

Locke Lord QuickStudy: Pandemic Unemployment Benefits Extended Yet Again for Employees and Independent Contractors

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President Biden signed into law the American Rescue Plan Act of 2021 on March 11, 2021. The bill ([H.R. 1319](#)) includes the “Crisis Support for Unemployed Workers Act of 2020” (here called “CARES Act III”), providing for yet another extension of the CARES Act unemployment provisions – this time from March 14, 2021 until September 6, 2021. In this QuickStudy, we explore the relevant changes to existing pandemic unemployment law and other amendments that affect employees and employers as well as independent contractors.

A Comparison of CARES Act III to CARES Act I and II

CARES Act I of late March 2020 provided new and expanded unemployment protections to two groups of workers: (1) those who were generally eligible for state unemployment benefits; and (2) those who are not typically eligible for state unemployment benefits, including self-employed individuals such as independent contractors and gig workers as well as those who, but for reasons arising out of COVID-19, were fully or partially unemployed.

The first group includes traditional employees generally eligible for state unemployment benefits. In addition to and following exhaustion of any state unemployment benefits, under CARES Act I, those employees were eligible for Pandemic Emergency Unemployment Compensation (“PEUC”), which effectively extended state unemployment benefits for an additional 13 weeks (for a total of 39 weeks).

The second group encompasses workers who do not otherwise qualify for unemployment, such as employees who have not met length of service requirements, as well as self-employed individuals. Under CARES Act I, those workers were entitled to receive Pandemic Unemployment Assistance (“PUA”) equal to the weekly unemployment benefits authorized under their state’s laws for those otherwise eligible. PUA recipients were eligible to receive benefits for up to 39 weeks.

As a benefit to both groups of workers, CARES ACT I increased the weekly benefit amount for regular unemployment caused by COVID-19, PEUC benefits, and PUA benefits by an additional \$600 per week. This supplement was payable through July 31, 2020.

CARES Act II, enacted on December 27, 2020, as part of the Consolidated Appropriations Act of 2021, extended PUA and PEUC benefits for up to 50 weeks until March 14, 2021. CARES Act II, however, halved the weekly supplemental amount to \$300 per week.

CARES Act III maintains the existing PUA and PEUC benefits and extends them to up to 79 weeks total, until September 6, 2021. Finally, CARES Act III further extends the supplemental \$300 per week enhancement for all individuals receiving unemployment benefits, which now expires on September 6, 2021.

Current recipients need not apply for extended PUA or PEUC benefits

It does not appear that employees and independent contractors need to apply again for PUA or PEUC benefits if already receiving those benefits. Rather, it appears PUA and PEUC benefits under CARES Act III will simply be tacked onto existing benefits received under CARES Act I and II. For those who have never received, or are yet to receive, PUA or PEUC benefits, an application for benefits under the new stimulus bill will be required.

What else does the new stimulus bill provide to employees and independent contractors??

The new stimulus bill includes a new and valuable provision that addresses the impact of taxes on past PUA benefits. CARES ACT III provides that the first \$10,200 in unemployment insurance benefits received in 2020 will be **tax-free** to individuals earning less than \$150,000. For married couples, each spouse can exclude up to \$10,200 in benefits, for a total tax-free benefit of up to \$20,400, subject to an earnings cap.

CARES Act III also continues a provision included in CARES Act II: unemployed or underemployed independent contractors who have an income mix from self-employment and W-2 wages still are eligible for PUA. Under CARES Act I, any such worker was typically eligible only for state-issued benefits based upon their W-2 wages. CARES Act II and III, though, provide for an additional weekly benefit of \$100 if a worker earned at least \$5,000 in self-employment income. The \$100 weekly payment availability will continue until September 6, 2021.

CARES Act III also continues to provide employers with tax credits in an amount equal to 100 percent of the qualified paid sick and paid family leave benefits they provide from April 1, 2021 through September 30, 2021. The employer mandate to provide such leave under the Families First Coronavirus Response Act (FFCRA) expired on December 30, 2020; however, employers may still voluntarily provide qualifying paid sick and family leave. CARES Act III maintains the application of these tax credits at 100% for independent contractors who would otherwise be entitled to the paid sick or family leave if he or she were an employee. Like the employer tax credit, the self-employed tax credit extends to September 30, 2021. For employees who have already taken FFCRA paid sick or emergency family medical leave, CARES Act III provides those individuals with a new bank of paid sick and family leave to draw from, as long as their employers agree to offer it. Independent contractors are eligible for additional paid sick and family leave for which they can take a tax credit.

Additionally, CARES Act III expands the qualifying reasons for an employee to be eligible for FFCRA emergency paid sick leave. It now includes leave to (1) obtain a COVID-19 vaccine; (2) recover from an injury, disability, illness, or condition related to receiving the COVID-19 vaccine; or (3) seek or await the results of a COVID-19 test or diagnosis after potential exposure. In addition, paid emergency family leave is no longer limited to those instances in which an employee is unable to work in order to care for a child whose school or place of care is closed. Paid emergency family leave now includes all qualifying reasons for emergency paid sick leave as well as the three new reasons noted above. More guidance on these issues is expected from the Department of Labor.

Finally, CARES Act III provides federal subsidies for those individuals who have lost their jobs and are eligible for continuing health benefits under COBRA. Under CARES Act III, an eligible individual may remain on his or her former employer's health plan free of charge from April 1 through September 30, 2021, so long as the eligible individual is still within COBRA's 18-month period. Notably, this legislation applies retroactively so that an employee who was recently terminated but declined COBRA coverage at that time (often due to cost) may apply for subsidized coverage within 60 days from the date he/she received notice from his or her former employer.

What CARES Act III means for businesses ?

The unemployment benefits for employees payable under CARES Act III are not "chargeable" to employers, although unemployment benefits to workers who have become unemployed for reasons unrelated to COVID-19 may affect employer premiums in the future.

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The extension of PUA and PEUC benefits may pose certain obstacles for employers as they attempt to retain, hire, or recall employees who may earn enough weekly unemployment benefits to discourage a return to work. Since the enactment of CARES Act I, employers nationwide have seen a rise in employees raising concerns relating to workplace safety and personal medical conditions which affect their ability and willingness to return to the workplace. Employers should continue to document steps they have taken to maintain safe workplace conditions, communicate to their employees safety measures implemented and protocols they are expected to follow, and provide reasonable accommodations required by law or in the mutual best interest of the workers and the company. Although not required by law, employers may choose to encourage workers to provide suggestions for maintaining a safe workplace. This approach may effectively address individual employee concerns and minimize reluctance to return to work and resignations. ?

Companies using independent contractors should be alert to claim notices they receive for new applications filed during this second extension period by independent contractors claiming to be employees, as was often the case when self-employed individuals applied for unemployment under CARES Act I and II. This development could cause legal challenges for companies to the extent it might create a false record that an independent contractor is an employee of the company. Businesses should timely contest such applications to avoid erroneous assessments of unpaid unemployment taxes, which could also prompt audits by state workforce agencies of the classification status of other similar workers treated as independent contractors. Many businesses have anticipated such filings since the enactment of CARES Act I and have enhanced their compliance with independent contractor laws to minimize the risk of misclassification liability, using a process such as [IC Diagnostics™](#). It is not too late for companies using independent contractors to take steps to maximize their compliance with state and federal laws governing independent contractor status.?

Note that CARES Act III's COBRA subsidy provision requires additional notices from employers to employees, including expanded notices to employees who are terminated after enactment of the Act, as well as to recently terminated employees who declined to elect coverage. The Act directs the Department of Labor to issue model notices within 30 days after enactment of CARES Act III. ?

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