washington Employment Security Department (ESD) adopted emergency rules regarding UI benefits to alleviate the impact of COVID-19, which went into effect on March 10, 2020. The emergency rules include the following:

- Workers will be eligible for UI benefits and employers will be provided relief of benefit charges if they need to temporarily reduce or shut down operations because a worker has COVID-19, and other workers must be isolated or quarantined.
- Workers who have been advised to quarantine themselves by a medical or public health official and are not otherwise receiving paid sick leave may be eligible for UI benefits.
- If workers become ill and are forced to quit their jobs, they may qualify for Paid Family Medical Leave. Once they are able to work, they may be eligible for UI benefits.
- Standby ability is expanded to part-time workers who are isolated, and the full-time requirement has been removed.
- The State will waive financial penalties for employers that file late tax reports or are untimely in responding to the ESD as a result of COVID-19.
- Unemployed workers who are in isolation as a result of COVID-19 are given more leniency in meeting UI deadlines.

Additionally, the [ESD has published an easy-to-read comparison guide](#) that lists some of the most common scenarios that may occur and benefits that may apply.

STAY UPDATED

We will continue to monitor developments, guidance, and rules related to COVID-19 and provide updates on topics that may impact employers. For further information, please contact one of our attorneys or visit our [COVID-19 resource library](#).

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