
MEMORANDUM



To: All WWD Clients

Date: May 9, 2020

Re: Pennsylvania Unemployment Insurance for Employees Working Short-Time

INTRODUCTION

In the wake of legislation adopted to provide economic security to individuals impacted by COVID-19, many union workers have seen their work eliminated or diminished. For workers who are laid off or furloughed, Unemployment Insurance is a benefit to which they may be entitled if other State Unemployment Insurance eligibility requirements are met. Some workers have not been laid off in the wake of the pandemic; instead, they have seen their hours of work and, as a result, their wages, reduced. While a reduction in hours is arguably better than a total layoff, workers in this situation often have a more difficult time determining whether they are eligible for Unemployment Insurance and, if they do, at what benefit rate.

Some states, including Pennsylvania, provide Unemployment Insurance for workers who have had their hours of work, and thus their pay, reduced. Critically, for states like Pennsylvania that participate, the CARES Act provides an additional, flat \$600 per week supplement for eligible Unemployment Insurance claimants but only for the period between April 4, 2020, and July 31, 2020¹ – even for those who are eligible for Unemployment Insurance because of a reduction in hours and pay. In addition, workers eligible for Unemployment Insurance because of a reduction in hours and pay, who exhaust their state Unemployment Insurance eligibility, also qualify for up to 13 weeks of additional Unemployment Insurance benefits provided by the CARES Act.

The questions and answers below offer guidance on how workers whose hours and pay are involuntarily reduced, and who otherwise meet eligibility requirements for Unemployment Insurance in Pennsylvania, may secure Unemployment Insurance benefits.

If my employer reduces my hours in the wake of the pandemic, but I am still working part-time hours, will I qualify for unemployment insurance?

Unemployment Insurance eligibility standards vary from state to state. In Pennsylvania, whether because of a pandemic or other reason, when an employer reduces an employee's hours, and that reduction results in a loss of pay to the employee, the employee may be eligible for Unemployment Insurance.

¹ The CARES Act makes benefits available through July 31, 2020, but individual State Unemployment Insurance programs may have a different last date of eligibility. For example, Pennsylvania's Department of Labor and Industry notes that the \$600 per week supplement is only available until July 25, 2020.

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The employee with reduced hours and pay must meet all the general eligibility criteria for Unemployment Insurance. This consists of being *unemployed* through no fault of the employee, being financially eligible (adequate earnings in covered employment in the claimant's *base year*), and otherwise being able and available for suitable work. Ordinarily, an employee who is determined as eligible for Unemployment Insurance benefits must certify that s/he is actively searching for suitable work during each week for which s/he is receiving benefits. However, Pennsylvania, among other states, has modified the active work search requirements during the COVID-19 pandemic.

As background, when a claimant files for Unemployment Insurance benefits, the Unemployment Compensation Service Center determines the claimant's weekly benefit rate ("WBR"). In typical times, this is the maximum amount that the claimant will be paid each week in Unemployment Insurance benefits. The weekly benefit rate is approximately 50% of an employee's full-time weekly wage up to a maximum benefit of \$572.00 per week. When a claimant is fully unemployed, he or she is eligible for his or her full weekly benefit rate.

In Pennsylvania, an employee whose work hours are reduced, but who remains partially employed on a shortened work schedule, may be eligible for (1) his or her full Unemployment Insurance benefit, (2) a reduced or *partial* Unemployment Insurance benefit, or (3) no benefit at all. The determination depends upon the claimant's average *base year* wages (earnings in the first four of the last five completed calendar quarters) and how much the claimant's present work hours, and therefore associated wages, have been reduced by the employer on a week by week basis.

Let's consider an example to clarify how this works:

Louise works full-time as a pharmacy assistant at a drug store and normally earns \$600 per week. Because of COVID-19 restrictions, Louise's employer reduces her work hours. Even though Louise is still on the employer's payroll, and is still earning money, her hours of work, and, therefore, her wages, have been reduced. As set forth above, Louise is still "unemployed" in the eyes of the Pennsylvania Unemployment Compensation Law, and potentially eligible for some amount of Unemployment Insurance benefits.

Louise applies for Unemployment Insurance benefits and it is determined that her weekly benefit rate is \$300. In other words, if she were completely unemployed, the most she would be eligible for in Unemployment Insurance benefits, for any

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given week of total unemployment, is \$300 plus the \$600.00 CARES Act supplement while it is in effect.

However, Louise is still working part-time. Louise is still entitled to her full weekly benefit amount of \$300 so long as wages earned by her in a week do not exceed her “partial benefit credit” as calculated by Unemployment Insurance. Under the law, the “partial benefit credit” is approximately 30% of the claimant’s weekly Unemployment Insurance benefit rate. Here, Louise’s partial benefit credit would be \$90 (30% of \$300 = \$90). Workers receiving Unemployment Insurance benefits must report earnings for each week when they file their bi-weekly claim with the Pennsylvania Department of Labor & Industry. If Louise reports earnings of over \$90 for any week in which she is receiving benefits, she will see a reduction in her weekly benefit rate, dollar for dollar, in that week. However, that will not affect her eligibility for the flat \$600.00 per week federal CARES Act additional benefit. In other words, if she is eligible for even \$1.00 in state Unemployment Insurance benefits for a particular week, she is also eligible for the additional flat \$600.00, per week, in CARES Act based Unemployment Insurance while it is available.

Let’s look at some additional scenarios to see how the weekly benefit rate may or may not be impacted by part-time earnings:

- 1. When Louise files her bi-weekly claim, she accurately reports that she earned \$90 for each at-issue week, working part time. As a result, her weekly benefit rate is not reduced and remains \$300 because she has not earned more than her partial benefit credit. She also receives the \$600.00 CARES Act supplement for each of those weeks.*
- 2. When Louise files her bi-weekly claim, she accurately reports that she is earning \$150 per week, working part time. As a result, her weekly benefit rate is reduced from \$300 to \$240, and she also receives the \$600.00 CARES Act supplement for those weeks. The weekly benefit rate is reduced by \$60 because that is the amount by which her weekly earnings exceeded her partial benefit credit for the week.*
- 3. If, instead, Louise reported earning \$300 in a week working part time, her weekly benefit rate is reduced further to \$90 for that week. She also receives the \$600.00 CARES Act supplement for that week. Again, her*

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which weekly benefit rate is reduced by \$210 because that is the amount by which her weekly earnings exceeded her partial benefit credit for the week.

not 4. If Louise reported earning \$400 in a week working part time, she would be eligible for a benefit for that week because the amount by which she exceeded her partial benefit credit has reduced her weekly benefit rate to \$0. In addition, she would not be eligible for the \$600.00 CARES Act supplement for that week.

As referenced above, individuals in Pennsylvania who receive Unemployment Insurance will also receive the \$600 per week in federal unemployment assistance pursuant to the CARES Act, during the period of its availability. Every claimant is entitled to this additional, weekly payment as long as they are otherwise eligible for a weekly Unemployment Insurance benefit for that week. Significantly, and as the examples above make clear, this \$600 per week, federal supplement does not diminish or otherwise impact the calculation of the weekly benefit rate for individuals who are still working a reduced schedule.

My employer says I cannot apply for unemployment insurance, even though my hours have been reduced, because I must first use all my vacation to cover the difference in lost hours. Is that correct?

No. The State (not the employer) administers and makes eligibility determinations for the Unemployment Insurance system. Employers do not determine whether an individual seeking Unemployment Insurance is eligible for weekly benefits – they can neither deny the individual eligibility, nor can they ensure or guarantee that an individual will be determined to be eligible for benefits by the State. That determination is to be made by the State, and the State alone.

In addition, Pennsylvania's Unemployment Compensation Law does not require a claimant to exhaust all available, accrued leave prior to making a claim for benefits.

While an employer cannot dictate an employee's eligibility for Unemployment Insurance, an employer may have the right to force an employee to utilize accrued leave while they are temporarily furloughed or while working reduced hours. Whether an employer may do so may be determined by the provisions of a collective-bargaining agreement, if applicable, by state or local law, and/or employer policy. If an employee does use such accrued leave during a week in which s/he claims Unemployment Insurance, wages received from using leave may impact the weekly benefit rate.

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Do I have to do anything different when I apply for unemployment insurance as compared to an individual who is completely laid off?

The process itself is identical, regardless of whether the worker has been totally separated from his or her employer or had his or her hours reduced. The worker should file an initial claim, that may be completed online. After filing the initial claim, the worker receives a PIN number and must file bi-weekly claims – this can be done online or by phone.

It is important to be accurate and forthright when applying for Unemployment Insurance, including accurately reporting when the claimant has worked, how much the claimant has worked, and how much the claimant has earned in wages. An individual who obtains Unemployment Insurance benefits based upon false information or omitting information will be compelled to pay back the amount received and may be subject to other penalties, up to and including possible criminal charges. In order to avoid even the appearance of fraud and protect against such claims, applicants must be truthful and provide complete answers to any questions when applying for Unemployment Insurance benefits.

Pennsylvania's Department of Labor and Industry has provided guidance and answers to frequently asked questions on its website for Unemployment Insurance claimants. Individuals considering opening an initial claim are instructed to file bi-weekly claims on Sunday, and to report their reduced or eliminated hours for the previous week.²

Individuals who have already opened an initial claim, received a PIN, and are proceeding to file the required bi-weekly claim, are instructed to answer "yes," as applicable, when asked if they worked at all during the applicable week, or will receive some type of pay (wages, leave, etc.) from the employer for the week.³

What advice should I give our members about applying for Unemployment Insurance benefits while working short time?

² <https://www.uc.pa.gov/unemployment-benefits/file/Pages/File%20an%20Initial%20Claim.aspx>.

³ <https://www.uc.pa.gov/unemployment-benefits/file/Pages/File%20a%20Biweekly%20Claim.aspx>.

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The best advice a Union may give its members about applying for Unemployment Insurance Benefits while working short time is:

1. Apply, with the understanding that the member may be eligible for some amount of benefit, but it will likely be reduced due to the member's short time work;
2. Members who may be eligible should not wait to apply and should take care not to miss or skip filing their bi-weekly claims. As set forth above, the CARES Act provides enhanced benefits to workers who are eligible for Unemployment Insurance benefits in states such as Pennsylvania, that have entered into the necessary agreements with the U.S. Secretary of Labor. Some benefits are only available for a limited period.
3. A member should not be discouraged from applying for Unemployment Insurance benefits by an employer's opinion as to their eligibility.
4. Remember, the State, not the employer, makes decisions on eligibility. A member must be honest and accurate when reporting hours worked and wages received.

CONCLUSION

After reviewing the above guidance, Unions should have a better understanding of members' rights to Unemployment Insurance in Pennsylvania when they have had their hours of work reduced.

Of course, a member or a Union Representative with a specific question about eligibility should consult with a qualified attorney. The Attorneys at Willig Williams and Davidson have been counseling union leadership and members regarding the COVID-19 crisis. If you, or any of your members, have questions or need assistance please feel free to contact one of the Willig, Williams & Davidson attorneys at 215-656-3600. Also check out our continuing updates on our Blog and Face Book page.